[#]

Incentivised Target Cost Delivery Deed

[#]   
(**Principal**)

[#]   
(**Contractor**)

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[60.11 Counterparts 257](#_Toc145062950)

[60.12 Moratorium Legislation 257](#_Toc145062951)

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**Schedules**

Schedule 1 — Contract Particulars

Schedule 2 — Conditions Precedent Schedule

Schedule 3 — Reimbursable Costs

Schedule 4 — Corporate Overhead and Profit

Schedule 5 — Risk or Reward Regime

Schedule 6 — Target Outturn Cost

Schedule 7 — Provisional Sum Work

Schedule 8 — Review Procedures

Schedule 9 — Pre-Agreed Scope Variations

Schedule 10 — Not used

Schedule 11 — Form of Subcontractor Direct Deed

Schedule 12 — Schedule of Certificates and Notices

Schedule 13 — Insurance Schedule

Schedule 14 — Relevant State Policies

Schedule 15 — Adjustment Event Schedule

Schedule 16 — Form of Performance Bond

Schedule 17 — Practical Completion

Schedule 18 — Statutory Declaration

Schedule 19 — Parent Company Guarantee

Schedule 20 — Form of warranty

Schedule 21 — Form of Expert Determination Agreement

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**Annexures**

Annexure 1 — Project Scope and Delivery Requirements

**Attachments**

Attachment 1 — Project Information

Attachment 2 — Principal Approvals

Attachment 3 — Bid Program

Attachment 4 — Bid Plans

Incentivised Target Cost Delivery Deed

**Date**

**Parties** [#] (**Principal**)

[#] (**Contractor**)

**Background**

1. [*Insert*]
2. [*Insert*]

Operative provisions

PART A — INTERPRETATION

# Definitions

1. In this Deed:
2. **Aboriginal Cultural Heritage** has the meaning given in the *Aboriginal Heritage Act 2006* (Vic).
3. **Actual Outturn Cost** or **AOC** means the total verified sum of:
   1. all Reimbursable Costs reasonably and actually incurred by the Contractor in performing the Contractor's Activities; and
   2. all Corporate Overhead and Profit payable by the Principal to the Contractor under this Deed,
4. until the issue of the Final Certificate, but not including amounts specifically excluded under this Deed.
5. **Additional or Replacement Security** has the meaning given in clause 51.5(b).
6. **Adjustment Event** means an Adjustment Event (Cost), and Adjustment Event (KRA) and Adjustment Event (Time) (or any one of those as the context requires). ***[Drafting note: DTF input required for any project-specific Adjustment Events]***
7. **[Adjustment Event Guidelines** means Schedule [#]]. ***[Drafting note: To be included on a project-specific basis, noting the Adjustment Event Schedule will need to be amended accordingly to remove references to the Adjustment Event Guidelines where not applicable.]***
8. **Adjustment Event (Cost)** means any act, event or circumstance listed as an Adjustment Event (Cost) in the Adjustment Event Schedule which occurs after the date of this Deed, but does not include any act, event or circumstance that is specifically excluded from being an Adjustment Event (Cost) in this Deed.
9. **Adjustment Event (KRA)** means any act, event or circumstance listed as an Adjustment Event (KRA) in the Adjustment Event Schedule which occurs after the date of this Deed, but does not include any act, event or circumstance that is specifically excluded from being an Adjustment Event (KRA) in this Deed.
10. **Adjustment Event (Time)** means any act, event or circumstance listed as an Adjustment Event (Time) in the Adjustment Event Schedule which occurs after the date of this Deed, but does not include any act, event or circumstance that is specifically excluded from being an Adjustment Event (Time) in this Deed.
11. **Adjustment Event Schedule** means Schedule 15.

**Adjustment Note** has the meaning given in the GST Law.

1. **Amended Remediation Plan** has the meaning given in clause 27.3(j).
2. **Amended Risk or Reward Regime** has the meaning given in clause 4.7(c).
3. **Amendment** has the meaning given in clause 51.1(a).
4. **Annexure** means an annexure to this Deed.
5. **Approval** means:
   1. each Principal Approval required for the purpose of the Project; and
   2. 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.
6. **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).
7. **As-Built** **Records** means the as-built information required to be provided in relation to the Works in accordance with [#] of the PSDR.
8. **Associate** means, in relation to a person, any officer, agent, adviser, consultant, contractor or employee of that person.
9. **Attachment** means an attachment to (but not forming part of) this Deed. ***[Drafting note:*** ***Attachments are generally not included as part of the Delivery Deed and are distinct from Annexures or Schedules. Principals should ensure that documents which are intended to form part of the Deed do not take the form of Attachments.]***
10. **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
11. **Authority** means any:
    1. government;
    2. 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
    3. 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 Site or Extra Land as a consequence of the Works or a Variation.
12. **Background IP Rights** means any Intellectual Property Rights developed by a party independent of the Contractor or prior to the Contract Date that is used for the Contractor's Activities.
13. **Bespoke Resolution Procedure** has the meaning given in clause 46.4(a)(ii).
14. **Best D&C Practices** means design, manufacture, supply, construction, installation, commissioning and repair practices which are carried out:
    1. with the standard of skill, care and diligence which may reasonably be expected of a prudent, experienced and competent person carrying out design, manufacture, supply, construction, installation, commissioning and repair work similar to the Contractor's Activities in Australia;
    2. in a manner safe to all people and the Environment;
    3. with the intent of ensuring reliable long term, safe and efficient operation of the Works;
    4. by prudent, experienced competent and trained personnel utilising high quality and safe and proper equipment, tools, procedures and industry standards;
    5. with an adequate number of personnel, materials, resources and supplies;
    6. using suitable, new (or refurbished) 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:
       1. normal conditions; and
       2. any other conditions that would be anticipated by a prudent, experienced and competent person carrying out design, manufacture, supply, construction, installation, commissioning and repair work similar to the Contractor's Activities in Australia; and
15. in a manner which is in accordance with the relevant requirements in the PSDR.

**Bid Program** means the Contractor's initial program for the Contractor's Activities which is as set out in Attachment 3.

1. **Bid Plans** means the Contractor's initial plans for the Project which are as set out in Attachment 4.
2. **Bond** has the meaning given to it in clause 33.1(a)(i).
3. **Brand** means all branding and goodwill associated with the Project (or any part of the Project) including:
   1. all registered and unregistered trade marks (other than those trademarks of any Contractor Associate which are used in its business more generally and are not created or developed in connection with the Project);
   2. all names including business names, domain names and company names (other than those names of any Contractor Associate that are used in its business more generally and are not created or developed in connection with the Project); and
   3. all telephone numbers, email addresses, internet addresses and all other addresses used by the general public in relation to the Project to make contact using an information communication technology network.
4. **Building Work** has the meaning given in section 6 of the FSC Act.
5. **Business Day** means a day in Melbourne that is not:
   1. a Saturday or Sunday; or
   2. a public holiday for Melbourne pursuant to the *Public* *Holidays Act 1993* (Vic).
6. **Business Hours** means between 9:00 am and 5:00 pm on a Business Day*.*
7. **Calculation Date** means the Date of Practical Completion (or, if there are Separable Portions, the last Date of Practical Completion to occur). [***Drafting note: Agencies should consider whether they would prefer an interim calculation of the Risk Amount or Reward Amount, which would enable the Principal to retain some of the Reward Amount for the duration of the DLP.***]
8. **Certificate of Practical Completion** means a certificate issued under clause 25.4(f), which is substantially in the form required by the Schedule of Certificates and Notices.
9. **Certificate of Close-out** means a certificate issued under clause 26(g), which is substantially in the form required by the Schedule of Certificates and Notices.
10. **Certificate of Returned Works Completion** means a certificate issued under clause 25.5(i), which is substantially in the form required by the Schedule of Certificates and Notices.

**Certifying Functions** has the meaning given in clause 7.2(e).

1. **Change in Control** means if, at any time any person (whether alone or together with any Associate or Associates):
   1. ceases to or commences to, directly or indirectly have Control of an Entity;
   2. commences to, directly or indirectly, have a relevant interest in more than 50% of the Securities of an Entity where that person previously had, directly or indirectly, a relevant interest in less than 50% of the Securities of that Entity; or
   3. commences to, directly or indirectly, have a relevant interest in 100% of the Securities of an Entity.
2. For the purposes of this definition of Change in Control, "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) and "relevant interest" has the meaning given in the Corporations Act but as if a reference in that section to "securities" were a reference to Securities as defined in this Deed.

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

* 1. the introduction of a new EPA Standard; or
  2. a change in or amendment to an EPA Standard.

1. **Change in Law** means any one of the following that occurs on or after the date which is [6 Months] after the date of this Deed: ***[Drafting note: Time period to be amended on a project specific basis.]***
   1. a change in, or repeal of existing Legislation of the Commonwealth, the State or an Authority;
   2. the enactment or making of new Law;;
   3. a change in the way Legislation is applied or interpreted as a result of a decision of a court of competent jurisdiction;
   4. the introduction of a new Approval (other than a Principal Approval);
   5. a new requirement to obtain an Approval (other than a Principal Approval); or
   6. an amendment to, repeal of or change in an Approval (other than a Principal Approval).
2. **Change in Mandatory Requirements** means:
   1. a Change in Law which compliance with requires a change to the Works or the Working Parameters and either:
      1. the costs in respect of the Change in Law (either by itself or in aggregate with each prior Change in Law which compliance with required a change to the Works or the Working Parameters) exceed $[insert]: or
      2. the Contractor is delayed in achieving Completion by more than [insert] Business Days due to the Change in Law (either by itself or in aggregate with each prior Change in Law which compliance with required a change to the Works or the Working Parameters),
   2. ***[Drafting note: DTF to confirm the inclusion of limbs (i) and (ii), which are based on paragraphs (d) and (e) of the definition of General Change in Law (Development Phase) in the Harmonised PPP Project Deed.]***
   3. but does not include:
      1. a Principal Approval Event;
      2. the event referred to in paragraphs (a)(i) or (a)(ii) above which:
         1. 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;
         2. is contained or referred to in the PSDR, the Bid Plans or any Project Document, or in any Project Information existing prior to the date of this Deed;
         3. a party performing activities similar to the Contractor's Activities in accordance with Best D&C Practices would have reasonably foreseen or anticipated a change similar to or having a similar effect on the rights and obligations of the Contractor prior to the date of this Deed;
         4. is substantially the same as a Law in force prior to the date of this Deed;
         5. is substantially the same as any other requirement with which the Contractor is required to comply under the Project Documents; or
         6. results from or is in response to any Contractor Act or Omission;
      3. the event referred to in paragraphs (a)(i) or (a)(ii) relating to:
         1. Taxes including the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and the GST Law;
         2. 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 2.19, whether or not it has any application; or
         3. the FSC Act;
      4. 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));
      5. any new Approval or change in an existing Approval due to the design of the Works or the Contractor's delivery methodology for the Project except where any such design or delivery methodology is necessary to satisfy the Contractor's obligations under the Project Documents;
      6. the Works or any part of the Works:
         1. being prescribed to be, to function as, declared as or otherwise becoming a critical infrastructure asset or critical infrastructure sector asset under the *Security of Critical Infrastructure Act 2018* (Cth)which, for the avoidance of doubt, does not include a declaration that the relevant Works are a 'system of national significance' under section 52B of the *Security of Critical Infrastructure Act 2018* (Cth); or
         2. being prescribed to be, to function as, declared as or otherwise becoming 'critical infrastructure' under the *Emergency Management Act 2013* (Vic), which does not include the relevant Works being designated as 'vital critical infrastructure' by order of the Governor in Council in accordance with section 74E of the *Emergency Management Act 2013* (Vic);
      7. a declaration made under section 26 of the *Terrorism (Community Protection) Act 2003* (Vic) in connection with the Project;
      8. 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;
      9. a Change in Policy; or
      10. a Contamination Notice; or
   4. a Change in Policy occurs after the date of this Deed:
      1. in respect of a Change in Policy that is not a Change in EPA Standard, the Contractor is:
         1. obliged to comply with as a matter of Law; or
         2. not required to comply with as a matter of Law but the Principal directs the Contractor to comply with under clause 36.1(b)l or
      2. in respect of a Change in Policy that is a Change in EPA Standard, the Contractor:
         1. is obliged to comply with in accordance with an EPA Statutory Instrument; or
         2. is not obliged to comply with in accordance with an EPA Statutory Instrument but the Principal directs the Contractor to comply with under clause 36.1(b),

and the Change in EPA Standard has a material adverse effect on the manner in which the Contractor undertakes the Contractor's Activities,

* 1. but does not include:
     1. any of the events referred to in paragraphs (b)(i)(i) or (b)(i)B above:

##### of which the Principal expressly notified the Contractor prior to the date of this Deed;

##### which is contained or referred to in the PSDR, the Bid Plans or any Project Document, or in any Project Information to the extent it exists prior to the date of this Deed;

##### which a party performing activities similar to the Contractor's Activities in accordance with Best D&C Practices would have reasonably foreseen or anticipated a change similar to or having a similar effect on the rights and obligations of the Contractor prior to the date of this Deed;

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

##### which is substantially the same as any other requirements with which the Contractor is required to comply under the Project Documents; or

##### which results from or is in response to any Contractor Act or Omission;

#### a Change in Law; or

#### a Pandemic Change in Law.

1. **Change in Policy** meansany one or more of the following that occurs after the date of this Deed:
   1. the introduction of a new Standard; or
   2. a change in or amendment to a Standard.
2. **Claim** means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made under any Project Document or otherwise at Law in connection with the Contractor’s Activities, including for any loss, Liability, any adjustment to the TOC, the KRAs or any Date for Completion, specific performance, restitution, payment of money (including damages) or any other form of relief or remedy.
3. **Close-out** means the stage when:
   1. the last Defects Liability Period has expired;
   2. all Defects have been rectified; and
   3. the Contractor has otherwise done everything which this Deed requires the Contractor to do prior to or as a condition precedent to Close-out.

[***Drafting note: To be addressed on a project specific basis.***]

**Commercially Sensitive Information** means any information relating to the Contractor's cost structure or profit margins.

1. **Commonwealth** means the Commonwealth of Australia.
2. **Commonwealth Funded Building Work** means Building Work that is directly or indirectly funded by the Commonwealth, other than Building Work that is prescribed for the purposes of section 43(4) of the FSC Act.
3. **Commonwealth Funding Conditions** means:
   1. compliance with the FSC Act;
   2. accreditation of the Contractor under the WHS Accreditation Scheme, or if a Contractor is not accredited, such Contractor has a valid exemption applying to that Contractor and that Contractor complies with the relevant conditions;
   3. provision by the Contractor to the Principal of a statement of assurance in connection with the Project in accordance with the Principal's reasonable requirements; and
   4. any other requirements of the Commonwealth as notified to the Contractor by the Principal in connection with the Commonwealth funding associated with the Project required under the [*insert funding agreement*]. [***Drafting note: To be deleted if Commonwealth funding is not applicable.***]
4. **Completion** means:
   1. Practical Completion; and
   2. Close-out,
5. (or the relevant one of these as the case may be).
6. **Concurrent Delay** has the meaning given in clause 27.10(a).
7. **Condition Precedent** means each condition precedent identified as such in the Conditions Precedent Schedule.
8. **Condition Precedent Deadline** has the meaning given in clause 3.2(b).
9. **Condition Precedent Satisfaction Date** means the date set out in the Principal's notice under clause 3.2(d) as being the date on which the last Condition Precedent to be satisfied, has been satisfied (or waived under clause 3.3(b)).
10. **Conditions Precedent Schedule** means Schedule 2.
11. **Confidential Information** has the meaning given in clause 53.2(a).

**Construction Documentation** has the meaning given to that term in the Delivery Requirements.

1. **Construction Management Plan** means the Plan of that name.
2. **Constructional Plant** means appliances and things used in the performance of the Contractor's Activities but not forming part of the Works.
3. **Contaminated Land Notice** has the meaning given in clause 12.1(c)(xi).
4. **Contamination** means a condition of land, air, soil or water including groundwater resulting from past or present Pollution.
5. **Contamination Notice** means:
   1. a notice, order or direction given, or purporting to have been given, under Legislation (including the *Environment* Protection *Act 1970* (Vic) and the *Environment Protection Act 2017* (Vic)); or
   2. any other Law,
6. which prohibits a person from taking certain measures as a result of Contamination or otherwise requires a person to take any improvement or investigation measures, or other 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 Site or Extra Land or, any other land in the direct vicinity of the Site or Extra Land used or occupied by the Contractor or any Contractor Associate for the Project, and includes any improvement notice, prohibition notice, notice to investigate, environmental action notice, non-disturbance notice or site management order given or purported to have been given under the *Environment Protection Act 2017* (Vic).
7. **Contract Date** means the date which appears on this Deed.
8. **Contract Particulars** means Schedule 1.
9. **Contract Works Insurance** has the meaning given in the Insurance Schedule.
10. **Contractor** means [insert]. ***[Drafting note: Definition of the Contractor to be completed on a project specific basis.]***
11. **Contractor Act or Omission** means:
    1. a breach of a Project Document by the Contractor or any Contractor Associate; or
    2. any other act or omission of the Contractor or any Contractor Associate, other than to the extent any such act or omission is a Permitted Act.
12. **Contractor Associate** means each of the following persons:
    1. any Associate of the Contractor;
    2. the Contractor Representative;
    3. the Design Development Coordinator and any Other Representative referred to in clause 7.4;
    4. each Subcontractor,
13. and their respective Associates, each only where acting in connection with the Project, but does not include the Principal or any Principal Associate.
14. **Contractor Material** means:
    1. the Design Documentation;
    2. the Construction Documentation;
    3. the As-Built Records;
    4. the Plans;
    5. the Reports;
    6. the Program;
    7. any Material prepared or created by or on behalf of the Contractor or any Contractor Associate in connection with any Approval;
    8. all other Material which the Contractor or any Contractor Associate:
       1. prepares or uses (or is required to prepare or use under a Project Document) in connection with the Project; or
       2. provides (or is required to provide under a Project Document) to the Principal or any Principal Associate in connection with the Project,
15. but does not include software tools which are:
    1. used internally by the Contractor or any Contractor Associate to create, but which are not incorporated into, the materials described in paragraphs (a) to (h); or
    2. generally commercially available.
16. **Contractor Representative** means the person identified as such in the Contract Particulars.
17. **Contractor Selected Item** has the meaning given in clause 23.6(b).
18. **Contractor's Activities** means the design, manufacture, supply, construction, installation and commissioning and completion of the Works, including the Temporary Works, and all other works, things and tasks which the Contractor is, or may be, required to carry out to:
    1. achieve Practical Completion;
    2. achieve Close-out; and
    3. otherwise comply with its obligations under or in connection with the Project Documents,
19. whether or not the performance of such things or tasks is subcontracted by the Contractor to another person.
20. **Contractor's Consultant** means any consultant identified as such in the Contract Particulars.
21. **Control** means:
    1. control of, or having the capacity to control the composition of the board or partnership committee, or decision making, directly or indirectly, in relation to the financial and operating policies;
    2. being in a position to cast, or control the casting of, more than 20% of the maximum number of votes that may be cast at a general meeting or similar; or
    3. 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 Security Interests as defined in this Deed) in more than 20% of the Security Interests,
22. 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).
23. **Corporate Overhead and Profit** means the Contractor's corporate overhead and profit calculated in accordance with Schedule 4.
24. **Corporations Act** means the *Corporations Act 2001* (Cth).
25. **Costs** means all costs properly and reasonably incurred, or which will be properly and reasonably incurred, that are directly attributable to the relevant Adjustment Event but excludes Corporate Overhead and Profit.
26. **Cost Plan** means the cost plan prepared under the ITC Development Agreement, as adjusted in accordance with clause 21.
27. **COVID-19** means the infectious disease arising from Novel Coronavirus 2019 and known as Coronavirus (COVID-19) which was characterised as a pandemic by the World Health Organisation on 11 March 2020.
28. **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 the applicable requirements (if any) under any relevant Project Document, and so that the Principal and the Principal Associates are in the position they would have been in had the relevant event, matter, thing or issue not taken place.
29. **Cure Program** has the meaning given in clause 43.4(a).
30. **Cyber Security Incident** has the meaning given in the *Security of Critical Infrastructure Act 2018* (Cth).
31. **Data** means all point and array information, text, drawings, statistics, tests, analysis and other materials (including geological, geotechnical and environmental information, maps, images, survey results and drill core and cutting shapes) embodied in any form which is:
    1. supplied by or on behalf of the Principal in connection with the Contractor's Activities (**Input Data**); or
    2. generated, recorded, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data or for the purpose of this Deed.
32. **Date for Close-out** means the date specified as such in the Contract Particulars as adjusted (if at all) under this Deed.
33. **Date for Completion** means:
    1. the Date for Practical Completion; and
    2. the Date for Close-out,
34. (or the relevant one of these as the case may be).
35. **Date for Practical Completion** means the date specified as such in the Contract Particulars as adjusted (if at all) under this Deed.
36. **Date of Close-out** means the date of the Certificate of Close-out issued under clause 26(g) as the date on which the Contractor achieved Close-out. [***Drafting note: The Date of Close-out may be the date of the Certificate of Close-out or may be prior to the date of the Certificate of Close-out. Consider on a Project specific basis having regard to relevant regulatory framework.***]

**Date of Practical Completion** means the date of the Certificate of Practical Completion issued under clause 25.4(f) as the date on which the Contractor achieved Practical Completion. [***Drafting note: For roads projects, the Date of Practical Completion must be the date of the certificate but, where not a road project, the Date of Practical Completion may be able to be prior to the date of the Certificate of Practical Completion. Consider on a Project specific basis having regard to relevant regulatory framework.***]

1. **Date of Returned Works Completion** has the meaning given in clause 25.5(i)(iv).
2. **Deed** has the meaning given in clause 2.2.
3. **Default** means any failure by the Contractor or a Parent Guarantor to comply with any obligation of the Contractor or a Parent Guarantor under any Project Document, but excludes any Major Default or Default Termination Event.
4. **Default Notice** has the meaning given in clause 43.2(a).
5. **Default Termination** **Event** means the occurrence of any of the following events:
   1. (**abandonment**): the Contractor wholly or substantially abandons all or any material (in scope or effect) part of the Contractor's Activities;
   2. (**fraud**): the Contractor engages in fraud, collusion or dishonest conduct in performing its obligations under the Project Documents;
   3. (**Contractor or Parent Guarantor Insolvency Event**): an Insolvency Event occurs in relation to the Contractor or the Parent Guarantor [***Drafting note: Requirement relating to Parent Guarantor to be considered in light of consortium structure (if applicable)***];
   4. (**assignment, transfer or disposal**): the Contractor assigns, sells, novates, transfers, mortgages, creates or allows to exist any security interest over or otherwise deals with any of its right, title or interest in or under any Project Document, the whole or any part of the Site or the Works other than in accordance with the requirements of this Deed;
   5. (**Change in Control**): where:
      1. a Change in Control occurs without the Principal's consent under clause 50.2 and is not a Change in Control referred to in clause 51.4; or
      2. the Principal gives notice under clause 51.5 that the Principal provides a conditional consent to or does not consent to a Change in Control in respect of a Contractor or Parent Guarantor and the Contractor fails to comply with clause 51.4(c)(i) within the time required by the Principal (acting reasonably) or clause 51.4(c)(ii) within 60 Business Days of receipt of that notice from the Principal (as applicable); ;
   6. (**unremedied Major Default**): a Major Default is capable, or deemed to be capable, of Cure and the Contractor fails to Cure the Major Default within the time set out in the Major Default Notice (as amended under clause 43.3(d), determined in accordance with clause 43.3(g) or extended under clause 43.4(e) (as applicable));
   7. (**Major Default not capable of Cure**): a Major Default is not capable of Cure and the Contractor fails to diligently comply with any reasonable requirements of the Principal to overcome the consequences of the Major Default within the time stated in the Major Default Notice (as amended under clause 43.3(d), determined in accordance with clause 43.3(g) or extended under clause 43.4(e) (as applicable));
   8. ***[Drafting note: This document includes two alternative regimes addressing the Contractor's failure to reach Completion by the Date for Completion.***

***Alternative A is a Liquidated Damages regime only***

***Alternative B is both a KRA regime and a Liquidated Damages regime (Liquidated Damages are applied where the Performance Reward Potential Pool under the KRA regime is reduced to zero).]***

**Alternative A or Alternative B**

* 1. [(**Liquidated damages**): the aggregate liability of the Contractor to the Principal under or in connection with any one or more of clauses 27.18(b) and 27.18(f)(ii) and in respect of breach of clause 27.1 is equal to or exceeds [10]% of the Initial TOC and the Contractor does not elect to increase the limitation of liability referred to in clause 27.18(c) by [5]% of the Initial TOC to equal [15]% of the Initial TOC, provided that:
     1. any election by the Contractor to increase the limitation of liability referred to in clause 26.19(c) by [5]% of the Initial TOC to equal [15]% of the Initial TOC only applies where the Contractor is expeditiously and diligently progressing the Contractor's Activities and is not otherwise in default under this Deed; and
     2. any increase will not limit the Principal's rights to subsequently rely on this paragraph (h) where the aggregate liability of the Contractor to the Principal under or in connection with any one or more of clauses 26.19(b) and 26.19(f)(ii) in respect of breach of clause 26.11(a) is equal to or exceeds [15]% of the Initial TOC.]
  2. (**General cap**): the aggregate liability of the Contractor to the Principal under or in connection with the Project Documents is equal to or exceeds [50]% of the Initial TOC;
  3. (**Parent Company Guarantee**); any Parent Company Guarantee provided in accordance with clause 33.6 becomes void, or voidable or unenforceable for any reason;
  4. (**Sunset Date**): Practical Completion has not occurred by the date that is [*insert period of time for the sunset date*] after the Date for Practical Completion; ***[Drafting note: the sunset date should align with the period to meet the LDs Cap, if any]***
  5. (**deemed Default Termination Event**): any other event which is deemed to be a Default Termination Event under this Deed.

1. **Default Termination Payment** has the meaning given in clause 44.3(c).
2. **Defect** means:
   1. any defect, fault or omission (including shrinkage, expansion, fading or settlement) in the Works or Returned Assets except to the extent:
      1. such defect, fault or omission is within tolerances (if any) set out in the Delivery Requirements; and
      2. where the defect, fault or omission is any shrinkage, expansion, fading or settlement of an asset, such shrinkage, expansion, fading or settlement is within the tolerances expected of an asset of the same type, nature and quality as the relevant asset and does not amount to a breach of the FFP Warranty; or
   2. any other aspect of the Works or the Returned Assets which is not in accordance with the requirements of this Deed,
3. and includes Minor Defects, and damage to the Works or a Returned Asset that is caused by any of the matters referred to in paragraph (a) or (b), but otherwise excludes damage to the Works or the Returned Assets.
4. **Defect Corrective Action Plan** has the meaning given in clause 28.4(a).
5. **Defects Liability Period** means the relevant period referred to in clause 28.2(a), as extended under clause 28.2(b).
6. **Delivery Phase Offer** means the offer to perform the Contractor's Activities and complete the Works developed by the Contractor and submitted to the Principal under the ITC Development Agreement.
7. **Delivery Requirements** has the meaning given in the PSDR. [***Drafting note: This is the Principal's requirements for the design and construction of the Works.***]
8. **Design Development Coordinator** means the person appointed by the Contractor as the Design Development Coordinator under clause 7.4.
9. **Design Development Process** has the meaning given in clause 23.1(b).
10. **Design Documentation** means all deliverables in respect of the design of the Works (including all draft and final design standards, design reports, durability reports, drawings, specifications, manuals, designs, models, samples, patterns and calculations) in computer readable written or any other form, which the Contractor or any Contractor Associate creates, develops or produces or which are required to, or must necessarily, be created, developed or produced in carrying out the Contractor's Activities.
11. **Development Phase Activities** means the Development Phase Services and the Early Delivery Activities.
12. **Development Phase Costs** means the total amount payable by the Principal to the Contractor under the ITC Development Agreement for the performance of the Development Phase Activities.
13. **Development Phase Services** has the meaning given in the ITC Development Agreement.
14. **Direct Affected Area** means an area in, on, over or under the direct vicinity, but outside, of the Site which is used or occupied by the Contractor or a Contractor Associate in carrying out the Contractor's Activities in accordance with this Deed.

**Direct Interface Deed** means any agreement or deed that the Contractor is required by the Principal to enter or does enter into with a Direct Interface Party in respect of Direct Interface Works under which the Contractor has recourse against the Direct Interface Party in respect of acts or omissions of the Direct Interface Party in carrying out the Direct Interface Works. [***Drafting note: The intention is to capture those agreements where the Contractor has direct recourse against the Direct Interface Party. If Direct Interface Deeds are entered into where there is no direct recourse to the Direct Interface Party, amendments will need to be made on a project specific basis.*** ***In addition, on a project specific basis, Project teams could include a mechanism which requires the Contractor to enter into Direct Interface Deeds post contract close.]***

1. **Direct Interface Party** means [*Insert*]. [***Drafting note: To be considered on a project specific basis.***]
2. **Direct Interface Works** means works, services, activities or functions:
   1. in connection with the Works;
   2. otherwise in connection with the Contractor's Activities; or
   3. on, in, under, over or in the direct vicinity of the Site,
3. which are undertaken by a Direct Interface Party simultaneously with the Contractor's performance of the Contractor's Activities and are the subject of a Direct Interface Deed.
4. **DLP Bond** has the meaning given to it in clause 33.1(a)(ii).
5. **Early Delivery Activities** has the meaning given in the ITC Development Agreement.
6. **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 or existing at the date of this Deed.
7. **Election Date** means for each Pre-Agreed Scope Variation, the relevant date specified as the '"Election Date" in the Pre-Agreed Scope Variations Schedule, or such other date as may be agreed by the parties.
8. **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).
9. **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.
10. **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.
11. **Environmental Management Plan** means the Plan of that name.
12. **Environmental Requirements** means all:
    1. Laws relating to the Environment and, if the Law is an Approval, the conditions and requirements of any Approval relating to the Environment; and
    2. environmental safeguards and measures necessary to protect the Environment and avoid, reduce, minimise or mitigate the environmental impacts of the Contractor's Activities, including those identified in this Deed, any other Project Document or otherwise required by Best D&C Practices.
13. **EPA** means the Environment Protection Authority Victoria constituted under Legislation.
14. **EPA Standard** means a Standard issued by the EPA in connection with or as a consequence of:
    1. the *Environment Protection Act 2017* (Vic); or
    2. any delegated legislation or statutory instruments made under the *Environment Protection Act 2017* (Vic).
15. **EPA Statutory Instrument** means:
    1. a written notice, order or direction issued to the Contractor; or
    2. an Approval obtained or required,
16. in connection with the Project under the *Environment Protection Act 2017* (Vic) or any delegated legislation or statutory instrument made under the *Environment Protection Act 2017* (Vic).
17. **Equipment** means:
    1. all furniture, fittings, fixtures and equipment necessary for the Works to satisfy the FFP Warranty; and
    2. any other equipment procured as a Variation,
18. excluding Plant and Temporary Equipment.

**Equipment List** means Appendix [#] of the PSDR.

1. **Equipment Selection Notice** means a notice which:
   1. reflects the outcome of any consultation or tender process for an item (or group of items) of Equipment conducted by the Contractor in accordance with clause 24; and
   2. otherwise contains the information in respect of the relevant item (or group of items) of Equipment, required under clause 24.
2. **Equipment Specification** means, for an item of Equipment:
   1. the make, model, reference number and, if required, the manufacturer of the item;
   2. the relevant technical specifications for the item;
   3. details of the functionality of the item;
   4. the quantity of the item;
   5. details of the proposed location of the item within the Works including, if applicable, an elevation drawing (at a scale of 1:100) of the item in its proposed location within the Works;
   6. principles for the supply and installation of the item;
   7. a brochure, photo or illustration of the item;
   8. if the item requires consumables, details of such consumables and the estimated costs associated with such consumables; and
   9. if applicable, the details of any required interconnectivity with:
      1. the Works; and
      2. other systems or items of equipment.
3. **Executive Review Group** means the executive level issue resolution group established in accordance with the Executive Review Group Terms of Reference.

**Executive Review Group Terms of Reference** means the terms of reference for the Executive Review Group set out in Schedule 22 (Executive Review Group Terms of Reference), as updated by agreement between the parties from time to time.

**Expert Determination Agreement** means the form of agreement set out in Schedule [21].

**Explanation** has the meaning given in clause 27.3(e)(i).

1. **Extra Land** means land or buildings in addition to the Site.
2. **FFP Warranty** means each and all of the warranties given in clause 5.6.
3. **Final Certificate** has the meaning given in clause 30.7(a).
4. **Final Payment Claim** has the meaning given in clause 30.6(a).
5. **Financial Year** means each 12 month period commencing on 1 July and ending on 30 June.
6. **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.
7. **Fixtures** has the meaning given in clause 19.1.
8. **Force Majeure Event** means:
   1. the occurrence of any of the following events after the date of this Deed:
      1. earthquake, natural disaster, bushfire, landslide, seismic activity, tsunami or mudslide;
      2. winds 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;
      3. a flood which might, at the date of this Deed, be expected to occur no more frequently than once in every 100 years;
      4. fire, explosion or flood caused by any of the events referred to in paragraph (i); or
      5. an Uninsurable Risk;
   2. which:
      1. occurs at or in the direct vicinity of the Site; ***[Drafting note: Extension to key off-site areas to be considered on a project specific basis.]***
      2. was not caused by the Contractor, any Contractor Associate, the Principal, any Principal Associate or any Direct Interface Party; and
      3. prevents:
         1. the Contractor from carrying out all or a material part of the Contractor's Activities; or
         2. the Principal from carrying out all or a material part of its obligations,
      4. in accordance with the Project Documents; or
   3. a Force Majeure Event under clause 37.1(b)(ii).
9. **FSC Act** means the *Federal Safety Commissioner Act 2022* (Cth) and its associated rules and regulations, as amended from time to time.
10. **Future Commonwealth Funded Building Work** has the meaning given in clause 55.3(a).
11. **Gainshare Amount** means the amount (if any) payable by the Principal to the Contractor in relation to how the AOC compares with the TOC, calculated as at the Calculation Date in accordance with the Risk or Reward Regime.
12. **Government Party** means the Principal or any Authority of the Principal.
13. **GST** has the meaning given in the GST Act.
14. **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
15. **GST Law** has the meaning given in the GST Act.
16. **Hazardous Substance** has the meaning given in clause 12.1(b)(i).
17. **Heritage Claim** means a claim made in connection with a requirement under any Law for the protection, preservation or removal of any Artefact.
18. **Hired Moveable Asset** means any Moveable Asset referred to in paragraphs (b) or (c) of the definition of Moveable Assets which is hired, leased or licensed by the Contractor in accordance with clause 19.2(f)(i), and:
    1. to which the Contractor has not acquired title; or
    2. which is subject to or has been procured or to which title has been acquired under a hire purchase agreement or finance lease.

**Indemnified IP Person** has the meaning given in clause 41.5(a).

1. **Independent Member** has the meaning given in the Executive Review Group Terms of Reference. ***[Note: Project teams may elect to include an Independent Member in the Executive Review Group on a project specific basis. If not elected, this definition (and the related provisions in the Executive Review Group Terms of Reference) should be removed.]***
2. **Indirect or Consequential Loss** means:
   1. any loss of opportunity, profit, anticipated profit, business, business opportunities, use or revenue or any failure to realise anticipated savings; or
   2. fines and penalties payable under agreements other than the Project Documents or a Significant Subcontract.
3. **Industrial Action** means any action of the following kinds:
   1. a failure or refusal by any Contractor Associate or Principal Associate to attend for work;
   2. a failure or refusal to perform any work at all by any Contractor Associate or Principal Associate who attends for work; or
   3. any blockade or embargo by any Contractor Associate or Principal Associate,
4. but does not include action of the type referred to in paragraphs (a), (b) or (c) by any person:
   1. that is authorised or agreed to by the Contractor or any Contractor Associate, including on the basis the action is of a type reasonably contemplated by the employee's employment conditions; or
   2. if:
      1. the action was based on a reasonable concern by such person about an imminent risk to their health or safety; and
      2. such person did not unreasonably fail to comply with a direction of the Contractor or any Contractor 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.
5. **Information Management System** has the meaning given in [#] of the PSDR.
6. **Information Privacy Principles** means the principles so identified and set out in the *Privacy and* *Data Protection Act 2014* (Vic).
7. **Initial Pandemic Management Plan** means the initial pandemic management plan in the Bid Plans.
8. **Initial TOC** means the sum identified as the TOC in Schedule 6 as at the Contract Date.
9. **Input Tax Credit** has the meaning given by the GST Law.
10. **Insolvency** **Event** means the occurrence of any of the following events:
    1. in relation to an Entity:
       1. (**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;
       2. (**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;
       3. (**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 Principal Representative;
       4. (**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 Principal Representative;
       5. (**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 Principal Representative;
       6. (**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:
          1. is not withdrawn within 10 Business Days; and
          2. in the reasonable opinion of the Principal Representative, may have a material adverse effect;
       7. (**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
       8. (**deregistration**): for a registered corporation under the Corporations Act, a step is taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration; or ***[Drafting note: If a Project is likely to (or has) international parties, Project teams may wish to consider also including the following: "(analogous events): anything analogous to anything referred to in paragraphs (i) to (viii) inclusive of this definition, or which has a substantially similar effect, occurs with respect to the Entity under any law;"]***
    2. in relation to a trust:
       1. (**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
       2. (**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; or
    3. 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) or (b) occurs in connection with that entity under the laws of that jurisdiction.
11. **Insurance Failure Event** means the extent to which an Insurance 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, other than where the failure to respond is due to a Principal Insurance Breach.
12. **Insurance Schedule** means Schedule 13.
13. **Insurance(s)** means all of the insurances required to be effected and maintained by the Contractor or any Contractor Associate or the Principal under this Deed (or the relevant one of these as the case may be) as referred to in the Insurance Schedule.
14. **Insurances (Principal)** means the insurances required to be effected and maintained by the Principal under this Deed (or the relevant one of these as the case may be) as referred to in the Insurance Schedule.
15. **Insured** means any person entitled to coverage under any of the Insurances as referred to in this Deed including, for the avoidance of doubt, any person to whom the benefit of coverage extends.
16. **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 referred to in this Deed.
17. **Intellectual Property Rights** includes:
    1. all copyright and analogous rights;
    2. all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs (whether or not registrable), confidential information (including trade secrets and know-how), circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific or artistic fields; and
    3. all rights to register, rights in applications for the registration of and rights to extend or renew the registration of any of the foregoing,
18. whether created or in existence before, on or after the Contract Date and whether existing in Australia or otherwise.
19. **IRT End Date means:**
    1. if a Bespoke Resolution Procedure is not agreed under clause 46.4(a)(ii), the date that is [20] Business Days after the referral to the IRT under clause 46.1; or
    2. if a Bespoke Resolution Procedure is agreed under 46.4(a)(ii), the date of the conclusion of that procedure.

**IRT Representatives** has the meaning given in clause 46.2(a).

1. **Issue** means any disagreement, difference of opinion or conflict of interest one party has with the other in respect of or in any way connected with this Deed or its subject matter.
2. **Issue Resolution Team** (or **IRT**) means the dispute resolution team established under clause 46.1.
3. **ITC Development Agreement** means the early contractor involvement agreement in respect of the Contractor's Activities and the Works entered into between the parties prior to the Contract Date under which the Delivery Phase Offer was developed and the Contractor performed the Development Phase Activities.
4. **Key People** means the Contractor Representative, any Other Representative and any other people specified as Key People in the Contract Particulars.

**Key Plant and Equipment** means the following key plant and equipment (including all associated equipment, spare parts and accessories):

* 1. [***insert***] [***Drafting note: This list is to be provided by the Contractor, and approved by the Principal. The contents of this list will vary on a project-specific basis.***]

1. **Key Plant and Equipment Manufacturing Country** means [insert] and [insert] to the extent that the Contractor or its Subcontractors are manufacturing the Key Plant and Equipment in those countries. ***[Drafting note: Key Plant and Equipment Manufacturing Countries is to be bid back by tenderers. This definition is used in the pandemic regime.]***
2. **Key Result Areas** or **KRAs** have the meaning given in the Risk or Reward Regime.
3. **Key Significant Subcontract** means [**insert**].
4. **Key Significant Subcontractor** means [**insert**]. [***Drafting note: Key Significant Subcontractors are to be agreed on a case by case basis and are a subset of Significant Subcontractors whose Subcontracts cannot be amended without consent.***]
5. **Kick-off Workshop** has the meaning given in clause 4.4(a).
6. **Law** means:
   1. those principles of common law and equity established by decisions of courts;
   2. all Legislation of the Commonwealth, the Principal or an Authority; and
   3. Approvals (including any conditions or requirements under them).
7. **Legislation** means:
   1. Commonwealth, Victorian or local Victorian government legislation and delegated legislation;
   2. all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation described in paragraph (a) of this definition of Legislation; and
   3. consolidations, amendments, re‑enactments and replacements of legislation or delegated legislation described in paragraph (a) of this definition of Legislation,
8. but excludes Approvals.
9. **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:
   1. actual, prospective or contingent; or
   2. currently ascertainable or not,
10. and whether under or in any way in connection with any of the Project Documents or arising at Law.
11. **LIDP** has the meaning given in Schedule 14 (*Relevant State Policies*).
12. **Local Jobs First Requirements** has the meaning given in Schedule 14 (*Relevant State Policies*).
13. **Major Default** means the occurrence of any of the following events:
    1. (**late Practical Completion**): the Contractor fails to achieve Practical Completion by the Date for Practical Completion;
    2. (**fraud**): a Contractor Associate engages in fraud, collusion or dishonest conduct in performing its obligations under the Project Documents;
    3. (**failure to provide Explanation or Remediation Plan**): the Contractor fails to provide:
       1. an Explanation in accordance with clause 27.3(e)(i); or
       2. a Remediation Plan in accordance with clause 27.3(e)(ii) that complies with clause 27.3(g) (as applicable) within 10 Business Days after receipt of the expert's notice under clause 27.3(b);
    4. (**failure to provide a Remediation Plan**): the Contractor fails to provide a Remediation Plan in accordance with clause 27.3(f)(ii) within 10 Business Days after receipt of the expert's notice under clause 27.3(f)(ii);
    5. (**failure to provide an Amended Remediation Plan**): the Contractor fails to provide an Amended Remediation Plan in accordance with clause 27.3(j) within 10 Business Days after receipt of the expert's notice;
    6. (**Expert's notice**): the expert notifies the Principal and the Contractor under:
       1. clause 27.3(l)(i)A, that the Amended Remediation Plan does not satisfactorily address the requirements of clause 27.3(g);
       2. clause 27.3(l)(i)B, that the Contractor is not diligently pursuing or updating the Remediation Plan or Amended Remediation Plan (as applicable);
       3. clause 27.3(l)(ii), that the Contractor will not be able to achieve Practical Completion by the date that is 24 months after the Date for Practical Completion; or
       4. clause 27.3(l)(iii), that the Contractor has not provided any Explanation, Remediation Plan or Amended Remediation Plan that complies with this Deed when it is obliged to do so under clause 27.3;
    7. (**representations and warranties**): a representation or warranty given by the Contractor under a Project Document is found to be materially incorrect or materially misleading or a financial audit report discloses fraudulent, false, misleading or negligent reporting by the Contractor in respect of any financial statements or invoices or other books or records of the Contractor;
    8. (**Change in Control**):
       1. in respect of an Entity other than the Contractor or the Parent Guarantor;
    9. either:
       1. a Change in Control occurs without the Principal's consent under clause 51.2 and is not a Change in Control referred to in clause 51.4; or
       2. the Principal gives notice under clause 51.5 that the Principal provides a conditional consent to or does not consent to a Change in Control in respect of a Contractor or Parent Guarantor and the Contractor fails to comply with clause 51.4(c)(i) within the time required by the Principal (acting reasonably) or clause 51.4(c)(ii) within 60 Business Days of receipt of that notice from the Principal (as applicable);
    10. (**subcontracting and Key People**): a breach by the Contractor of any of its obligations under clauses 7.5, 8.5 or 8.10(b);
    11. (**Probity Event**): failure of the Contractor to take any action agreed by the parties in accordance with clause 38.2(b)(i) (if any) or if no agreement is reached as determined by the Principal in accordance with clause 38.2(c);
    12. (**failure to maintain Security**): failure to provide or maintain a Parent Company Guarantee or Security in accordance with clause 33 (including any replacement Security);
    13. (**Insurances**): a breach by the Contractor of any its obligations under clauses 42.1, 42.2(a)(i), 42.3, 42.7 or 42.8;
    14. (**Default not Cured**): a Default becomes a Major Default under clause 43.2(b);
    15. (**breach of Project Document**): the Contractor or a Parent Guarantor breaches any of its obligations under any Project Document (other than if such breach of a Project Document is otherwise a Major Default or a Default Termination Event) and the breach:
        1. has or will have a material adverse effect on the Contractor's ability to deliver the Project; and
        2. is not in the process of being remedied by the Contractor or a Parent Guarantor (as the case may be) in accordance with the regime set out in the relevant Project Document;
    16. (**payment of workers**): in respect of clause 31.1(a), the Contractor knowingly provides a statutory declaration which contains a statement that is untrue;
    17. (**payment of Subcontractors**): the Contractor fails to pay any amount due to a Subcontractor within 10 Business Days of the due date of any such payment; or
    18. (**deemed Major Default**): any other event which is deemed to be a Major Default under this Deed.
14. **Major Default Notice** has the meaning given in clause 43.3(b).
15. **Manage** means investigate, analyse, classify, excavate, stockpile, store, reuse, treat, transport offsite and dispose of, remediate, disperse, abate or destroy.
16. **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.
17. **Minor Defect** means a Defect that:
    1. will not prevent the relevant Works from complying with the relevant FFP Warranty;
    2. the Principal Representative determines that the Contractor has reasonable grounds for not promptly rectifying; and
    3. will not adversely impact the performance of the Works or Returned Assets (as the case may be).

**Minor Subcontract** means a Subcontract valued equal to or below the amount set out in the Contract Particulars.

1. **Month** meansa calendar month, unless:
   1. the context otherwise requires; or
   2. this Deed is terminated earlier, in which case the last Month will be the period from the day after the end of the last calendar month immediately preceding the termination to the date of termination.
2. **Monthly Progress Report** means the Report of that name.
3. **Moral Rights** means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, which rights are created by the *Copyright Act 1968* (Cth), and if any work is used in any jurisdiction other than in Australia, any similar right capable of protection under the law of that jurisdiction.
4. **Moveable Assets** means:
   1. the Works (other than any Returned Assets);
   2. all other Equipment and Plant not referred to in paragraph (a); and
   3. all other chattels which are included in the register maintained pursuant to clause 19.3,
5. but excludes Fixtures.
6. ***[Note: To be defined on a project specific basis.]***
7. **Native Title Claim** means any claim or application under any Law relating to native title, including any application under section 61 of the *Native Title Act 1993* (Cth).
8. **New OHS Regulations** means any regulations made by the Victorian Government which supersede the OHS Regulations.
9. **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 Contractor's Activities.
10. **OHS Regulations** means the *Occupational Health and Safety Regulations 2017* (Vic).

**Operation and Maintenance Manual** or **O&M Manual** means the operation and maintenance manual required to be provided in accordance with the PSDR (if any).

1. **Operations** means [#]. ***[Drafting note: this is the core purpose of the asset. To be defined and used on a project specific basis.]***
2. **Other Contractor** means any person, other than the Contractor and the Contractor Associates, engaged by the Principal, who carries out work or activities on, in, under or over the Site (including where they also extend to outside of the Site), and includes any subcontractor of such person.
3. **Other Party** has the meaning given in clause 60.11(a).
4. **Other Representative** has the meaning given in clause 7.4.
5. **Outstanding Defect Cost Amount** has the meaning given in clause 33.4(b).
6. **Overdue Rate** means the sum of the Bank Bill rate plus 2.5% per annum, with the Bank Bill rate being:
   1. 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
   2. if that rate is no longer available or if, in the reasonable opinion of the Principal 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 Principal Representative to be the appropriate equivalent rate, having regard to prevailing market conditions.
7. **Painshare Amount** means:
   1. a Painshare Amount (Primary); and
   2. a Painshare Amount (Secondary).
8. **Painshare Amount (Primary)** has the meaning given in section 3.1 of the Risk or Reward Regime.
9. **Painshare Amount (Secondary)** has the meaning given in section 3.1 of the Risk or Reward Regime.
10. **Pandemic** means:
    1. COVID-19; and
    2. any other infectious disease that is declared as a pandemic by the World Health Organisation after the date of this Deed.
11. **Pandemic Adjustment Event** means any of the following occurring after the date of this Deed:
    1. a Pandemic Subcontractor's Plant Closure; or
    2. a full day delay in the supply of any Key Plant and Equipment from a Key Plant and Equipment Manufacturing Country as a result of:
       1. Australian quarantine restrictions; or
       2. a closure of the Australian international border or any other international border,
    3. where such quarantine restrictions or border closures are introduced after the date of this Deed as a result of a Pandemic and have a material adverse impact on the Contractor's Activities; or
    4. a Pandemic Area Closure,
12. but in each case:
    1. excluding a Pandemic Adjustment Event that arises from a Pandemic Change in Law (which shall be treated as a Pandemic Change in Law); and
    2. excluding a Pandemic Adjustment Event that is the subject of a Variation Order under clause 34.
13. **Pandemic Area Closure** means a full day closure of the Site which:
    1. occurs after the date of this Deed;
    2. is required to be closed by Law or a Pandemic Direction as a result of an outbreak of a Pandemic;
    3. has been closed in accordance with the procedures set out in the Pandemic Management Plan; and
    4. has a material impact on the Contractor's Activities.
14. **Pandemic Change in Law** means (if it takes effect after the date of this Deed):
    1. a change in (including any extension, repeal, revocation or expiry of) Legislation in response to a Pandemic;
    2. new Legislation in response to a Pandemic; or
    3. a new Pandemic Direction or a change to (including any extension, repeal, revocation or expiry of) an existing Pandemic Direction.
15. **Pandemic Direction** means a direction, order, requirement, declaration or exercise of a power by a relevant Authority in Victoria or in any other Australian jurisdiction in response to a Pandemic which the Contractor is required to implement in order to comply with its obligations under Legislation, including:
    1. a public health order or direction issued by a relevant Authority under the *Public Health and Wellbeing Act 2008* (Vic) or the equivalent public health Legislation in another Australian jurisdiction;
    2. the exercise of powers or issuing of directions or requirements by a relevant Authority under the *Biosecurity Act 2015* (Cth);
    3. the exercise of powers or issuing of directions pursuant to a declaration of an emergency as a 'state of disaster' or a declaration of a 'state of emergency'; or
    4. the exercise of powers or issuing of directions analogous or with a similar effect to those contemplated in paragraphs (a)-(c).
16. **Pandemic Impact Date** has the meaning given in clause 6A.3(a).
17. **Pandemic Management Plan** means the Plan referred to as the Pandemic Management Plan in section [#] of the PSDR as updated from time to time in accordance with this Deed.
18. **Pandemic Subcontractor's Plant Closure** means the full day closure of a Subcontractor's plant or factory:
    1. located within Australia; or
    2. located in a Key Plant and Equipment Manufacturing Country,
19. in each case, which:
    1. delays the Contractor in achieving Completion by more than one day per event;
    2. is required to be closed by:
       1. if the plant or factory is located in Australia, Law or a Pandemic Direction; or
       2. if the plant or factory is located in a Key Plant and Equipment Manufacturing Country, law,

as a result of an outbreak of a Pandemic;

* 1. occurs after the date which is the later of the date of execution of the relevant Subcontract and the date of this Deed;
  2. has been closed in compliance with the procedures set out in a "Pandemic management plan" prepared by the relevant Subcontractor; and
  3. has a material adverse effect on the Contractor's Activities.

1. **Parent Company Guarantee** means each guarantee given by a Parent Guarantor of the Contractor to the Principal in connection with the obligations of the Contractor to the Principal including the parent company guarantee given under the ITC Development Agreement in the form of Schedule [19]. [***Drafting note: Subject to the Contractor's proposal. The parties providing the Parent Company Guarantees will be subject to the Principal's approval and consideration of the overall security package.***]
2. **Parent Guarantor** means each person giving a Parent Company Guarantee, which as at the date of this Deed means the persons listed as such in the Contract Particulars and is:
   1. the Contractor's ultimate holding company; or
   2. an entity with a financial position and credit standing acceptable to the Principal.
3. **Payment Claim** means a payment claim submitted by the Contractor in accordance with clause 30.1 in the form required by the Principal.
4. **Payment Certificate** has the meaning given in clause 30.8(a)(ii).
5. **Performance Bond** means a bank guarantee or line of credit which: ***[Drafting note: To be considered on a project specific basis, whether Performance Bonds should include insurance bonds, having regard to value for money.]***
   1. is unconditional, irrevocable and payable on demand;
   2. is issued by a financial institution that is the holder of a current licence issued by the Australian Prudential Regulation Authority (or such other financial institution approved by the Principal) and has the Required Rating;
   3. specifies a location in Melbourne (or such other place as the Principal may approve) where demand can be given and payment made, without further confirmation from the issuer, on any Business Day;
   4. is governed by and is to be construed according to the Laws applying in Victoria;
   5. is, if required, duly stamped; and
   6. is in the form set out in Schedule [16] or otherwise in a form acceptable to the Principal.

**Performance Reward Amount** has the meaning given in the Risk or Reward Regime.

**Performance Reward Potential Pool** has the meaning given in the Risk or Reward Regime.

1. **Permitted Act** means an act or omission:
   1. permitted, authorised or required under a Project Document; or
   2. required to comply with any Law or Standard.
2. **Permitted Subcontract Variation** means a modification to the Subcontract or the work under the Subcontract which:
   1. will not result in an increase in the Subcontract price beyond what has been allowed for in the Cost Plan;
   2. will not cost, or result in an increase to the Subcontract price of, more than $[50,000];
   3. will not cost, or result in an increase to the Subcontract price of, more than $[200,000] when aggregated with the costs of all modifications to the Subcontract made up to that time; and
   4. will not extend the date for practical completion under the Subcontract by more than [5] Business Days for any single modification or more than [20] Business Days when aggregated with all modifications made up to that time,
3. but which is not a modification to the Subcontract works:
   1. as to quality (other than a modification to increase or better the quality);
   2. which would or might adversely affect the suitability of the Works for their intended purpose; or
   3. which is inconsistent with the requirements of, or would breach or cause the breach of this Deed.
4. **Personal Information** means any personal information, within the meaning given in the *Privacy Act 1988* (Cth).
5. **Plan** means each of the plans to be prepared, provided and updated by the Contractor in accordance with [#] of the PSDR.
6. **Plant** means all plant and machinery and other like items which:
   1. are referred to in the Delivery Requirements;
   2. are necessary to ensure the Works satisfy the FFP Warranty; or
   3. the Contractor or any of its Subcontractors or any other person acting on their behalf installs, constructs or places on the Site and which are, or become part of the Works, or which are used exclusively for operating or maintaining the Works,
7. but excludes any Equipment and Temporary Equipment.
8. **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:
   1. unsafe or unfit for habitation or occupation by persons or animals;
   2. degraded in its capacity to support plant life;
   3. contaminated; or
   4. otherwise environmentally degraded.
9. **PPSA** means the *Personal Property Securities Act 200*9 (Cth).
10. **Practical Completion** means the stage in the execution of the Contractor's Activities when the Contractor has satisfied all the conditions precedent to Practical Completion set out in Schedule [17].
11. **Practical Completion Plan** means a plan prepared by the Contractor in accordance with clauses 18.1 and 25.2, and containing all items listed in clause 25.2.
12. **Pre-Agreed Scope Variation** means a Scope Variation specified in the Pre-Agreed Scope Variations Schedule.
13. **Pre-Agreed Scope Variation Notice** has the meaning given in clause 35(a).

**Pre-Agreed Scope Variations Schedule** means Schedule 9.

1. **Principal** means the ***[insert details of relevant Department or Minister]*** for and on behalf of the Crown in the right of the State of Victoria. ***[Note: This should be aligned with the name of the entity on the cover page of this Deed.]***
2. **Principal Approval** means each of the Approvals set out in Attachment 2.
3. **Principal Approval Event** means:
   1. legal action being taken in connection with a Principal Approval;
   2. any review or revocation of, or change to, a Principal Approval; or
   3. any review or revocation of, or change to, an Approval (other than a Principal Approval) as a result of the circumstances specified in paragraphs (a) and (b),

but does not include:

* 1. any event set out in paragraphs (a) to (c) that is due to a Contractor Act or Omission;
  2. legal action being taken, or any review or revocation of, or change to:
     1. any further or secondary Approval that relates to or forms part of a Principal Approval (other than as contemplated in paragraph (c)) or any amendment to a Principal Approval of a type referred to in clause 6.1(b); or
     2. a Principal Approval or any further or secondary Approval due to:
        1. a Contractor Act or Omission;
        2. change to the design or delivery methodology in relation to the Project, the Works or the Contractor's Activities (other than where this is due to a Variation or Scope Variation which is the subject of a direction by the Principal in respect of which the Principal issues a Variation Order or Scope Variation (as applicable)); or
        3. a failure by the Contractor or any Contractor Associate to comply with any Law; or
  3. legal action being taken by the Contractor or a Contractor Associate;
  4. a Change in Law; or
  5. [#].

1. ***[Drafting note: To be amended on a project specific basis*** ***and may include matters such as the CHMP or the EPBC Act Approval. Agencies may wish to also exclude Contractor initiated changes to land access arrangement from the Principal Approval on a project specific basis.]***
2. **Principal Associate** means each of the following persons:
   1. the Principal Representative; and
   2. any other person to whom the Principal delegates a right, power, function or duty in accordance with a Project Document,
3. and their respective Associates, each only when acting in connection with the Project, but does not include:
   1. the Contractor or any Contractor Associate;
   2. any Direct Interface Party when undertaking Direct Interface Works;
   3. any Utility provider or any of its Associates acting in connection with the Project; or
   4. any Site Information Report Provider or any of its Associates acting in connection with the Project.
4. **Principal Concurrent Event** has the meaning given in clause 27.10(b)(i).
5. **Principal Contractor** has the meaning given in the OHS Legislation.
6. **Principal Insurance Breach** means the extent to which an Insurance 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, due to:
   1. a breach of:
      1. a Project Document; or
      2. the relevant Insurance policy,
   2. by the Principal or a Principal Associate; or
   3. conduct of the Principal or a Principal Associate which is an exclusion under the relevant Insurance.
7. **Principal IP** means all Intellectual Property Rights and trade secrets and know-how comprised in:
   1. the Data;
   2. the Brand; and
   3. the Trade Marks.
8. **Principal Representative** means the person identified as such in the Contract Particulars or any replacement appointed in accordance with clause 7.2(g).
9. **Principal Selected Item** has the meaning given in clause 23.6(c).
10. **Principal's Consultant** means any consultant identified as such in the Contract Particulars.

**Principal's KRAs** has the meaning given in Schedule 15.

1. **Privacy Code** has the meaning given in clause 53.5(a).
2. **Probity Event** means the occurrence of any of the following events:
   1. an event that relates to the Contractor, a Parent Guarantor or a Relevant Person which:
      1. has or may have a material adverse effect on, or on the perception of, the character, integrity or honesty of the Contractor, a Parent Guarantor or a Relevant Person; or
      2. has or may have a material adverse effect on:
         1. the public interest; or
         2. public confidence in the Project;
   2. a failure of the Contractor, a Parent Guarantor or a Relevant Person (and for the purposes of clause 38.2 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
   3. a conflict of interest involving the Contractor, a Parent Guarantor, or a Relevant Person, which has or will have a material adverse effect on the ability of the Contractor, Parent Guarantor or Relevant Person (as applicable) to carry out and observe its obligations in connection with the Project.
3. **Probity Investigation** has the meaning given in clause 38.1(a).
4. **Program** means the Bid Program as updated in accordance with the requirements of this Deed.
5. **Project** means the carrying out of the Contractor's Activities and performance of all other obligations under or in connection with the Project Documents by any party to them.
6. **Project Control Group** means the group referred to in clause 7.7.
7. **Project Documents** means:
   1. this Deed;
   2. the Parent Company Guarantees;
   3. the Significant Subcontracts;
   4. each Direct Interface Deed;
   5. each Subcontractor Direct Deed; and
   6. any other document the parties agree is a Project Document.

[***Drafting note: Additional documents may be included subject to the Contractor's proposal.***]

1. **Project Information** means:
   1. the information set out in Attachment 1; [***Drafting note: Where a data room is used during the RFP Phase, the Project Information should include all information in the data room.***]
   2. the Site Information Reports; and
   3. all Materials:
      1. issued or made available by or on behalf of the Principal or any Principal Associate to the Contractor or any Contractor Associate in connection with the Project (whether prior to or after the date of this Deed);
      2. referred to, or incorporated by reference, in any material referred to in paragraph (c)(i); or
      3. which the Principal expressly confirms in writing is a document which the Contractor is entitled to rely on,
   4. but excludes:
      1. this Deed or the Materials that form part of this Deed; or
      2. the Materials which the Principal is expressly required by this Deed to provide to the Contractor or any Contractor Associate.
2. **Project Objectives** means the objectives for the Contractor's Activities and the Works as set out in clause 4.1(a).
3. **Project Scope** has the meaning given in the PSDR. [***Drafting note: This consists of parts of the Principal's Proposal such as the concept design. This is determined on a case by case basis.***]
4. **Provisional Quantity Item** means an item of work specified as such in the Provisional Sum Work Schedule.
5. **Provisional Sum** means the estimate of the amount payable for performing a Provisional Sum Item, as specified in the Provisional Sum Work Schedule and included in the Initial TOC.
6. **Provisional Sum Item** means an item of work specified as such in Schedule 7.
7. **Provisional Sum Work** means work undertaken in respect of a Provisional Sum Item or Provisional Quantity Item.
8. **Provisional Sum Work Schedule** means Schedule 7.
9. **PSDR** means the Project Scope and Delivery Requirements which are Annexure 1. [***Drafting note: This is to include the whole scope including the Principal's requirements and also the Contractor's preliminary design developed under the ITC Development Deed.***]
10. **Public Disclosure Obligations** has the meaning given in clause 53.1(a).
11. **Quality Assurance System** has the meaning given in clause 17.3.
12. **Rates** means all municipal rates, water rates, sewerage rates, drainage rates and other rates payable to any Authority in connection with the Site or Extra Land, but does not include any portion of such rates as relates to the connection of the Site to Utilities or rates or charges for the use of Utilities.
13. **Records** has the meaning given in clause 4.8(a).
14. **Reference Documents** has the meaning given in the PSDR.

**Regular Performance Report** has the meaning given in clause 4.

**Reimbursable Costs** has the meaning given in Schedule [3].

1. **Related Body Corporate** has the meaning given in the Corporations Act.
2. **Relationship Principles** has the meaning given in clause 4.2(a)4.2(a).
3. **Relevant Entity** has the meaning given in the Security of Critical Infrastructure Laws from time to time.
4. **Relevant Legislation** means [*insert*].
5. **Relevant Person** means any officer, employee, consultant, contractor, Subcontractor, Parent Guarantor or agent of the Contractor who:
   1. has the ability to exercise influence or control over the decisions or actions of the Contractor in relation to the Contractor or in matters relating to the Project;
   2. works in any role in connection with the Project, including undertaking any task for the purpose of this Deed; or
   3. has, or will reasonably be expected to have, access to Personal Information held in connection with, the Project.
6. **Relevant Personal Property** has the meaning given in clause 60.13(a)(i).
7. **Relief Event** means any event for which the Contractor is entitled to make a Claim against the Principal in connection with the Project including any Adjustment Event (Cost), Adjustment Event (KRA) and Adjustment Event (Time).
8. **Remediate** or **Remediation** means to remove, disperse, abate, destroy, dispose of, neutralise, remediate, treat, cap or contain (as applicable) and includes testing and assessing for the purpose of determining whether to undertake any such action.
9. **Remediation Plan** has the meaning given in clause 27.3(e)(ii).
10. **Reporting Entity** has the meaning given in the Security of Critical Infrastructure Laws from time to time.
11. **Reports** means each of the reports to be prepared, provided and updated by the Contractor in connection with the Contractor's Activities or the Works in accordance with [#] of the PSDR.
12. **Representatives** has the meaning given in clause 47.
13. **Reputable Insurer** has the meaning given in clause 42.2(a)(i).
14. **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. ***[Drafting note: Project teams to include on a project specific basis including an equivalent credit rating (for example, by AM Best or Fitch).]***
15. **Resolution Institute** means Resolution Institute Ltd ACN 008 651 232.
16. **Responsible Entity** has the meaning given in the Corporations Act.
17. **Returned Asset** means each asset that is to be handed over to a Returned Asset Owner in accordance with clause 25.5(j), that is the subject of Returned Works and that is described in [#] of the PSDR, as modified, repaired or rectified in accordance with this Deed.
18. **Returned Asset DLP** means, in respect of each Returned Asset, the relevant period referred to in clause 28.7(a), as extended under clause 28.7(e).
19. **Returned Asset Owner** means in respect of each Returned Asset, the owner of the Returned Asset or any entity entitled to exercise control over the Returned Asset.
20. **Returned Works** means, until the relevant Date of Returned Works Completion, each part of the Works that is to be handed over to a Returned Asset Owner to form a Returned Asset.
21. **Returned Works Completion** means when the Contractor has:
    1. met the Returned Works Completion Requirements; and
    2. the Date of Returned Works Completion has occurred,
22. for a Returned Asset.
23. **Returned Works Completion Requirements** means when the Contractor has:
    1. completed the Returned Works for a Returned Asset other than Minor Defects which:
       1. are Defects, work, acts, matter, state of affairs or things that are otherwise required in accordance with this Deed to have been performed, achieved, rectified, provided or completed by the Contractor to achieve Returned Works Completion; and
       2. the Contractor and the Principal agree, or the Principal Representative determines, do not need to be so performed, achieved, rectified, provided or completed by the Contractor in order to achieve Returned Works Completion;
    2. otherwise met all other requirements for Returned Works Completion in accordance with the Project Documents; and
    3. satisfied all requirements of any relevant Direct Interface Deed that the Contractor is required to satisfy for a Returned Asset before returning that Returned Asset to the relevant Returned Asset Owner.
24. **Reviewing Party** has the meaning given in the Review Procedures.
25. **Review Procedures** means Schedule [8].
26. **Reward Amount** means the amount payable by the Principal to the Contractor (if any) in respect of overall AOC and KRA performance, calculated at the Calculation Date in accordance with the Risk or Reward Regime and consisting of any Gainshare Amounts and any Performance Reward Amounts as applicable.

**Risk Amount** means the amount payable by the Contractor to the Principal (if any) in respect of overall AOC and KRA performance, calculated at the Calculation Date in accordance with the Risk or Reward Regime and consisting of any applicable Painshare Amounts.

1. **Risk & Contingency Provisions** means the provision for all possible Reimbursable Costs associated with risks and contingencies that may arise in performing the Contractor's Activities and the Works included in estimating the TOC, but excluding any Adjustment Events (Cost).
2. **Risk or Reward Regime** means the performance regime in relation to AOC and KRA outcomes, as set out in Schedule [5].
3. **Risk Register** means a register of the current risks to the Contractor's Activities and the Works that includes, for each risk:
   1. a description of the risk;
   2. the Contractor's proposed approach for avoiding or mitigating the risk;
   3. where applicable, the proposals or solutions for avoiding or mitigating the risk developed in accordance with clause 7.11(e)(ii); and
   4. where applicable, the specific actions to be taken by the parties in response to the risk decided in accordance with clause 7.11(e)(iii).
4. **Road Management Act** means the *Road Management Act 2004* (Vic).
5. **Schedule of Certificates and Notices** means Schedule [12].
6. **Scope Variation** means a Variation which amounts to either:

### a significant change, significant amendment or significant alteration to the scope of the Contractor's Activities; or

* + 1. a significant change to the fundamental requirements of the Contractor's Activities.

**Scope Variation Order** means a notice from the Principal entitled "Scope Variation Order" issued under clause 34.3(a)(ii)B.1), 34.3(a)(ii)B.2)e) or 34.4(c)(i)A.

**Securities** means shares, units, interests in a partnership, and any other interests which would constitute "securities" as defined under the Corporations Act.

**Security** means the security provided by the Contractor to the Principal in accordance with this Deed, including:

* 1. the DLP Bond; and
  2. the Bond.

1. **Security Interest** means shares, units, interests in a partnership, and any other interests which would constitute "securities" as defined under the Corporations Act.
2. **Security of Critical Infrastructure Laws** means the *Security of Critical Infrastructure Act 2018* (Cth), and any statutory rules or guidelines approved under that Act, and all other Laws that apply to the security of infrastructure from time to time.
3. **Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 2002* (Vic).
4. **Self Performed Reimbursable Work** means the part of the Contractor's Activities to be performed by the Contractor itself or by its Related Body Corporate as described in the Contract Particulars or otherwise approved by the Principal under clause 8.16.
5. **Separable Portion** means a portion of the Contractor's Activities described in this Deed as a Separable Portion or which the Principal Representative has determined pursuant to clause 9 is a Separable Portion.
6. **Senior Representatives Group** has the meaning given in clause 7.6.
7. **Significant Subcontract** means any of the following:
   1. a Subcontract for all or part of the Contractor's Activities:
      1. the value of the works and/or services under which exceeds $[#]; or
      2. which, when aggregated with the value of the works and/or services under each other Subcontract for the Contractor's Activities previously entered into by the same Subcontractor (or their Related Bodies Corporate), will result in the total value of those Subcontracts exceeding $[#]; [***Drafting note: Thresholds to be determined on a project specific basis to reflect the nature of the Project.***]
   2. the contracts listed as such in the Contract Particulars; and
   3. any other contract that the parties agree from time to time is a Significant Subcontract.
8. [***Drafting note: Definition subject to the Contractor's subcontracting structure.***]
9. **Significant Subcontractor** means each of the counterparties to the Significant Subcontracts other than the Contractor and includes all Key Significant Subcontractors.
10. **Site** means the land described as the "Development Site" in [#] of the PSDR.
11. **Site Access and Interface Protocols** means the Site Access and Interface Protocols as set out in the Construction Management Plan.
12. **Site Conditions** means any physical conditions:
    1. in, on, under or over the Site; or
    2. in the Direct Affected Area,
13. including:
    1. (**water**): ground water, ground water hydrology, the existence of any wells or springs and the effects of any de-watering;
    2. (**physical structures**): physical and structural conditions above, upon and below the ground including any infrastructure, partially completed structures, Artefacts or in ground works;
    3. (**vegetation**): pastures, grasses or other vegetation;
    4. (**topography**): topography, ground surface and sub-surface conditions and geology including rock or other materials;
    5. (**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;
    6. (**Contamination**): any Contamination;
    7. (**Pollution**): any Pollution;
    8. (**physical conditions**): all other physical conditions and characteristics:
       1. in, on, under or over the surface of the Site; or
       2. in the Direct Affected Area; and
    9. (**proprietary interests**): all proprietary interests over or in connection with the Site,
14. whether or not they were in existence or known to the Contractor or a Contractor Associate before the date of this Deed.
15. **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, or on behalf of, a person engaged by the Principal or a Principal Associate that is provided to or made available to the Contractor or a Contractor Associate for the purposes of the Project.
16. **Site Information Report Provider** means any person that prepares a Site Information Report.
17. **Social Procurement Commitment** has the meaning given in Schedule 14 (*Relevant State Policies Schedule*).
18. **Social Procurement Commitment Schedule** has the meaning given in Schedule 14 (*Relevant State Policies Schedule*).
19. **Social Procurement Framework** has the meaning given in Schedule 14 (*Relevant State Policies Schedule*).
20. **Social Procurement Target** has the meaning given in Schedule 14 (*Relevant State Policies Schedule*).
21. **Solvent** has the meaning given in the Corporations Act.
22. **Standard** means:
    1. any standard, code, guideline, specification, rule, policy, procedure, directive, circular or practice referred to in the PSDR (and includes the Reference Documents); and
    2. unless the Principal gives notice to the Contractor that it does not constitute a Standard for the purpose of this Deed, any other standard, code, guideline, specification, rule, policy, procedure, directive, circular or practice with which the Contractor:
       1. is expressly required by the terms of any Project Document, by Law or by direction of the Principal to comply; or
       2. should comply in accordance with Best D&C Practices,
    3. in carrying out the Contractor's Activities, provided such standard, code, guideline, specification, rule, policy, procedure, directive, circular or practice is available to the Contractor, is publicly available or otherwise would have been available to the Contractor exercising Best D&C Practices,
23. but excludes all Laws and any conditions or requirements under any Laws.
24. **Subcontract** means an agreement which:
    1. the Contractor enters into with a Subcontractor; or
    2. a Subcontractor enters into with another Subcontractor,
25. in connection with the Contractor's Activities.
26. **Subcontract Adjustment Event** means an adjustment event under a Subcontract which corresponds with an Adjustment Event (Cost) under this Deed, or is otherwise approved by the Principal Representative.
27. **Subcontract Packaging and Procurement Plan** means the plan of that name developed under the ITC Development Agreement.
28. **Subcontractor** means:
    1. any person who enters into a contract in connection with the Contractor's Activities with the Contractor or any Significant Subcontractor (and includes the Significant Subcontractors); and
    2. for the purposes of:
       1. clauses 8.1, 8.2, 8.3, 8.4, 8.10, 8.11(b), 8.11(c), 8.11(d),8.11(e), 14.1, 38 and 53.5;
       2. sections [2.3(a)(iii) to 2.3(a)(v)] of Schedule 14 (*Relevant State Policies)*; and
       3. [#] of the PSDR,
    3. any person whose subcontract is in connection with the Contractor's Activities and is in a chain of contracts where the ultimate contract is with the Contractor or any Significant Subcontractor (and includes the Significant Subcontractors).

**Subcontractor Direct Deed** means the direct deed in the form set out in Schedule 11. [***Drafting note: The Principal will determine the need for this document based on the Contractor's contractual structure. This document will give the Principal rights to know if there are disputes under the subcontract and also to have a novation of the subcontract to the Principal (or its nominee) if the ITC Contract is terminated.***]

1. **Submitted Document** has the meaning given in the Review Procedures.
2. **Substantial Breach** means a material or substantial breach of this Deed by the Principal and includes:
   1. failing to make a payment due under this Deed which is not the subject of an Issue;
   2. failing to have in place or effect and maintain the Insurances (Principal); and
   3. failing to give, or ensure the Contractor has, access to the Site in accordance with clause 14.1(a)(i).
3. **Survey Mark** in clause 11, means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring the Contractor's Activities;
4. **Target Outturn Cost** or **TOC** means the Initial TOC, as may be adjusted in accordance with this Deed, being the estimate of all Reimbursable Costs, Corporate Overhead and Profit and Risk & Contingency Provisions required to perform the Contractor's Activities and bring the Works to a stage where the Certificate of Close-out can be issued in accordance with this Deed.
5. **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 Principal, 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.
6. **Tax Invoice** has the meaning given in the GST Law.
7. **Taxable Supply** has the meaning given in the GST Law, excluding section 84-5 of the GST Act.
8. **Temporary Equipment** means all plant, machinery and equipment and other items used by the Contractor or its Subcontractors solely for the purpose of enabling or facilitating delivery of the Works (as the case may be) which does not and will not become part of the Works or Returned Assets, but excludes Temporary Works.
9. **Temporary Works** means the temporary physical things or works which the Contractor must design, supply, construct, install, produce or complete for the purpose of carrying out the Contractor's Activities and includes access, ingress, egress and laydown requirements, but excludes the Returned Assets.
10. **Termination for Convenience Payment** has the meaning given in clause 44.2(d).
11. **Termination Payment** means a Termination for Convenience Payment or a Default Termination Payment, as applicable.
12. **Third Party IP Rights** means any Intellectual Property Rights in or relating to the Contractor's Activities that are not capable of being vested in the Principal because the Contractor does not own and is unable to acquire those Intellectual Property Rights.
13. **Trade Marks** means any trade marks specified by the Principal to the Contractor in writing and any other trademarks used by or on behalf of the Contractor or a Contractor Associate in relation to the Project (other than those trademarks of any Contractor 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).
14. **Traffic Management Strategy** means [*#*]. [***Drafting note: to be completed on a project specific basis.***]

**Transit Insurance** has the meaning given in the Insurance Schedule.

**Transparent Dealings Basis** has the meaning given in clause 4.2(a)(v).

1. **Uninsurable Risk** means any:
   1. war, civil war, rebellion, revolution, military usurped power or mutiny, military insurrection, military commotion or other civil commotion;
   2. nuclear or biological contamination (not including the disease commonly known as coronavirus disease (COVID-19) and any related virus);
   3. ionising radiation or contamination by radioactivity;
   4. terrorist act occurring on the Site (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 the Contractor or any Contractor Associate.

**Urgent Defect** means [***insert***].

**Utility** means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater, communications and data services (including telephone, text message, facsimile, and internet).

1. **Utility Activities** means to construct, provide, relocate, remove, reinstate, repair, protect, decommission or modify any Utility Infrastructure.
2. **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.
3. **Variation** means:
   1. any change (including any addition, decrease, omission, deletion, demolition or removal) to the Works or the Delivery Requirements; ***[Drafting note: Agencies to consider on a project specific basis whether this paragraph (a) should expressly include a change to the "Contractor's Activities" (and whether paragraph (b) should be amended accordingly).]***;
   2. a change to the way in which the Contractor's Activities are carried out from that set out in the relevant Plan;
   3. a Principal Approval Event the subject of a Variation Proposal issued in accordance with clause 6.1(d);
   4. a Change in Mandatory Requirements the subject of a Variation Proposal issued in accordance with clause 34.2(a); or
   5. an event occurs which is expressly stated to be a Scope Variation under clause 39.2(c),
4. but excluding:
   1. a Change in Law or a Change in Policy unless it is a Change in Mandatory Requirements the subject of a Variation Proposal issued in accordance with clause 34.2(a);
   2. where any change referred to in paragraphs (a) and (b) is required to ensure that the Works or the Contractor's Activities (as the case may be) are otherwise in accordance with the requirements of this Deed; and
   3. Provisional Sum Work.

**Variation Order** means a written notice from the Principal entitled "Variation Order" issued under clause 34.3(a)(ii)B.1), 34.4(c)(i)A or [#].

**Variation Proposal** means a notice entitled "Variation Proposal" submitted by the Contractor under clause 34.2(a).

**Variation Request** has the meaning given in clause 34.1(a).

**VMIA** means Victorian Managed Insurance Authority, an insurance authority for statutory agencies established by the Victorian Government pursuant to section 5 of the *Victorian Managed Insurance Authority Act 1996* (Vic) *.*

1. **Warranted Asset** means each part of the Works referred to in [*#*#] of the PSDR.
2. **Warranted Life** means, in respect of a Warranted Asset, the period specified for that Warranted Asset in [#] of the PSDR commencing on:
   1. if the Warranted Asset is a Returned Asset, the Date of Returned Works Completion for that Returned Asset; or
   2. if the Warranted Asset forms part of the Works and is not a Returned Asset, the Date of Practical Completion.
3. ***[Drafting note: To be considered on a project specific basis.]***
4. **Whole of Life Costs** means in respect of the Works or proposed Works, the sum of the following costs that could reasonably be expected to be incurred by the Contractor in the provision of the Contractor's Activities:
   1. the total anticipated purchase and lifecycle replacement costs;
   2. all costs associated with delivery, installation and commissioning including any design, insurance and transportation costs and costs of providing any necessary connections, Utilities or other services;
   3. ongoing operating costs including the cost of Utilities, consumables and other direct operating costs; and
   4. ongoing repair and maintenance costs including cleaning costs.
5. **WHS Accreditation Scheme** means The Work Health and Safety Accreditation Scheme in force pursuant to section 43 of the FSC Act. [***Drafting note: Definition to be deleted if Commonwealth funding not applicable to the project.***]
6. **WHS Management Plan** means [#]. [***Drafting note: To be defined on a project specific basis.***]
7. **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.

**Working Group** means:

* 1. [#];
  2. the Design Working Group as described in the PSDR; and
  3. any other working group or liaison group that the Contractor is required to establish under this Deed, including the PSDR.

1. **[*Drafting note: To be considered on a project specific basis.*]**
2. **Working Parameters** means:
   1. [insert]; and
   2. [insert],
3. specified in the conditions and requirements of the Principal Approvals. ***[Note: Working Parameters are to be proposed by Shortlisted Respondents in the Delivery Phase Offers. This term is used in the definition of Change in Mandatory Requirements. These must be objective criteria which are measurable against the Principal Approvals and if changed by a Change in Law may give rise to relief.]***
4. **Works** means all of the physical things which the Contractor must design, manufacture, supply, construct, install, commission or complete in accordance with the requirements of this Deed as part of the Contractor's Activities including the Temporary Works and those physical things that will form the Returned Assets, as modified, repaired or rectified.

# General rules of interpretation

## Interpretation

1. In this Deed:

### (**headings**): headings and subheadings are for convenience only and do not affect interpretation;

### (**number and gender**): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

### (Deed and Schedule references): a reference to:

#### a party, clause, Schedule, Annexure or Attachment is a reference to a party, clause, Schedule, Annexure or Attachment of or to this Deed; and

#### a section, table, item or part is a reference to a section, table, item or part of the Schedule or PSDR (as applicable) in which they are located,

* 1. unless expressly provided otherwise;

### (**Appendix**): a reference to an Appendix is a reference to an Appendix of the PSDR;

### (**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;

### (**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 and, in the case of a trustee, includes a substituted or additional trustee;

### (**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;

### (**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);

### (**Standards**): unless otherwise expressly stated, a reference to a Standard includes that Standard as amended or updated from time to time;

### (**legislation**): without limiting clause 36 or clause 6A, a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes:

#### all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation; and

#### consolidations, amendments, re-enactments and replacements;

### (**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;

### (**"includes"**): "include", "includes" and "including" will be read as if followed by the phrase "(without limitation)";

### (**"or"**): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;

### (**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;

### (**"$"**): a reference to "$", AUD or dollar is to Australian currency;

### (**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;

### (**time**):a reference to time is a reference to time in Melbourne, Victoria, Australia;

### (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

### (**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;

### (**absolute discretion**): unless the Principal is expressly required under a Project Document to act reasonably in exercising a power, right or remedy, the Principal can exercise any power, right or remedy in its absolute and unfettered discretion and the Principal has no obligation to do so;

### (**"may"**): without limiting clause 2.1(t), unless the Principal is expressly required under a 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 Principal, means that the Principal can exercise that power, right or remedy in its absolute and unfettered discretion and the Principal has no obligation to do so;

### (**replacement Authorities**): where there is a reference to an Authority, institute, association or other body referred to in a Project Document which:

#### is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, that Project Document is deemed to refer to that other entity; or

#### ceases to exist, that Project Document is deemed to refer to the new entity (if any) which serves substantially the same purpose or object as the former entity;

### (**no bias against drafter**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proposed that provision;

### (**at its own cost**): where an obligation in this Deed is expressed to be at the Contractor’s own cost or expense or words to that effect, that obligation forms part of the Contractor’s Activities and unless otherwise approved by the Principal in writing, the costs of complying with that obligation are recovered through the Corporate Overhead and Profit in accordance with [Schedule 4]; and

### (**Separable Portions**):

#### the interpretations of Date for Practical Completion, Date of Practical Completion, Practical Completion, Date for Close-out, Date of Close-out, Close-out, apply separately to each Separable Portion and references to this Deed terms in clauses 27, 27.18, 28.2, 28.7, 33.1 and 33.5 will mean so much of the Works, Temporary Works, Provisional Sum Work, Contractor's Activities and Site as is comprised in the relevant Separable Portion; and

#### the interpretation of the term Calculation Date does not apply separately to each Separable Portion and only applies at the end of the last Separable Portion to achieve Practical Completion; and

### (**Claims and Liability**): where, in this Deed, it is stated that:

#### the Contractor is not entitled to make any Claim against the Principal; or

#### the Principal is not liable to the Contractor,

* 1. or words to that effect, then:

#### the Contractor releases the Principal absolutely from any Claim whatsoever and however arising (including in negligence) which the Contractor had or, but for this Deed, might have had in connection with the subject matter for which this Deed states that the Contractor has no entitlement to make a Claim; and

#### the Contractor is not prevented from making a Claim for payment under and in accordance with clause 29 and 30 for Reimbursable Costs to the extent permitted by Schedule 3.

## Composition of this Deed

1. This Deed comprises:

### clauses 1 to 60;

### Schedules 1 to [#]; and

### Annexures [#] to [#],

1. (this **Deed**).

## Order of precedence

### (**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:

#### clauses 1 to 60, Schedule 14 (*Relevant State Policies*) and Schedule 22 (*Executive Review Group Terms of Reference*);

#### Schedules [***# to be inserted]; [Drafting note: To be determined on a project specific basis.***]

#### the Delivery Requirements;

#### the Schedules not referred to in paragraph (i) and paragraph (ii);

#### the Project Scope; and

#### the Annexures (if any) other than the PSDR.

#### [***Drafting note: To be considered on a case by case basis whether there are parts of the PSDR which are to be lower on the order of precedence.***]

### (**Higher or greater requirement**): Subject to clause 2.5A, to the extent that any part of this Deed imposes on the Contractor 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.

## Inconsistency between Project Documents

1. If there is an inconsistency, ambiguity or discrepancy between this Deed and any other Project Document, then the following order of precedence applies:

### this Deed; and

### the remaining Project Documents.

[***Drafting note: Hierarchy for inconsistencies within the PSDR to be addressed in PSDR.***]

## Inconsistency between this Deed and Plans

1. To the extent that any Plan imposes on the Contractor 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.

## 2.5A Inconsistency between Standards

1. If there is an inconsistency, ambiguity or discrepancy between two or more Standards, then the following order of precedence applies:

### any Standard referred to in the PSDR; and

### any other Standard which the Contractor:

#### is expressly required by the terms of any Project Document, by Law or by direction of the Principal to comply; or

#### should comply in accordance with Best D&C Practices.

## 2.5B Inconsistency between this Deed and the ITC Development Agreement

1. If there is an inconsistency, ambiguity or discrepancy between this Deed and the ITC Development Agreement, then the following order of precedence applies:

### this Deed; and

### the ITC Development Agreement.

## Resolution of inconsistency, ambiguity or discrepancy

### (**Notification**): If either party identifies any inconsistency, ambiguity or discrepancy within or between any of the Project Documents or between this Deed and the 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.

### (**Resolution**): The Principal must direct the Contractor as to how to resolve the inconsistency, ambiguity or discrepancy which is the subject of a notice under clause 2.6(a) within 5 Business Days of receiving or providing the notice under clause 2.6(a) as follows:

#### in accordance with clauses 2.3 to 2.5B (as applicable);

#### if the relevant inconsistency, ambiguity or discrepancy cannot be resolved under clause 2.6(b)(i), in accordance with any process for resolving such inconsistencies, ambiguities and discrepancies contained in the relevant document; or

#### if the relevant inconsistency, ambiguity or discrepancy cannot be resolved under clause 2.6(b)(i) or clause 2.6(b)(ii) the Principal must direct the Contractor to adopt the option the Principal requires the Contractor to proceed with (which may be the higher or greater requirement, standard, quality, level of service, staffing level, quantum or scope).

### (**No further action**): The Contractor must not take any action in respect of the inconsistency, ambiguity or discrepancy referred to in clause 2.6(a) until it has received a notice from the Principal under clause 2.6(b).

### (**No Claims**): Despite any other provision of this Deed, the Contractor will not be entitled to make any Claim for an extension of time to any Date for Completion or an adjustment to the TOC or KRAs in connection with a direction given by the Principal under this clause 2.6.

## Annexures

1. Save in respect of the PSDR, to the extent that the content of any Annexure seeks to impose any obligation on the Principal, the Contractor will not be entitled to make any Claim against the Principal in connection with that obligation unless that same obligation is expressly imposed on the Principal in a clause or Schedule of this Deed.
2. ***[Drafting note: Provision may be deleted where the only Annexure is the PSDR.]***

## Plans and Reports

1. Without limiting clause 2.9, a reference to any Plan, Report, or any other plan or report is a reference to that Plan, Report, or other plan or report, as amended, revised or updated from time to time under this Deed.

## Version of documents the Contractor must comply with

1. If the Contractor 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, the Contractor 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).

## Prior approval or consent

1. If the Contractor is required by a Project Document to obtain the Principal's or the Principal 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.

## Action without delay

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

## Provisions limiting or excluding Liability, rights or obligations

### (**No limitation**): A right or obligation of the Principal or the Contractor under this Deed will not limit or exclude any other right or obligation of the Principal or the Contractor under this Deed unless otherwise expressly stated.

### (**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.

## Minimum requirement not sufficient

1. The Contractor acknowledges and agrees that to the extent the PSDR specifies a minimum requirement, the performance of the Contractor's Activities in accordance with that minimum requirement may not, of itself, be sufficient to discharge the Contractor’s obligations under this Deed.

## Relationship of the parties

1. Nothing in any Project Document:

### (**no additional relationship**): creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or

### (**no good faith**): imposes any duty of good faith on the Principal,

1. unless otherwise expressly stated.

## Principal's rights, duties and functions

### (**Principal's own interests**): Unless otherwise expressly stated in the Project Documents, nothing in the Project Documents gives rise to any duty on the part of the Principal to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations under the Project Documents.

### (**Principal's rights**): Notwithstanding anything expressly stated or implied in the Project Documents to the contrary:

#### the Principal 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

#### nothing expressly stated or implied in the Project Documents has the effect of constraining the Principal or placing any fetter on the Principal's discretion to exercise or not to exercise any of its executive or statutory rights, duties or functions.

### (**No Claim**): Subject to clause 5.7(c), the Contractor will not be entitled to make any Claim against the Principal in connection with any exercise or failure of the Principal to exercise any of its legal, executive or statutory rights, duties or functions.

## Reasonable endeavours of Principal

1. A statement in a Project Document providing that the Principal or any of its officers, employees or agents will or must use or exercise "best endeavours", "reasonable endeavours", "act reasonably" or "act in good faith" in relation to an outcome means that the Principal 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 Principal or any of its officers, employees or agents:

### (**no guarantee**): guarantees the relevant outcome will be brought about; or

### (**no obligation**): is required to:

#### 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;

#### exercise a power or discretion or otherwise act in a manner that the Principal regards as not in the public interest;

#### develop or implement new policy or a change in policy; or

#### procure any new Legislation or a change in Legislation.

## Final and Binding

1. If a determination, decision, opinion or direction (including that of the Principal Representative) is stated 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.

## Power of attorney

1. The Contractor irrevocably:

### (**appointment of attorney**): appoints the Principal, and the Principal's nominees from time to time, jointly and severally, as its attorney with full power and authority to exercise the Principal's rights in accordance with clause 37; and

### (**ratification**): agrees to ratify and confirm whatever action is taken by the attorney appointed by the Contractor under clause 2.18(a).

## Proportionate liability

1. 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.

## Prevent

1. For the purposes only of each of:

### paragraph (a)(viii) of the definition of Force Majeure Event;

### clause 6.2(c);

### clause 37.1(c);

### clause 41.7(d); and

### clause 43.5(a),

### a reference to "prevent" or any form of that term includes preventing the relevant party from being able to perform the relevant obligations to which each of the definitions or clauses referred to in paragraphs (a) to (c) relates within the relevant timeframes (if any) specified in this Deed.

[***Drafting note: List to be checked for each Project.***]

PART B — PROJECT COMMENCEMENT

# Conditions Precedent

## Commencement of obligations

[***Drafting note: This regime may not always be required – to be considered on a case by case basis. Clauses commencing on the date of this Deed to be confirmed once Deed is settled.***]

1. This Deed will not automatically commence until the date set out in the Principal's notice under clause 3.2(d) as being the date on which the last Condition Precedent has been satisfied (or waived under clause 3.3(b)), except for the provisions contained in:

### clause 1 (Definitions);

### clause 2.1 (Interpretation);

### clause 2.2 (Composition of this Deed);

### clause 2.3 (Order of precedence);

### clause 2.4 (Inconsistency between Project Documents);

### clause 2.6 (Resolution of inconsistency, ambiguity or discrepancy);

### clause 2.11 (Action without delay);

### clause 2.12 (Provisions limiting or excluding Liability, rights or obligations);

### clause 2.14 (Relationship of the parties);

### clause 2.15 (Principal's rights, duties and functions);

### clause 2.16 (Reasonable endeavours of Principal);

### clause 2.18 (Final and Binding);

### clause 2.19 (Proportionate liability);

### this clause 3 (Conditions Precedent);

### clause 5.7 (All risks);

### clauses 7.2 (Principal Representative) and 7.3 (Contractor Representative);

### clause 10.2 (No Principal liability for review);

### clause 38 (Probity Investigations and Probity Events);

### clause 41.1 (General indemnity);

### clause 41.2 (Indemnity for Contractor breach);

### clause 41.3 (Project Information indemnity and release);

### clause 41.4 (Utility and Contamination indemnities);

### clause 41.5 (Intellectual Property and Moral Rights indemnity);

### clause 41.6 (Limits on Contractor Liability to indemnify);

### clause 41.7 (Third party claim under indemnity);

### clause 41.8 (Continuing obligation);

### clause 41.11 (Limit on Principal liability to the Contractor for Relief Events);

### clause 41.15 (Indirect or Consequential Loss);

### clause 41.16 (Benefits held on trust);

### clauses 42 (Insurance);

### clause 45 (Issue resolution procedure) to 49 (Arbitration);

### clause 50 (Corporate representations, warranties and obligations);

### clause 51 (Assignment and change in control);

### clause 53 (Confidential Information and privacy);

### clause 54 (Intellectual Property);

### clause 59 (Notices and bar to Claims);

### clause 60 (Miscellaneous); and

### the Schedules to the extent necessary to give effect to the above clauses,

### which will commence on the date of this Deed.

## Satisfaction of Conditions Precedent

### (**Conditions Precedent Schedule**): The Conditions Precedent Schedule sets out which party is to satisfy each Condition Precedent.

### (**Contractor to satisfy**): Unless otherwise waived in accordance with clause 3.3(b), the Contractor 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 Principal as each Condition Precedent is satisfied or waived.

### (**Principal to satisfy**): Unless otherwise waived in accordance with clause 3.3(b), the Principal 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 the Contractor as each such Condition Precedent is satisfied or waived.

### (**Notice at Condition Precedent Satisfaction Date**): When the last Condition Precedent to be satisfied has been satisfied or waived, the Principal must confirm that all Conditions Precedent have been satisfied or waived and the date upon which the last Condition Precedent was satisfied or waived.

## Waiver of Conditions Precedent

### (**Conditions Precedent Schedule**): The Conditions Precedent Schedule sets out which party benefits from the satisfaction of each Condition Precedent.

### (**Waiver**): A Condition Precedent is only waived if the Condition Precedent is included for the benefit of:

#### 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

#### both parties as set out in the Conditions Precedent Schedule, if both parties agree to waive the Condition Precedent.

## Failure to satisfy Condition Precedent by Condition Precedent Deadline

1. If any Condition Precedent is not satisfied (or waived in accordance with clause 3.3(b)) by the relevant Condition Precedent Deadline, then:

### (**Principal option to terminate**): the Principal may, at its option terminate this Deed by giving not less than 5 Business Days' notice to the Contractor; and

### (**Project Documents terminated**): if the Principal terminates this Deed under clause 3.4(a), each 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.

### (**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.

PART C — GENERAL OBLIGATIONS

# Collaborative Framework

## Project Objectives

### (**Project Objectives**): The Project Objectives are to:

#### facilitate achievement of the [##]; *[****Drafting note:*** ***To be inserted on a project specific basis. For example, consider inserting "transport system objectives specified in the Transport Integration Act 2010 (Vic)" whenever Deed is for transport infrastructure.]***

#### achieve safe outcomes for all parties and all affected people at all times;

#### achieve Completion by the relevant Date for Completion;

#### achieve value for money outcomes for the Principal having regard to quality, cost and resources, time, fitness for purpose, total cost of ownership, and risk (**value for money**);

#### provide an opportunity for the Contractor to make a fair return for good performance in accordance with this Deed;

#### ensure that where a risk or opportunity is best able to be managed by a party, that the risk or opportunity is allocated to, and managed by, that party;

#### ensure that risks and opportunities are identified and managed in a collaborative, transparent and value for money way;

#### deliver sustainable social and environmental outcomes by minimising energy use and maximising sustainability, minimising impacts on the environment, and promoting workforce development; and

#### [***Drafting note: insert additional project specific items.***].

### (**Commitment**): In implementing this Deed, the parties commit to working together to seek to achieve the Project Objectives.

### ***[Drafting note: Other examples may include:***

***- achieve unrivalled health and safety performance by actively safeguarding and enhancing the wellbeing of people, industries and community in the safe delivery and operation of the Project***

***- minimise impacts on the environment, including but not limited to noise and vibration, air quality, traffic and transport, heritage, waste, water and energy management and embodied environmental impacts;***

***- minimise disruption, delay and inconvenience to the affected public, road and public transport users, adjacent businesses, stakeholders and the community during the performance of the Contractor’s Activities;***

***- maximise opportunities in relation to social sustainability, including workforce development and local procurement;***

***- meet social, environmental and economic objectives across the Project to deliver an integrated project that connects the community in an environmentally sustainable manner;***

***- deliver the Contractor’s Activities in a manner that supports positive and collaborative relationships with stakeholders and the community;***

***- deliver the Works to meet the operational, performance and reliability requirements of the Project;***

***- ensure quality is fundamental in the design and delivery of the Works, and that the Works are procured and delivered in accordance with relevant requirements and are Fit for Purpose;***

***- ensure compliance with all applicable Laws and Standards, the State and Commonwealth requirements, the Relevant State Policies Requirements Schedule, and all PSDR requirements.]***

## Relationship Principles

### (**Principles**): Each party agrees that, in giving effect to the Project Objectives, they will abide by the following principles of behaviour (**Relationship Principles**):

#### promoting a 'one team' culture co-operating to achieve the Project Objectives and a best for project outcome;

#### establishing and maintaining a culture that emphasises and reinforces safety and wellbeing, innovation and collaboration, excellence and achievement, certainty and responsiveness, integrity, mutual trust and respect and personal relationships;

#### notifying each other of perceived or real differences of opinion or conflicts of interest as soon as they arise so as to promote the resolution of such issues within the shortest possible timeframe;

#### always acting in a manner that delivers value for money for the Principal;

#### being transparent in all dealings and sharing all relevant information in a timely way (**Transparent Dealings Basis**);

#### ensuring their respective officers, agents, advisers, consultants, contractors, subcontractors and employees are also committed to these Relationship Principles; and

#### ensuring that learnings of the parties are identified and shared and capability is developed.

### (**Behaviour of parties**): Each party will actively identify and support behaviour which reflects the Relationship Principles, and promptly take reasonable steps to address behaviour that does not reflect the Relationship Principles.

### (**Senior Representatives Group**): The Senior Representatives Group will carry out functions in accordance with clause 7.6 to establish, support and demonstrate a culture consistent with the Relationship Principles.

## Reporting

### (**Written reports**): The Contractor will prepare and submit to the Senior Representatives Group written reports regarding the Contractor's and the Principal's performance against the KRAs under this Deed (**Regular Performance Reports**).

### (**Submission**): The Regular Performance Reports will be submitted:

#### every two months, and no later than 5 Business Days prior to each meeting of the Senior Representatives Group (or as otherwise directed by the Senior Representatives Group) while the Contractor's Activities is being performed; and

#### in a format acceptable to the Senior Representatives Group.

### (**Presentation**): The Contractor will ensure that the Contractor Representative is available to present each Regular Performance Report to the Senior Representatives Group and answer any queries the Senior Representatives Group may have about that Regular Performance Report.

## Kick-off Workshops

### (**Collaborative handover and transition**): The parties agree that, in giving effect to the Project Objectives and Relationship Principles, the parties will host a collective and collaborative workshop to facilitate a handover induction and transition from the procurement teams to the delivery teams, including any Returned Asset Owners (as applicable) (**Kick-off Workshop**).

### (**Kick-off Workshop functions**): The functions of the Kick-off Workshop will be to:

#### facilitate a smooth transition from the procurement teams to the delivery teams;

#### ensure the delivery teams understand the key contractual, technical and commercial issues raised during the procurement and commercial negotiations of this Deed and how such issues were agreed to be managed;

#### collaboratively identify and assess managed risks and opportunities;

#### facilitate early resolution, mitigation or proactive management of any potential issues on a best for project basis;

#### seek to avoid misunderstandings or double-handling of key commercial issues and risks;

#### seek to ensure the appropriate use of the expertise and experience of the procurement and delivery teams;

#### collaborate and coordinate interfaces between the procurement and delivery teams;

#### deal transparently and share all relevant information in a timely way between the procurement and delivery teams; and

#### share learnings identified during the procurement phase with the delivery team to develop the capability of the delivery team.

### (**Process**) The Kick-off Workshop must proceed in the following manner:

#### (**Timing**): The parties must ensure that the Kick-off Workshop occurs within [30] Business Days of the Contract Date or as otherwise agreed between the parties.

#### (**Participants**): The Principal and the Contractor must each ensure that all key commercial, technical and legal stakeholders from their procurement team and delivery team attend the Kick-off Workshop, including the Contractor Representative, the Principal Representative and the on-site project director of the Contractor. The full list of participants from each party must be circulated to the other party no less than [5] Business Days prior to the Kick-off Workshop.

#### (**Meeting**): The Kick-off Workshop must occur in person at a location to be agreed between the parties.

#### (**Chair**): The on-site project director of the Contractor will chair the Kick-off Workshop unless otherwise agreed between the parties and must:

##### seek input from the Contractor Representative and Principal Representative in determining an agenda for the Kick-off Workshop which must be circulated to the parties at least [5] Business Days prior to the Kick-off Workshop; and

##### take minutes of the Kick-off Workshop and distribute such minutes within [10] Business Days after the Kick-off Workshop takes place.

#### The Kick-off Workshop is consultative in nature and its functions as outlined in clause 4.4(b) will not (unless unanimously agreed otherwise agreed by the parties) affect or alter the rights and obligations of the parties under this Deed .

***[Note: A new KRA will be included which applies to both the Contractor and Principal re the effective participation and outcomes of the Kick-off Workshop. This will then be the subject of a Regular Performance Report.***]

## Other Relationship Tools

1. (**Delivery features**): In addition to clause 4.3 and 4.4 above, and clause 4.6 below, the parties agree to adopt the following features in order to deliver on the Project Objectives and Relationship Principles:

### independent collaboration facilitators, to assist in solving for key project risks and opportunities;

### a staged approach to identifying, assessing and solving for collaboratively managed risks and opportunities; and

### KRAs as outlined in clause 4.7 below, for the Principal and Contractor, to be used to inform Senior Representatives Group meetings.

## Proactive Principal Engagement

### (**Acknowledgement**): The parties acknowledge that some of the risks allocated to, or shared by, the Contractor under this Deed are affected by:

#### the timely provision of accurate and comprehensive information from third parties, including Authorities;

#### the timely and facilitative exercise of powers or discretions by third parties, including Authorities;

#### the effective management of project stakeholders, including adjacent property owners and occupiers and some of the Principal's Associates;

#### the timely, collaborative and best for projects coordination of interfaces with other projects in the vicinity of the Works;

#### the timely identification and resolution of anything that has the potential to affect achievement of the Project Objectives; and

#### [***Drafting note: list to be expanded as necessary on a project-specific basis***],

* 1. and that regular and proactive engagement by the Principal in connection with these matters has the potential to facilitate achievement of the Project Objectives and the Principal's KRAs have been developed on this basis.

### (**Principal's KRAs**): To give effect to these matters, the parties have agreed the Principal's KRAs. Achievement (or otherwise) of the Principal's KRAs:

#### must be regularly assessed in accordance with clauses 7.6 and 7.8; and

#### must be monitored and reviewed as part of the Senior Representatives Group and Executive Review Group.

***[Drafting note: Whilst the KRAs do not give rise to an entitlement to make any claim, the Principal's KRAs are an important element of the Incentivised Target Cost model as it is important that the Principal is actively engaged and actively undertaking tasks which are allocated to it. These KRA's will need to be considered on a case by case basis but may include promptly responding to documentation, attendance at meetings, engagement with Authorities.]***

## Key Result Areas

### (**Purpose**): The purpose of the KRAs are to facilitate achievement of the Project Objectives. Failure to achieve a KRA is not, of itself, a default and does not give rise to a Claim.

### (**Review**): As and when agreed by the parties but at least every two months, the parties must consult in good faith to determine the ongoing fitness of the KRAs to facilitate achievement of the Project Objectives, and to consider whether additional or modified KRAs may better facilitate this outcome.

### (**Amendments**): To the extent that the parties agree that:

#### a KRA, or part of it, should be omitted, replaced or otherwise amended; or

#### a new KRA should be inserted,

* 1. then:

#### the Principal will prepare and provide the Contractor with an amended version of the Risk or Reward Regime which identifies any amendments (**Amended Risk or Reward Regime**); and

#### both parties must sign the Amended Risk or Reward Regime,

* 1. and, from the date on which the Amended Risk or Reward Regime has been signed by both parties, the Amended Risk or Reward Regime will be deemed to have replaced the Risk or Reward Regime.

### (**Acknowledgement**): The parties acknowledge and agree that:

#### the TOC was developed in accordance with the ITC Development Agreement and:

##### is fixed and not subject to alteration or escalation under this Deed except in accordance with clause 4.7 and where otherwise expressly stated in this Deed; and

##### is inclusive of all Reimbursable Costs, Corporate Overhead and Profit and Risk & Contingency Provisions; and

#### the KRAs will only change as a result of an Adjustment Event (KRA).

### (**Incorrect assumptions**): The Contractor acknowledges and agrees that if any assumption adopted in developing the TOC proves to be incorrect, such incorrect assumption will not be an Adjustment Event.

## Open book commitment

### (**Contractor Material**): The Contractor must keep and maintain all Contractor Material and the Contractor's records and other documentation referred to in this Deed that relate to the Works (**Records**).

### (**Preparation and availability**): The Contractor must:

#### to the extent the Contractor Material and Records comprise financial information, prepare all Contractor Material and Records in accordance with established and good accounting and estimating practices and procedures; and

#### on receipt of a request from the Principal, and on each anniversary of the Contract Date make the Contractor Material and Records fully available to the Principal, the Principal Representative and any other person authorised by the Principal on a Transparent Dealings Basis in connection with any Claim or Issue.

### (**Legal professional privilege**): The requirement in clause 4.8(b)(ii) does not apply to Contractor Material and Records (or any company board papers) that are the subject of legal professional privilege.

## General

1. The parties agree that the Principal or the Principal Associate's failure to achieve the matters described in this clause 4 (including the achievement (or otherwise) of the Principal's KRAs) does not give rise to any Claim by the Contractor, and will not give rise to an Adjustment Event (Time) or an Adjustment Event (Cost).

# 4A Sustainability

***[Note: Sustainability is a key requirement of the Principal. This sustainability clause may be inserted on a project specific basis. Project teams may consider including the follow sustainability requirements:***

* ***whether the Contractor must obtain and maintain a Climate Active Carbon Neutral Certification (CACN);***
* ***whether the Contractor must use best endeavours to not exceed the 'Delivery Phase Emissions Baseline' (the estimated baseline of carbon emissions in the performance of the Contractor's Activities, as at the Contract Date);***
* ***whether the Contractor must not commence any Works on the Site until it prepares a 'Sustainability Plan' as certified by the Principal Representative;***
* ***whether carbon offsetting will be implemented.]***

### The Contractor must comply with the sustainability requirements set out in the PSDR, including section [##].

### Without limiting clause 5A(a), The Contractor must achieve: ***[Note: Project teams should consider sustainability requirements on a project specific basis, for example the Green Building Council of Australia Green Star Rating, the Infrastructure Sustainability Council Rating Tool ratings, the Climate Active Carbon Neutral – Service certification, NABERS ratings and other sustainability ratings, as relevant.]***

#### [##] as set out in section [##] of the PSDR; and

#### [##] as set out in section [##] of the PSDR.

### In order to achieve the ratings referred to in clause 4A(b), but without limiting that clause, The Contractor must: ***[Note: Project teams to consider including reference to organisations such as the Green Building Council of Australia, the Infrastructure Sustainability Council and Climate Active (as applicable).]***

#### register with the [##] for the purposes of obtaining a rating;

#### cooperate and liaise with the [##] and the Principal as required; and

#### provide any documentation required by the [##] and the Principal*.*

PART D – GENERAL OBLIGATIONS

# Overarching obligations of the Contractor

## Contractor's Activities

1. Without limiting the Contractor's obligations under this Deed, the Contractor must carry out the Contractor's Activities in accordance with:

### the Project Documents;

### all applicable Laws;

### all applicable Standards;

### the Best D&C Practices; and

### directions given or purported to be given by the Principal Representative,

### under this Deed.

## Provision of materials, labour and Constructional Plant

1. Except to the extent that this Deed otherwise provides, the Contractor must, at its own expense, supply everything necessary for the proper performance of the Contractor's obligations and discharge the Contractor's liability under this Deed.

## Comply with directions

### (**Comply with directions**): Subject to clause 5.3(b), the Contractor must and must procure that each Contractor Associate complies with:

#### all directions given or determinations made by the Principal or the Principal Representative in accordance with, or purported to be given in accordance with, the Project Documents;

#### subject to clause 34.4, all directions of the Principal that constitute or involve a Variation;

#### all directions to comply with the Project Documents; and

#### all directions or determinations given by the Principal Representative in accordance with the Project Documents,

* 1. unless any such compliance will be a breach of Law.

### (**Contractor not to act**): Except as otherwise required by Law, the Contractor must not accept or act upon directions or determinations in connection with the Project from an officer, employee or agent of the Principal other than the Principal Representative or a Principal delegate appointed under clause 7.2(h) acting in accordance with its delegation.

### (**Principal direction**): Subject to clause 5.3(e), if the Contractor considers that a direction or determination would entitle the Contractor to make a Claim against the Principal, the Contractor must, within 10 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 Principal that it considers the direction or determination will give rise to a Claim against the Principal and specifying details of the Claim.

### (**Conditions for Contractor claim**): Without limiting any other limitations on the Contractor's entitlement to make a Claim as set out in this Deed, the Contractor is not entitled to make any Claim against the Principal in respect of a direction or determination unless it has given a notice under clause 5.3(c) within the period identified in that clause.

### (**Directions that are Variations**): The Contractor's obligations to notify the Principal in respect of a direction or determination that the Contractor claims gives rise to a Variation or Scope Variation, are set out in clause 34.4.

## Provide all Contractor Material

1. The Contractor must provide or make available to the Principal and the Principal Representative all Contractor Material in connection with the Project and the Contractor's Activities that the Contractor (or any Contractor Associate) has in its power, possession or control, as requested by the Principal, and allow the Principal to make copies of such Contractor Material.

## Not put Principal in breach

1. In carrying out the Contractor's Activities, the Contractor must ensure that neither it nor any Contractor Associate causes the Principal or any Principal Associate to breach or fail to comply with:

### any applicable Law or Standard; or

### [the Commonwealth Funding Conditions]. ***[Drafting note: Delete paragraph (b) if no Commonwealth funding is applicable to the Project.]***

## Fit For Purpose warranty

### (**Works**): On the Date of Practical Completion, the Contractor warrants that the Works:

#### are:

##### Fit For Purpose by reference to the purposes, functions and uses which are current and apply as at the Date of Practical Completion; and

##### capable of remaining Fit For Purpose by reference to the purposes, functions and uses which are current and apply as at the Date of Practical Completion, subject to operation and maintenance after such date which:

###### is in accordance with the O&M Manuals;

###### is such that any damage to the relevant component of the Works occurring after the Date of Practical Completion is promptly rectified in accordance with Best D&C Practices; and

###### takes into account any Change in Law or Change in Policy occurring after the Date of Practical Completion; and

#### comply with the requirements of this Deed, all applicable Laws, and all applicable Standards.

### (**Returned Assets**): As at the Date of Returned Works Completion for a Returned Asset, the Contractor warrants that the relevant Returned Asset:

#### is Fit For Purpose by reference to the purposes, functions and uses which are current and apply as at the Date of Returned Works Completion for that Returned Asset;

#### complies with the requirements of this Deed, all applicable Laws, and all applicable Standards; and

#### if the Returned Asset or any part of the Returned Asset is a Warranted Asset is capable of remaining Fit For Purpose by reference to the purposes, functions, uses and requirements referred to in clause 5.6(b)(i) (without any major maintenance or refurbishment works) for its Warranted Life, provided that the Returned Asset is operated and maintained following the relevant Date of Returned Works Completion for that Returned Asset:

##### in accordance with the O&M Manuals;

##### such that any damage to the relevant Returned Asset or any part of the Returned Asset occurring after the Date of Returned Works Completion for that Returned Asset is promptly rectified in accordance with Best D&C Practices; and

##### in accordance with all Laws and Standards then applicable.

## All risks

### (**All risks**): Without limiting the generality of the Contractor's obligations but subject to the Contractor's entitlement for payment of Reimbursable Costs, Corporate Overhead and Profit and except as otherwise expressly provided in the Project Documents as between the Principal and the Contractor, the Contractor accepts all risks (and the cost of such risks) in connection with performing the Contractor's Activities (including the Site, Extra Land, the Site Conditions and the Works).

### (**Right to defend**): Subject to any provision of a Project Document to the contrary, clause 5.7(a) does not preclude or limit the Contractor from raising any defence available at Law to any Claim made by the Principal or Principal Associates against the Contractor.

### (**Principal Liability**): Without limiting clauses 5.7(d) or 29.8(b), clauses 2.15(c), 5.7(a) and 5.7(b) do not limit any Claim that the Contractor may have against the Principal or a Principal Associate, or any Liability the Principal or a Principal Associate may have to the Contractor or any Contractor Associate, under the Project Documents or at Law:

#### for damages for breach of a Project Document by the Principal or any Principal Associate; or

#### in respect of the Contractor’s or any Contractor Associate's Liability to a third party in respect of death, personal injury or damage to property, to the extent that the Liability of the Contractor or any Contractor Associate is a consequence of a fraudulent, reckless, unlawful or malicious act or omission of the Principal or any Principal Associate.

### (**Contractor acknowledgement**): Subject to clause 29.8, the Contractor acknowledges and agrees that the Contractor's sole financial remedy, and the Principal’s sole financial Liability for delay, disruption or disturbance to the progress of any part of the Contractor's Activities, including by reason of an Adjustment Event (Time), is limited to:

#### the adjustment to the TOC determined pursuant to clause 27 or 35 if the delay, disruption or disturbance is caused by an Adjustment Event (Cost); and

#### the adjustment to the KRAs determined pursuant to clause 27 or 35 if the delay, disruption or disturbance is caused by an Adjustment Event (KRA).

### (**PSDR**): The Contractor acknowledges and agrees that:

#### prior to the date of this Deed, it has:

##### checked, examined, analysed and carefully considered the PSDR;

##### satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the PSDR; and

##### satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the PSDR; and

#### the PSDR is proper, adequate and fit for the purpose of enabling the Contractor to carry out the Contractor's Activities in accordance with this Deed, and ensuring that the Works satisfy the relevant FFP Warranty.

***[Note: On a project specific basis, Project teams may wish to split out Part 1 of the PSDR (which is the Principal brief) and Part 2 of the PSDR (which is the Contractor response).]***

## No Claims

### (**No entitlement or Claims**): The Contractor acknowledges and agrees that:

#### except as expressly provided in this Deed, the Contractor is not entitled to any:

##### adjustment to the TOC or any rates included in this Deed, the KRAs or any Date for Completion; or

##### additional payment under this Deed;

#### except as expressly provided in this Deed, as between the Principal and the Contractor, the Contractor is not entitled to make against the Principal or any Principal Associate, and the Principal and Principal Associates are not liable for, any Claim arising out of or in connection with the Contractor’s Activities, any Direct Interface Works, any Site Conditions, any Project Information or the Project Documents; and

#### it will not make any adjustments to any design or work methodology current as at the Contract Date that will reduce the durability, whole of life performance, environment and sustainability performance, functional performance, quality or safety, of any part of the Contractor’s Activities, or increase the whole of life costs associated with any part of the Contractor’s Activities, other than to the extent directed by the Principal.

### (**No limitation**): Clause 5.8(a)(ii) does not:

#### preclude or limit the Contractor from raising any defence available at Law to any Claim made by the Principal or Principal Associates against the Contractor; or

#### limit any Claim that the Contractor may have against the Principal or a Principal Associate, or any Liability the Principal or a Principal Associate may have to the Contractor or any Contractor Associate, under the Project Documents or at Law:

##### for damages for breach of a Project Document by the Principal or any Principal Associate; or

##### in respect of the Contractor’s or any Contractor Associate's Liability to a third party in respect of death, personal injury or damage to property, to the extent that the Liability of the Contractor or any Contractor Associate is a consequence of a fraudulent, reckless, unlawful or malicious act or omission of the Principal or any Principal Associate.

### (**Claims for payment of** **Reimbursable Costs**): A reference to 'Claim' under clauses 2.6(d), 2.7, 2.15(c), 5.3(d), 5.8(a)(ii), 6.1(e), 6A.3(a), 7.2(f)(ii), 12.6(g), 22.2(d), 23.1(c), 23.6(g), 27.2(d), 29.2(a), 34.3(d), 34.4(d), 36.2(b), 41.14(b), 42.5(a), 42.5(b), 44.2(f) or 59.4 does not prevent the Contractor from making a claim for payment of Reimbursable Costs under clause 29 where the Contractor is otherwise entitled to make such a claim.

# Approvals

## Principal Approvals

### (**Principal Approvals**): The Principal: ***[Drafting note: In respect of specific Principal Approvals, the Project team should consult with its planning experts to consider whether the Contractor needs the benefit of such approvals. This should be addressed on an Approval specific basis. For example, if the Principal is responsible to obtain an EPBC Act approval, the following drafting could be used: for the purposes of section 2A of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) the Principal will ensure that the Contractor is authorised to take the action specified in the Approval granted pursuant to the Environment Protection and Biodiversity Conservation Act 1999 (Cth).]***

#### has obtained, or will obtain, the Principal Approvals on or before the dates set out in Attachment 2;

#### will, subject to the provision of all required information and assistance from the Contractor in accordance with clause 6.1(c), ensure that the Contractor has the benefit of such Principal Approvals as required to perform the Contractor's Activities on and from the relevant dates set out in Attachment 2; and

#### will satisfy the conditions and requirements of Principal Approvals which are required to be satisfied or fulfilled by the Principal (if any) in accordance with Attachment 2.

### (**Changes to Principal Approvals**): The Principal must obtain any changes to a Principal Approval required as a consequence of a Variation or Scope Variation which is the subject of a direction by the Principal in respect of which the Principal issues a Variation Order or Scope Variation Order (as applicable), or an Adjustment Event (Time).

### (**Reasonable assistance**):The Contractor must provide to the Principal all reasonable assistance and all information reasonably requested by the Principal in order for the Principal to:

#### obtain the Principal Approvals that have not been obtained as at the date of this Deed;

#### obtain any changes to a Principal Approval; and

#### without limiting clause 6.2(c) or 6.2(d), satisfy and fulfil the conditions and requirements of any Principal Approvals which are required to be satisfied or fulfilled by the Principal in accordance with Attachment 2.

### (**Principal Approval Event**): If a Principal Approval Event occurs:

#### at the request of the Principal, the Contractor must provide all reasonable assistance in connection with dealing with the Principal Approval Event;

#### the Contractor acknowledges and agrees that as between the Principal and the Contractor, the Principal may deal with the Principal Approval Event as it sees fit (including, if appropriate, conducting any legal challenge in the name of the Contractor); and

#### the Principal Approval Event will be deemed to be a Variation in respect of which the Contractor may submit a Variation Proposal in accordance with clause 34.2 and the Contractor's entitlements will be determined in accordance with clause 34.

### (**Condition precedent**): The Contractor is not entitled to make any Claim against the Principal in respect of any Principal Approval Event (including its impact) unless it has submitted a notice to the Principal and the Principal Representative no later than 20 Business Days after the Principal Approval Event occurs.

## Relevant Approvals to be obtained and complied with by the Contractor

### (Contractor to obtain Approvals (other than Principal Approvals)): The Contractor must:

#### obtain all Approvals (other than the Principal Approvals);

#### maintain all Approvals and do all things necessary to ensure that it can rely on all Approvals; and

#### subject to clause 6.1(c), obtain any amendments to any Approvals,

* 1. to the extent relevant to the Contractor's Activities.

### (**Contractor to obtain secondary approvals**): The Contractor must:

#### obtain all secondary consents, verifications and information; and

#### undertake other action,

* 1. required under a Principal Approval unless otherwise required to be satisfied or fulfilled by the Principal in accordance with Attachment 2.

### (**Contractor to comply**): The Contractor must not take or fail to take (as the case may be) any action that will prevent the Principal from complying with, to the extent relevant, any conditions or requirements of any Approval or Environmental Requirement.

### (**Deviations from the approved Project**): If the Project, as proposed or undertaken by the Contractor, deviates from the Project that is permitted by and will comply with the Principal Approvals, the Contractor must, subject to clause 6.1(b), obtain and comply with any:

#### further Approvals required as a result of such deviation; and

#### necessary amendments to Approvals (including, to the extent necessary, the Principal Approvals),

* 1. and the Contractor must reimburse the Principal for any costs incurred by the Principal in connection with the Contractor requesting or obtaining amendments to a Principal Approval.

### (**Copies of Approvals**):The Contractor must promptly provide to the Principal:

#### copies of all Approvals that it is required to obtain under any Project Document when they are obtained, amended or renewed; and

#### upon request, evidence that the Contractor has complied with any conditions or requirements of the Approvals.

### (**Condition precedent**):The Contractor must, as a condition precedent to Practical Completion, ensure that it has:

#### obtained all Approvals that it is required to obtain under this Deed with respect to the Works; and

#### complied with, carried out and fulfilled all conditions and requirements of all Approvals with respect to the Works.

### (**Copies of documents**):The Contractor must give the Principal copies of documents issued to the Contractor in respect of the Contractor's Activities by any organisation having jurisdiction in connection with the performance of the Contractor's Activities.

## Conditional Approvals

1. If any Approval is issued with conditions which would or could have a material adverse effect on:

### (**Contractor's obligations**): the ability of the Contractor to meet its obligations under this Deed; or

### (**Operations**): the ability of any Principal Associate (as applicable) to undertake any relevant Operations,

1. the Contractor must promptly:

### (**Provide notice**): notify the Principal Representative that those conditions would or could have such an effect; and

### (**Provide copy of conditions**): provide a copy of the relevant conditions, together with the Contractor's detailed proposal for satisfying those conditions in a manner that would not have such an effect, to the Principal Representative for review in accordance with the Review Procedures.

# 6A. Pandemics

## 6A.1 Initial Pandemic Management Plan

1. The Contractor warrants that:

### (**Mitigation measures**): the Initial Pandemic Management Plan includes all mitigation measures that the Contractor is implementing with respect to COVID-19 (including, supply chain impacts (including supply chain impacts in relation to Key Plant and Equipment) and OHS Legislation), and those in response to any and all:

#### Legislation in response to COVID-19; and

#### Pandemic Directions in response to COVID-19;

that are in place at the date of this Deed;

### (**Allowances**): without limiting any express entitlement of the Contractor under this Deed, the Program contains sufficient allowances for the assumption by the Contractor of all risk in relation to the impact of COVID-19 on the performance of the Contractor's Activities as at the date of this Deed and the assumption of that risk in respect of the period between the date of this Deed and the Pandemic Impact Date, including for complying with and implementing the Initial Pandemic Management Plan; and

### (**Updated Pandemic Management Plan**): any updated Pandemic Management Plan will include all mitigation measures the Contractor is implementing with respect to any Pandemic (including supply chain impacts (including supply chain impacts in relation to Key Plant and Equipment) and OHS Legislation), and those in response to any and all:

#### Pandemic Change in Law; and

#### Pandemic Adjustment Events,

* 1. which are in place or have occurred at the date of the relevant update.

## 6A.2 Pandemic obligations

### (**Contractor obligations**): The Contractor must:

#### upon request, provide the Principal Representative with a copy of each Subcontract for the supply of Key Plant and Equipment;

#### ensure the Pandemic Management Plan takes into account all Pandemics, Pandemic Changes in Law and Pandemic Adjustment Events for the period during which the Pandemic Change in Law and Pandemic Adjustment Events remain in force or effect and are relevant to the Contractor's Activities;

#### proactively monitor the potential impacts of any Pandemics and all relevant Pandemic Changes in Law and Pandemic Adjustment Events on the Contractor's Activities; and

#### implement mitigation measures to minimise any potential impact of any Pandemics, any relevant Pandemic Change in Law and any Pandemic Adjustment Events on the Contractor's Activities, including:

##### as set out in the updated Plans and otherwise consistent with Best D&C Practices;

##### sequencing the Contractor's Activities and employing construction, operations and maintenance methodologies and practices that minimise the impacts of any Pandemic, any relevant Pandemic Change in Law and any Pandemic Adjustment Events on the Contractor's Activities; and

##### provide, upon request, the Principal Representative with a Monthly report, and any other information reasonably requested by the Principal Representative (excluding any sensitive pricing information), on the status of procurement of Key Plant and Equipment and how the Contractor is mitigating any risks associated with such procurement.

### (**Expert review**): The Principal may submit any updated Pandemic Management Plan provided under this Deed and any other information provided by the Contractor in relation to Pandemic Changes in Law and Pandemic Adjustment Events to an independent expert appointed by the Principal, for review in accordance with the Review Procedures.

## 6A.3 Moratorium on Claims

### (**No Claim**): Notwithstanding any other clause of this Deed, the Contractor will not be entitled to make any Claim under clauses 27 or 36 arising out of or in connection with any:

#### Pandemic Adjustment Event; or

#### Pandemic Change in Law,

* 1. that occurs on or before the date which is [##] weeks after the Contract Date (**Pandemic Impact Date**), provided that the Contractor will be entitled to make a Claim on or after the Pandemic Impact Date in respect of a Pandemic Adjustment Event or Pandemic Change in Law (as the case may be) that occurs prior to that date but that is continuing thereafter.

### (**Continuing Event**): In the case of a Claim in respect of a Pandemic Adjustment Event or Pandemic Change in Law that occurred prior to the Pandemic Impact Date but that is continuing thereafter:

#### the Contractor's entitlement to any extension of time or Adjustment Event (Cost) will be limited as if the Pandemic Adjustment Event or Pandemic Change in Law (as the case may be) occurred on (and not prior to) the Pandemic Impact Date; and

#### the Contractor will not be entitled to make any Claim in respect of any increased costs or delay it suffered or incurred prior to the Pandemic Impact Date.

### (**No compensation Claim**): The Contractor will not be entitled to Claim compensation from the Principal for a Relief Event which is a Pandemic Change in Law or a Pandemic Adjustment Event to the extent that the loss for which compensation is claimed is covered by the proceeds of any monetary entitlements which the Contractor or any relevant Contractor Associate has received or is entitled to recover pursuant to any Legislation with respect to the relevant Pandemic.

## 6A.4 Pandemic Change in Law

1. If a Pandemic Change in Law occurs:

### (**Amended Pandemic Management Plan**): the Contractor must provide an amended Pandemic Management Plan detailing any proposed changes to the Contractor's Pandemic Management Plan arising from the Pandemic Change in Law including details of the steps that the Contractor proposes to take to mitigate and/or resolve the effects of the Pandemic Change in Law; and

### (**Existing measures**): to the extent any measures in the then current Pandemic Management Plan:

#### are required to be changed in order for the Contractor to comply with the Pandemic Change in Law;

#### are no longer necessary following the Pandemic Change in Law in order for the Contractor to comply with Legislation; or

#### can be reduced and still enable the Contractor to remain compliant with Legislation,

* 1. the Pandemic Change in Law will be an Adjustment Event (Cost) and an Adjustment Event (Time).

# Parties and personnel

## Authorities

### (**Jurisdiction of Authorities**): The Contractor acknowledges and agrees that:

#### there are Authorities with jurisdiction over aspects of the Contractor's Activities and the Site;

#### 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 Contractor's Activities or the Site; and

#### it will co-operate with and co-ordinate the Contractor's Activities with such Authorities as is required by them.

### (**Provide information**): The Contractor must give the Principal Representative copies of:

#### all material documents given to the Contractor or a Contractor Associate by an Authority (including Approvals and other notices) promptly upon receipt;

#### all material documents given by the Contractor or a Contractor Associate to an Authority at the time that those documents are given to the Authority; and

#### details of any other material communication between the Contractor or a Contractor Associate and an Authority,

* 1. in connection with the Project.

## Principal Representative

[***Drafting note: This document has been drafted on the basis of a Principal Representative only. On a project by project basis, agencies may elect to appoint an independent reviewer who may perform functions such as certifying payment, determining extensions of time, certifying Practical Completion. On a project specific basis, the delivery agency should also consider which (if any) certifications of the Principal Representative are to be final and binding (ie not subject to any dispute resolution). These should all be listed in the relevant clauses.***]

### (**Natural person**): The Principal must ensure that at all times there is a natural person appointed by it as the Principal Representative for the Project.

### (**Identity**): As at the date of this Deed, the Principal Representative is the person nominated as such in the Contract Particulars.

### (**Agent of the Principal**): The Principal Representative will administer the Project Documents on behalf of the Principal and:

#### will exercise all rights, powers, authority and functions of the Principal Representative under the Project Documents; and

#### may exercise all rights, powers, authority and functions of the Principal under the Project Documents,

* 1. and does so as the Principal's agent.

### (**Oral directions**): The Principal Representative may give a direction orally but will as soon as practicable confirm that direction in writing.

### (**Certifying Functions**): The Principal Representative must, in performing any of its functions under this Deed which require it to certify time, cost or Practical Completion:

#### arrive at a reasonable measure or value of work, quantities or time;

#### act reasonably in determining whether Practical Completion has been achieved in accordance with this Deed;

#### act honestly and impartially; and

#### act within the time prescribed under this Deed or, where no time is prescribed, within a reasonable time.

### (**Decision binding**):

#### Determinations made by the Principal Representative pursuant to this Deed are not final and binding on the parties, unless there is an express provision in this Deed to the contrary.

#### Without limiting clause 7.2(f)(i), the Contractor’s sole means of redressing any errors or other disputes in respect of a determination made by the Principal Representative is through the issue resolution procedure set out in clause 45 and the Contractor is not entitled to otherwise bring any Claim in respect of any determination by the Principal Representative under this Deed.

### (**Replacement**): The Principal may at any time replace the Principal Representative, in which event the Principal must appoint another person as the Principal Representative and notify the Contractor of that appointment.

### (**Delegation by Principal Representative**): The Principal Representative may at any time delegate the exercise of any power or authority of the Principal Representative to a person other than the then appointed Principal Representative.

### (**Delegation by the Principal**): The Principal may at any time delegate the exercise of any power or authority of the Principal to a person other than the then appointed Principal Representative.

### (**Notification of delegation**): The Principal must promptly notify the Contractor of the identity of each delegate and the powers and authority delegated (including any conditions applying to the delegated power).

### (**Vary or terminate delegation**): The Principal may vary or terminate any power or authority it has delegated, whether to the Principal Representative or otherwise, and must promptly notify the Contractor of any such variation or termination.

## Contractor Representative

### (**Natural person**): The Contractor must ensure that at all times there is a natural person appointed by it as the Contractor Representative in respect of the Project.

### (**Identity**): As at the date of this Deed, the Contractor Representative is the person nominated as such in the Contract Particulars.

### (**Employee**): The Contractor Representative must be an officer or employee of the Contractor or a Related Body Corporate of the Contractor and must be employed full time as the Contractor Representative.

### (**Contact**): The Contractor Representative must act as the principal point of contact between the Contractor and the Principal in respect of the administration of the Project Documents and be available to the Principal as and when reasonably required.

### (**Presence**): The Contractor must ensure that the Contractor Representative is present at the Site at such times as is necessary to ensure that the Contractor is complying with its obligations under the Project Documents and otherwise upon reasonable request by the Contractor Representative.

### (**Directions**): A direction is given to the Contractor if it is given to the Contractor Representative.

### (**Authority and skills**): The Contractor must ensure that at all times during their appointment, the Contractor Representative has:

#### the authority to perform its role and duties and discharge its obligations under the Project Documents; and

#### a detailed knowledge of the Project and sufficient experience and skills to undertake the role of the Contractor Representative.

### (**Duties**): The Contractor Representative must perform the duties of the Contractor Representative under the Project Documents, including to:

#### (**spokesperson**): act as the spokesperson for the Contractor;

#### (**partnership**): facilitate the ongoing implementation of a collaborative relationship with the Contractor;

#### (**liaison**): liaise and generally deal with stakeholders;

#### (**manage**): represent the views of the Contractor and manage and co-ordinate issues with any Contractor Associate prior to presentation to the Principal; and

#### (**presence**): ensure a strong presence and consistent project management role for the Contractor in the implementation of the Project.

## Other Representatives

### (**Natural person**): The Contractor must appoint a natural person as:

#### the Design Development Coordinator; [***Drafting note: Appointment of a Design Development Coordinator to be considered on a project specific basis depending on the level of design required for the project and the Design Development Process.***]

#### [#], [***Drafting note: Certain key personnel of the Contractor and its Subcontractors may be nominated in a particular role in respect of the Project. To be included based on the Contractor's proposal.***],

* 1. (each an **Other Representative**).

### (**Appointment**): If they are not already approved by the Principal as at the date of this Deed , for each role listed in clause 7.4(a), the Contractor must recommend to the Principal a person who, in the Contractor's opinion, is suitable for appointment in that role. The Principal must, acting reasonably, either approve or disapprove the Contractor's recommendation and if the Principal notifies the Contractor that it:

#### approves the person recommended by the Contractor, the Contractor must promptly appoint such person in the relevant role; or

#### does not approve the person recommended by the Contractor, the Contractor must recommend a further candidate within 20 Business Days after the date of the Principal's notice and the process in this clause 7.4(b) will apply again.

### (**Presence**): The Contractor must ensure that each Other Representative is present at the Site at such times as are necessary to ensure that the Contractor is complying with its obligations under this Deed that are relevant to the role of the Other Representative and otherwise upon reasonable request by the Principal Representative.

### (**Authority and skills**): The Contractor 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.

### (**Role**): The role of each Other Representative is as set out in the relevant Appendices of the PSDR which describes that Other Representative's role, function and obligations.

## Key People

The Contractor must:

### (**Key People**): subject to clause 7.5(b), ensure that the Key People are employed or engaged in the roles specified in the Contract Particulars;

### (**Principal consent to delegate**): not delegate the exercise of any power or authority or any of the functions of any of the Key People or allow any such delegation without the Principal's approval (which approval will not be unreasonably withheld or delayed).

### (**Principal consent to replace**): if any of the Key People die, become seriously ill, or resign from the employment of the Contractor or any Contractor Associate the Principal agrees to the replacement of any Key People, replace the relevant Key People with persons approved by the Principal (such approval not to be unreasonably withheld or delayed) of at least equivalent qualification, experience, ability and expertise.

## Senior Representatives Group

### (**Establishment**): The parties will establish a group consisting of the following members (together the **Senior Representatives Group**):

#### the Principal Representative;

#### the Contractor Representative;

#### [2] nominated senior executives from each party with genuine experience in cost reimbursable contracting models and not involved in day to day implementation of this Deed;

#### any other person the Principal nominates from time to time; and

#### any other person the parties agree is appropriate.

[***Drafting note: Representatives will be determined on a Project specific basis.***]

### (**Functions**): The functions of the Senior Representatives Group will be to:

#### establish and ensure the implementation of the strategic leadership and direction of the parties;

#### establish, support and demonstrate a culture consistent with the Relationship Principles and designed to achieve the Project Objectives;

#### transparently and proactively monitor the parties' relationship and general compliance with the Project Objectives;

#### review the performance of the Contractor's Activities;

#### review performance against the Principal's KRAs;

#### review the Reports;

#### review and discuss the Regular Performance Reports provided by the Contractor in accordance with clause 4.3;

#### monitor and review the parties' performance against the KRAs, and seek to identify and agree actions to remedy non-compliances or otherwise improve performance;

#### review, report on and monitor issues which may result in an Issue or a Claim;

#### assist in the resolution of any matters referred to in the Regular Performance Reports or referred to the Senior Representatives Group by a party; and

#### 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.

### (**Other documentation**): The Contractor may (or must following a request from the Principal), prepare and provide documents to the Senior Representatives Group to facilitate discussion by the Senior Representatives Group in respect of the matters contemplated by this clause 7.6.

### (**Meetings**): The Senior Representatives Group must meet:

#### every [2] months commencing from the date of this Deed; and

#### as otherwise:

##### agreed in writing between the Principal Representative and the Contractor Representative; or

##### called to meet on no less than 10 Business Days' notice by the Principal Representative or the Contractor Representative (or on such other notice as otherwise agreed by them),

* 1. and conduct its meetings in the manner agreed from time to time between the parties; and

## Project Control Group

### (**Establishment**): The parties will establish a group consisting of the following members (together the **Project Control Group**):

#### the Principal Representative;

#### the Contractor Representative;

#### the Design Development Coordinator;

#### the on-site project director of the Contractor; and

#### any other person the parties agree is appropriate.

### (**Functions**): The functions of the Project Control Group will be to:

#### monitor the overall progress and performance of the Contractor's Activities and compliance with the requirements of the Project Documents;

#### assist in the resolution of any matters referred to the Project Control Group by a party including Issues referred to it under clause 47(d);

#### review all reports and plans provided by the Contractor, its Subcontractors and the Principal Representative;

#### reviewing the quality of work performed by the Contractor;

#### reviewing and attempting to resolve issues arising out of community relations; [***Drafting note: Project team to consider if more extensive community liaison is required.***]

#### reviewing and considering value engineering opportunities and cost savings;

#### reviewing and discussing environmental and occupational health and safety issues;

#### discuss and address interface management issues; and

#### 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;

### (**Meetings**): The Project Control Group must:

#### meet:

##### monthly (not later than 15 Business Days after the end of each month);

##### as otherwise:

###### agreed by the Principal Representative and the Contractor Representative; or

###### called to meet on 10 Business Days' notice by the Principal Representative or the Contractor Representative (or on such other notice as otherwise agreed by them or as is required under clause 47(d)); and

#### conduct its meetings in the manner agreed from time to time between the Principal Representative and the Contractor Representative;

### (**Reports**): The Contractor 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), give each member of the Project Control Group and the Principal Representative:

#### prior to Close-out, a Monthly Progress Report for the previous month prepared in accordance with the PSDR; and

#### the PSDR.

### (**Other attendees**): The Principal may:

#### require that one or more representatives of any Direct Interface Party attend a meeting of the Project Control Group and the Contractor agrees to those representatives attending the relevant meeting; and

#### direct the Contractor to procure the attendance of senior representatives of any of the Subcontractors (not forming part of the Project Control Group) or any of their respective Associates at any meeting of the Project Control Group.

## Executive Review Group

***[Drafting note: Role of the Executive Review Group to be considered on each project - agencies are free to amend the role and frequency of meetings.]***

### (**Executive Review Group**): The parties will:

#### establish the Executive Review Group as contemplated in the Executive Review Group Terms of Reference. and

#### participate (and the Contractor must procure that the Key Significant Subcontractors participate) in the Executive Review Group in accordance with the Executive Review Group Terms of Reference.

### (**Independent Member costs**): The Contractor will be liable to pay 50% of the costs and expenses of any Independent Member (including the Independent Member's professional fees and any costs incurred in exercising or purporting to perform its obligations***). [Drafting note: This is optional - depending on whether an Independent Member is appointed which is not required for every Project.]***

## Working Groups

1. The Contractor acknowledges and agrees that it will establish and participate in each Working Group as required by the PSDR. [***Drafting note: The Principal will decide what, if any, working groups are required on a project specific basis.***]

## General requirements for meetings

### (**Meeting agendas**): The Principal 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:

#### seek input from the Contractor Representative; and

#### include any items notified to it by any other member received not later than 5 Business Days prior to the date of the meeting;

### (**Minutes**): The Principal must either:

#### 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

#### notify the Contractor that it requires the Contractor to take minutes of each Project Control Group meeting, Senior Representatives Group meeting or any Working Group meeting and distribute such minutes prior to the next relevant meeting.

### (**Chair**): The chair for each of the Project Control Group and the Senior Representatives Group will be the Principal Representative unless otherwise agreed by the parties. [***Drafting note: Consider whether PCG should have an independent chair or chair that alternates between parties on a project specific basis.***]

### (**Continuity of membership**): The parties acknowledge the importance of each of the Project Control Group, the Senior Representatives Group and each Working Group having continuity of membership in order to successfully carry out its functions.

### (**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.

### (**Liability of groups**): The Project Control Group, Senior Representatives Group and each Working Group:

#### are advisory only and their decisions or recommendations are not binding on the parties; and

#### do not have any legal responsibilities, liability or power to require any of the parties to act or refrain from acting in any way.

### (**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.

### (**No reliance or Claim**): No party will be entitled to:

#### rely on any statement, opinion, advice, representation, warranty, promise or undertaking made or given by or on behalf of or any member of the Project Control Group, Senior Representatives Group or Working Group; or

#### make any Claim,

* 1. in connection with:

#### anything which occurs at any meeting of the Project Control Group, Senior Representatives Group or Working Group; or

#### anything else which any member of the Project Control Group, Senior Representatives Group or Working Group does or fails to do in his or her capacity as a member of any such group.

### (**Conduct at meetings**): The Contractor and each Contractor Associate must freely and openly discuss the Contractor's Activities at all meetings conducted with the parties must, and must procure that each Contractor Associate, fully respond to any questions which the Principal may ask the Contractor or the relevant Contractor Associate at any meetings conducted in accordance with this Deed within 5 Business Days.

### (**Further information**): The Principal Representative may require the Contractor to provide information on matters discussed at any Project Control Group meeting, Senior Representatives Group meeting or Working Group meeting and the Contractor must provide that information in a timely manner.

## Early warning procedure and risk reporting

### (**Contractor must notify**): The Contractor must give early warning of a risk by notifying the Principal as soon as it becomes aware of any fact, matter or thing which may give rise to a risk of:

#### an adverse effect on the performance of the Contractor's Activities or the Works including any Claim by the Contractor; or

#### a party being in breach of any term of this Deed.

### (**Principal may notify**): The Contractor acknowledges and agrees that the Principal may, at any time, give early warning of a risk by notifying the Contractor's Representative of any fact, matter or thing which may give rise to a risk of:

#### an adverse effect on the performance of the Contractor's Activities or the Works; or

#### a party being in breach of any term of this Deed,

* 1. and such notification may be in writing or verbally in a meeting or on site.

### (**Not a precondition**): The notice under clause 7.11(a) is separate from, and not a precondition to, the notices required under this Deed, including clause 27.

### (**Risk Register**): The Contractor must:

#### prepare a Risk Register within 20 Business Days of the Contract Date;

#### update the Risk Register at least monthly, and otherwise whenever necessary to ensure it reflects current risks to the Contractor's Activities and the Works, including the risks notified under 7.11(a) or 7.11(b); and

#### provide the Principal Representative with real time access to the Risk Register.

### (**Risk management meetings**): The Contractor must attend risk management meetings with the Principal Representative on a monthly basis or as otherwise directed by the Principal Representative to:

#### review the current Risk Register;

#### develop proposals and seek solutions for avoiding or mitigating the risks listed on the Risk Register, including what assistance the Principal may be able to provide to the Contractor, including informing the Principal Representative if it considers any such proposal or solution would give rise to a Variation or otherwise give rise to a Claim by the Contractor;

#### decide upon any specific action to be taken by the parties in response to the risks listed on the Risk Register; and

#### remove from the Risk Register those risks which have been avoided or passed.

### (**Contractor's Liability**): A notification, record or action under this clause 7.11 will not relieve the Contractor from or alter its Liabilities or obligations under this Deed, including any and all notification obligations under this Deed.

# Arrangements for performance of the Contractor's Activities, including Subcontracting and self performed

## Subcontracting

1. The Contractor:

### (**requirements for Subcontracting**): must not subcontract the performance of the Contractor's Activities or any part of them except in accordance with this clause 8;

### (**no relief**): is not relieved from any or all of its obligations or Liabilities (whether under the Project Documents or otherwise) as a result of any subcontracting of those obligations or Liabilities;

### (**Contractor responsible**): will be responsible for the acts and omissions of any Subcontractor and their respective Associates in carrying out the Contractor's Activities as if such acts or omissions were the acts or omissions of the Contractor; and

### (**Actions of Subcontractors**): for the purposes of the *Wrongs Act 1958* (Vic), without limiting clause 2.19, is entirely responsible for any failure to take reasonable care on the part of any Subcontractor or their Associates.

## Tendering of Subcontracts

### (**Tendering**): The Contractor may only tender for a Subcontract (other than a Minor Subcontract) in accordance with the Subcontract Packaging and Procurement Plan. [***Drafting note: On a project specific basis, this plan should include matters such as a right for the Principal to review and approve tender lists (for all or a subset of key packages).***]

### (**Subcontract Packaging and Procurement Plan**): If the Contractor proposes to tender a Subcontract (other than a Minor Subcontract) and that proposal is not included in the then current Subcontract Packaging and Procurement Plan, the Contractor must:

#### amend the Subcontract Packaging and Procurement Plan; and

#### submit the amended Subcontract Packaging and Procurement Plan to the Principal Representative for review in accordance with the Review Procedures.

### (**ITC Development Agreement**): The Subcontract Packaging and Procurement Plan must comply with the requirements for that plan in the ITC Development Agreement.

### (**Contractor to provide copies**): The Contractor must provide to the Principal Representative copies of all Subcontract tender and contract documentation, including documentation received from tenderers within [3] Business Days of the date on which the Contractor proposes to enter into the relevant Subcontract and otherwise on request of the Principal Representative.

### (**Project Control Group report**): The Contractor must include the names of all Subcontractors engaged to perform the Contractor's Activities in its report to the Project Control Group pursuant to clause 7.7(d).

## Award of Subcontracts

### (**Tender process**): The Contractor must:

#### examine and analyse all tenders received;

#### if required by the Principal Representative, conduct post-tender negotiations with the tenderer(s), which must, if the Principal Representative so requires, be held in the presence of the Principal Representative; and

#### notify the Principal Representative which tenderer it proposes to enter into the relevant Subcontract with, which notification:

##### must be accompanied by appropriate justification and any other details or information which may be required by the Principal Representative; and

##### will be deemed to include a warranty by the Contractor that:

###### the recommended tenderer has the necessary suitability, reliability, expertise and financial standing to execute the work being subcontracted;

###### the Contractor knows of no reason why that tenderer's tender should not be accepted; and

###### the tenderer's tender will provide value for money for the Principal.

### (**Principal Representative approval**): Subject to clause 8.3(g), if the Principal Representative approves, or is deemed to have approved, the Contractor's proposal to enter into a Subcontract with a tenderer, the Contractor must promptly enter into a Subcontract with the approved tenderer on the basis of the subcontract price approved by the Principal Representative.

### (**Principal Representative disapproval**): The Principal Representative may only disapprove the Contractor’s proposal to enter into a Subcontract with a tenderer within 10 Business Days after receiving the proposal and only where:

#### the Subcontract price exceeds the amount allowed for the relevant work in the Cost Plan and the Principal Representative considers (acting reasonably) that the proposal does not represent value for money;

#### the Principal Representative considers (acting reasonably) that the relevant tender demonstrates that the proposed Subcontractor is not appropriate to perform the relevant work; or

#### the proposed form of Subcontract does not comply with clause 8.3(g) or any template form of subcontract previously approved by the Principal or the Principal Representative.

* 1. If the Principal Representative fails to notify the Contractor of its disapproval of the Contractor's proposal within 10 Business Days after receiving the proposal, the Principal Representative is deemed to have approved the Contractor's proposal.

### (**Principal Representative direction**): If the Principal Representative disapproves the Contractor's proposal, the Principal Representative may direct the Contractor to:

#### accept the tender of another tenderer; or

#### require the Contractor to seek alternative proposals, in which case clause 8.3 applies.

### (**Enter into Subcontract**): Subject to clause 8.3(g), if the Principal Representative directs the Contractor to accept the tender of another tenderer, the Contractor must promptly enter into a Subcontract with the approved tenderer on the basis of subcontract price and on the terms approved by the Principal Representative.

### (**Provide copy of Subcontract**): If requested by the Principal, the Contractor must provide the Principal with a copy of any executed Subcontract, including any Design Documentation relevant to that Subcontract.

### (**Subcontract terms**): The Contractor must ensure that any Subcontract:

#### complies with the unfair contract terms law as set out under the Australian Consumer Law;

#### to the extent reasonably practicable, provides for alternative dispute resolution;

#### does not contain time bar provisions or provisions restraining the rights of the Subcontractor which are unreasonably onerous for such a Subcontract;

#### contains:

##### provisions expressly recognising and permitting the exercise by the Principal of its rights under and contains provisions equivalent to all relevant provisions prescribed by (if applicable), clauses 7.5, 8.1, 8.2, 8.5, 15.3, 17.1(d)(iv), 23.1, 27, 34, 37, 38, 42, 43, 44, 51, 52 and 53.

##### to the extent the Subcontractor performs any obligations of the Contractor under this Deed or any part of the Contractor's Activities, an obligation on the Subcontractor to observe the requirements of clause 52, 53.5 and 54 to the same extent as the Contractor is required to do so (as if the Subcontractor were named in place of the Contractor);

##### a provision that the Subcontractor must not assign or subcontract without the consent in writing of the Contractor;

##### a provision that if this Deed is terminated or the work is taken out of the hands of the Contractor, the Subcontractor must, after the Principal has directed them to do so, promptly enter into a deed of novation with the Contractor and the Principal or its nominated replacement contractor (at its cost);

##### provisions that (to the extent permitted by Law) exclude the application of Part IVAA of the *Wrongs Act 1958* (Vic) or any equivalent statutory provision in any other state, territory or the Commonwealth;

##### where the Subcontractor is a consultant, a provision that the Subcontractor must effect and maintain professional indemnity insurance consistent with the terms in clause 42.2;

##### a provision that the Subcontractor must afford access to the Principal Representative at all reasonable times to the Site;

##### where relevant, a requirement that the Subcontractor executes a deed of collateral warranty in favour of the Principal;

##### no 'pay when paid' or 'pay if paid' provisions;

##### in respect of payment, provisions that:

###### are consistent with and support the Subcontractor's ability to enjoy the benefits provided under the Security of Payment Act;

###### require the Subcontractor to serve its Subcontract payment claims no later than 4 clear Business Days prior to the date on which the Contractor is to serve its payment claim under this Deed; and

###### require the Contractor to pay the Subcontractor within 20 Business Days of the issue of a payment certificate;

##### a right for the Contractor to terminate the Subcontract for convenience with the Subcontractor’s payment entitlements being equivalent to those of the Contractor under clause 44.2;

##### an obligation on the Subcontractor to obtain warranties on commercially reasonable terms for all materials from the manufacturers and Subcontractors who manufacture or supply the materials (as the case may be);

##### obligations on the Subcontractor to grant any licence or vest any Intellectual Property Rights in accordance with clause 54;

##### any provisions to be included in Subcontracts in accordance with the Relevant State Policies; and

##### where not addressed by any of the above principles, conditions and obligations which, to the extent reasonably practicable in the context of the relevant Subcontract, are substantially the same as the conditions and obligations set out in this Deed.

### (**No Liability on termination**): The Contractor must ensure that if this Deed is terminated under clause 44 that the Principal has no Liability to the Contractor in respect of any Liability the Contractor may have to any Subcontractor as a consequence of the termination.

## Minor Subcontracts

1. The Contractor must ensure that for each Minor Subcontract:

### (**suitability**): the tenderer that the Contractor proposes to, or has, engaged has the necessary suitability, reliability, expertise and financial standing to execute the work being subcontracted;

### (**other reasons**): the Contractor knows of no reason why that tenderer's tender should not be accepted; and

### (**value for money**): the tenderer's tender will provide value for money for the Principal.

## Specific Work health and safety

### (**Employee**): In this clause 17.1 a reference to an 'employee' is a reference to that term as it is defined in the OHS Legislation.

### (**Works**): The Contractor must carry out and must procure that the Works are carried out:

#### safely and in a manner that does not put the health and safety of employees or any other persons at risk; and

#### in a manner that protects property.

### (**Principal direction**): If there is a risk of injury to employees or any other person or damage to property arising from the Works:

#### the Principal Representative may direct the Contractor to change its manner of working or to cease working to minimise that risk; and

#### the Contractor must comply with any direction given by the Principal Representative under clause 17.117.1(c)17.1(c)(i).

### (**Contractor obligations**): The Contractor must:

#### comply with all Laws and other requirements of this Deed for work, health, safety and rehabilitation management;

#### commit to continuous improvement in work health and safety;

#### ensure that all Subcontractors and their respective employees comply with their respective obligations under the OHS Legislation;

#### ensure that any Subcontracts that they enter into contain the same or substantially the same terms as this clause 17;

#### 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;

#### notify the Principal 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 Contractor's Activities;

#### in respect of any notifiable incident referred to in clause 17.1(d)(vi):

##### immediately provide the Principal Representative with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator;

##### promptly provide the Principal Representative with a copy of all witness statements and the investigation report relating to the notifiable incident;

##### promptly provide the Principal Representative with copies of any notice(s) or other documentation issued by the relevant Commonwealth, State or Territory regulator; and

##### within 10 days of the date of notification to the relevant Commonwealth, State or Territory regulator, provide the Principal 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;

#### within 10 days of receipt, provide to the Principal Representative copies of:

##### 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 the Contractor or a Subcontractor relating to work health and safety matters;

##### all formal notices issued by a health and safety representative of the Contractor or a Subcontractor under or in compliance with the applicable OHS Legislation; and

##### all formal notices, written communications and written undertakings given by the Contractor or a Subcontractor to the regulator or agent of the regulator under or in compliance with the applicable OHS Legislation;

#### institute systems to:

##### obtain regular written audit results from all Subcontractors about their ongoing compliance with OHS Legislation; and

##### ensure that Subcontractors comply with any such audit findings;

#### provide the Principal Representative with a written report of all work health and safety matters (including matters in connection with clauses 17.1 and 17.2) or any other relevant matters as the Principal Representative may reasonably require from time to time, including a summary of the Contractor's (and the Significant Subcontractors') compliance with the OHS Legislation;

#### exercise a duty of utmost good faith to the Principal in carrying out the Contractor's Activities to enable the Principal to discharge its duties under the OHS Legislation;

#### do not do anything or fail to do anything that would or would be likely to cause the Principal to be in breach of the OHS Legislation;

#### if requested by the Principal 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

#### comply with all reasonable requests of the Principal to assist the Principal to discharge any work health and safety obligations of the Principal in connection with the Project under OHS Legislation.

[***Drafting note: More detailed requirements on OHS will be included in the PSDR***.]

## Principal Contractor

### (**Definitions**): In this clause 17.2, 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:

#### any Contractor's Activities, including work under any Subcontract; and

#### any construction work carried out on the Site by the Principal or any Principal Associate:

##### during any period in which the Contractor has been engaged as Principal Contractor in respect of the Site; and

##### which interfaces with the Contractor's Activities,

* 1. is taken to be part of the same "construction project", unless otherwise agreed.

### (**Appointment as** **Principal Contractor**): Without limiting the Contractor's obligations under any other provision of this Deed:

#### for the purposes of Part 5.1 of the OHS Regulations, the Principal:

##### appoints the Contractor as Principal Contractor:

###### in respect of the Contractor's Activities; and

###### for the rectification of Defects;

##### authorises the Contractor to manage and control the Site and each workplace at which the Contractor carries out construction work, and to discharge the duties of a Principal Contractor under the OHS Legislation in respect of construction work at that workplace,

* + 1. in accordance with this Deed.

### (**Accepting appointment as Principal Contractor**): The Contractor:

#### accepts its appointment as a Principal Contractor;

#### acknowledges that it has management and control of each workplace at which construction work is to be carried out for the period of its appointment as Principal Contractor; and

#### must comply with all obligations imposed on a Principal Contractor by the OHS Legislation and OHS Regulations.

### (**New OHS Regulations**): The Contractor agrees that if the New OHS Regulations are enacted in Victoria and supersede the OHS Regulations, and under this clause 17.2, the New OHS Regulations provide for the Principal to appoint a Principal Contractor for the Contractor's Activities, the Site or the Project in accordance with the New OHS Regulations, then, if required to maintain the Contractor's appointment as Principal Contractor, the Principal will appoint the Contractor as Principal Contractor within the meaning of the New OHS Regulations, and the Contractor agrees to accept such appointment.

### (**Contractor to ensure compliance**): The Contractor acknowledges and agrees that it will exercise and fulfil all of its functions and obligations as Principal Contractor under the OHS Legislation that are relevant to the Project.

### (**Functions and obligations of Principal Contractor**): If the appointment of the Contractor as Principal Contractor is not effective for any reason, the Contractor 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.

### (**Contractor obligations**): The Contractor must:

#### ensure that if any Law, including in the State or Territory in which the Works are situated or the Contractor's Activities are being carried out (as the case may be), requires:

##### a person:

###### to 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

###### to have 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

##### a workplace, plant or substance (or design) or work (or class of work) to be authorised or licensed, that workplace, plant or substance (or design) or work (or class of work) is so authorised or licensed;

#### not direct or allow a person to carry out work or use plant or a substance at a workplace unless the requirements of clause 17.2(g)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and

#### if requested by the Principal or required by the OHS Legislation in respect of any work, 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 Principal (acting reasonably) before the Contractor or a Subcontractor (as the case may be) commences such work.

## Quality Assurance System

1. The Contractor must develop, implement and maintain a quality assurance system that covers:

### (**Contractor's Activities**): the carrying out of the Contractor's Activities; and

### (**personnel**): personnel and human resources, including recruitment, training, and occupational health and safety management of the Contractor and any Contractor Associate,

1. (**Quality Assurance System**) in accordance with the PSDR.

[***Drafting note: QA Systems used to be considered on a project specific basis***.]

## Industrial relations

1. The Contractor must in carrying out the Contractor's Activities:

### assume sole responsibility for and manage all aspects of industrial relations for the Contractor's Activities;

### keep the Principal Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Activities.

## Requirements for Significant Subcontracts

### (**Roles**): The Contractor must ensure that those Significant Subcontractors specified in the Contract Particulars are engaged in the roles assigned to them in the Contract Particulars.

### (**Amendments**): The Contractor must provide to the Principal a copy of any amendment it proposes to make to any Significant Subcontract before it is made.

### (**Principal consent**): Without limiting clause 51.1, the Contractor must not, and must ensure that none of the Contractor Associates:

#### amend or agree to amend, grant an indulgence, waive or accept any waiver of any rights under any Significant Subcontract in a way that would have a material adverse effect on:

##### the ability of the Contractor to perform and observe its obligations under any Project Document; or

##### the rights, or increase the liabilities or obligations, of the Principal under any Project Document, or the ability or capacity of the Principal to exercise its rights or perform its obligations under a Project Document;

#### amend or agree to amend, grant an indulgence, waive or accept any waiver of any rights under any Key Significant Subcontract; or

#### terminate, rescind, novate or assign or agree to any termination, rescission, novation or assignment of any Significant Subcontract,

* 1. without the consent of the Principal which will not be unreasonably withheld or delayed.

### (**Direct deeds**): The Contractor must procure:

#### from each Significant Subcontractor an executed direct deed in the form of the Subcontractor Direct Deed (if required by the Principal); [***Drafting note: To be considered if a subset of Significant Subcontractors is more appropriate to provide direct deeds than all Significant Subcontractors.***]

#### 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 Principal); and

#### promptly deliver those executed deeds to the Principal Representative.

## Competence

### (**Contractor to ensure competence**): The Contractor must ensure that all persons employed or engaged to perform the Contractor's Activities hold appropriate qualifications and have received appropriate training for their intended duties, and provide evidence of such qualifications and training to the Principal as reasonably requested.

### (**Incompetence**): If the Principal notifies the Contractor that, in the Principal's reasonable opinion, any person employed or engaged on the Contractor's Activities is incompetent, does not meet the standard required by clause 8.10(a), or is negligent, dishonest or guilty of misconduct, then, without limiting the Contractor's other obligations under this Deed, the Contractor must promptly ensure that such person is removed from performing the Contractor's Activities for the remainder of the Project and following removal of any person in accordance with this clause 8.10(b), the Contractor must not employ or engage, and must ensure that none of the Contractor Associates employ or engage, that person in respect of the Contractor's Activities without the prior written consent of the Principal.

## Payment of amounts owed to Subcontractors

### (**Payment to Significant Subcontractors**): The Contractor must ensure that:

#### all Subcontractors are paid in accordance with the terms of their Subcontracts; and

#### each Subcontract contains an equivalent provision to clause 8.11(a)(i) in relation to that Subcontract and Subcontractor.

### (**Payment to other Subcontractors**): The Contractor must use reasonable endeavours to ensure that all other Subcontractors not referred to in clause 8.11(a) are paid in accordance with the terms of their Subcontracts.

### (**Copies of notices under Security of Payment Act**): The Contractor must ensure that, within:

#### 2 Business Days after any notice under the 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 the Contractor from any Subcontractor; or

#### 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, the Contractor from any of its Subcontractors,

* 1. a copy of that notice is given to the Principal.

### (**Suspension under Security of Payment Act**): Subject to clause 8.11(e), 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 the Contractor or any Contractor Associate to pay amounts to the Subcontractor, the Principal may pay to the Subcontractor the amount owing to the Subcontractor in connection with that work, and any amount so paid by the Principal, will be a debt due and payable from the Contractor to the Principal.

* 1. ***[Note: Throughout this Deed various amounts are debts due and payable from the Contractor to the Principal. On a project specific basis, Agencies may wish to include a regime for these amounts, at the Principal's election, to be Principal Reimbursable Costs or a debt due and payable so that they are counted towards the AOC. This should be considered on a project specific basis, for example, it may be appropriate in circumstances where there are amounts payable by the Contractor for rail occupations which are borne by the Principal and so that they are counted as "costs of the project" rather than simply being paid by the Contractor to the Principal.]***

### (**Principal may pay Subcontractors**): Notwithstanding clause 8.11(d), if any amount is:

#### certified as payable; or

#### otherwise due and payable,

* 1. to a Subcontractor under a Subcontract, and the Contractor or any Contractor Associate does not satisfy its obligations to pay such amount to that Subcontractor in accordance with that Subcontract, then the Principal may pay such amount to that Subcontractor provided it has given the Contractor 10 Business Days' notice of its intention to do so, and any amount so paid by the Principal will be a debt due and payable from the Contractor to the Principal.

## Variations requiring approval

1. The Contractor must not cause, instruct, permit, request or consent to:

### (**variations**): a variation or amendment to a Subcontract or the work under the Subcontract other than a Permitted Subcontract Variation;

### (**increases in payment**): any increase in the amount payable to the Subcontractor under, or for the performance of, the Subcontract works other than the cost of a Permitted Subcontract Variation or in response to a Subcontract Adjustment Event; or

### (**termination**): the termination of any Subcontract,

1. without the prior written approval of the Principal Representative, which approval will not be unreasonably withheld.

## Notification of Subcontractor claims and disputes

1. The Contractor must notify the Principal Representative:

### (**existence of claims and disputes**): of the existence of any claims or disputes of which it is aware that have arisen under any Subcontract, if the claims process or dispute resolution process under that Subcontract has been activated by any party to it; and

### (**resolution of claims and disputes**): when and how any such claims or disputes have been resolved.

## Warranties from Subcontractors

### (**Deeds of collateral warranty**): The Contractor must procure and provide to the Principal duly completed and executed deeds of collateral warranty from the [Key Significant] Subcontractors which must: [***Drafting note: List of Subcontractors to provide warranties to be considered on a project specific basis and listed.***]

#### undertake or supply the work or other items stated in the Contract Particulars; and

#### be in favour of the Principal,

in the form of Schedule [20], or otherwise on terms and in a form acceptable to the Principal.

### (**Assignment of warranties**): In addition to clause 8.14(a), where the Contractor has obtained warranties which continue to operate beyond the expiry of the Defects Liability Period (or, where there is more than one, the last to expire) from:

#### Subcontractors; or

#### any manufacturers and suppliers of plant, equipment, materials and other items incorporated into the Works,

the Contractor must, on or before expiry of the Defects Liability Period and as a precondition to submitting a Final Payment Claim pursuant to clause 30.6 assign to the Principal the benefit of all such warranties obtained by the Contractor.

### (**Evidence of assignment**): The warranties and documents evidencing the assignment of rights under clause 8.14(b) must be delivered to the Principal Representative at the times required by this Deed, and if no time is stated, then prior to the issue of the Certificate of Close-out.

### (**No limitation of liability**): Nothing in this clause 8.14, nor any deed of collateral warranty nor assignment of rights as contemplated by this clause 8.14, will:

#### limit or affect any of the Contractor’s obligations or liabilities; or

#### derogate from any rights which the Principal may have against the Contractor, in respect of the subject matter of the deeds of collateral warranty or the assigned warranties.

## Novation

1. [***Drafting note: This clause is only required if the Principal is intending to novate a Principal's Consultant to the Contractor. This may be required to ensure there is single point design responsibility. This provision can be deleted if there are no consultants that the Principal is looking to novate to the Contractor.***]

### When directed by the Principal, the Contractor, without being entitled to an adjustment to the TOC or the KRAs, must promptly execute a deed of novation between the Principal, the Contractor and each Principal's Consultant either:

#### stated in the Contract Particulars (as the case may be) for the services set out in the Contract Particulars (as the case may be); or

#### such other Principal's Consultant as the Principal may request (acting reasonably).

### The warranties given by the Contractor under this Deed remain unaffected notwithstanding that that the Contractor has entered into a deed of novation in respect of a Principal's Consultant and thereafter has retained that consultant in connection with Contractor's Activities.

## Self Performed Reimbursable Works

### (**Written approval**): Other than in respect of the Self Performed Reimbursable Work set out in the Contract Particulars (if any), the Contractor must not itself, and must ensure that its Related Body Corporates do not, carry out any part of the Contractor's Activities unless written approval is received from the Principal that the relevant Contractor's Activities may be carried out as Self Performed Reimbursable Work.

### (**Particulars**): In order to request written approval from the Principal Representative pursuant to clause 8.16(a), the Contractor must provide to the Principal Representative the following particulars in writing and on an open book basis:

#### a detailed scope of the proposed work to be undertaken as Self Performed Reimbursable Work;

#### a detailed methodology addressing the following:

##### a description of the resource methodology that will be used to undertake the proposed works;

##### the cash flow for the proposed works;

##### the value for money for the Principal if the proposed works are undertaken as Self Performed Reimbursable Work;

##### the time for commencement and completion of the proposed works and confirmation that these times are in accordance with the then current Program;

#### the proposed project team to undertake the proposed works, including all construction workers, managerial and technical personnel;

#### the number of resources (man power) and the anticipated total hours to carry out the proposed works onsite and offsite;

#### the cost of any materials and equipment the Contractor intends to purchase as part of the Self Performed Reimbursable Work for use in the proposed works and the proposed rate proposed to be charged for use of such equipment for the purposes of demonstrating that the purchase represents value for money; and

#### the fixed price or (where rates are agreed to apply to the work) estimate (including contingency) for the proposed works broken down into sufficient detail and reconciled against the Cost Plan (which must be exclusive of any margin for overheads or profit);

### (**Further particulars**): If required by the Principal, the Contractor must provide further particulars prior to the Principal giving approval for the proposed works to commence.

### (**Obligations**): In carrying out the Self Performed Reimbursable Work, the Contractor must:

#### not vary the work which is the subject of the Self Performed Reimbursable Work unless the Principal has directed a Variation and that Variation relates directly to the work the subject of the Self Performed Reimbursable Work; and

#### with each Payment Claim, provide the Principal with details of all resources, labour and construction plant, used by the Contractor in the execution of the Self Performed Reimbursable Work since the previous Payment Claim, which identifies as a minimum:

##### the part of the Self Performed Reimbursable Work being performed by the Contractor;

##### the name of each person performing the work for each part of the Self Performed Reimbursable Work with details of their labour category, the time when the person started and finished work, the number of hours being claimed for each person and whether those hours are at normal time, time and a half or double time; and

##### details of the type of plant being used for each part of the Self Performed Reimbursable Work and the number of hours being claimed.

PART E — SITE

# Separable Portions

### (**Creation**): The Principal Representative may at any time by written notice to the Contractor direct additional Separable Portions.

### (**Separable Portions**):Any direction given by the Principal Representative pursuant to clause 9(a) must, for each Separable Portion, include details of:

#### the Works and the Temporary Works;

#### the Site;

#### the Date for Completion;

#### the adjustment to the TOC to account for changes to the Separable Portions;

#### amendments to the Risk or Reward Regime to account for changes to the Separable Portions; and

#### respective amounts of liquidated damages,

* 1. all as determined by the Principal Representative (acting reasonably), provided that the sum of the daily rates of liquidated damages applicable to each Separable Portion created pursuant to clause 9(a) is equal to the daily rate of liquidated damages that:

#### previously applied to the Separable Portion; or

#### in aggregate previously applied to the Separable Portions,

* 1. affected by the Principal Representative's direction under clause 9(a).

# Project and Site Information

## No representations or warranties from the Principal

1. The Contractor acknowledges and agrees that, except as expressly provided by this Deed, neither the Principal, nor any Principal Associate has made or makes any representations, has given any warranties or guarantees or owes any duty of care in respect of:

### (**Project Information**): the accuracy, suitability, adequacy or completeness of the Project Information;

### (**Site**):

#### title to the Site or adequacy of or access to the Site or Extra Land and its surroundings for the Project; or

#### any Site Conditions;

### (**Utility Infrastructure**): the existence, location, condition or availability of any Utility Infrastructure;

### (**Easement**): any Easements or rights of way; or

### (**asset condition**): the existence, adequacy, location, condition (including the fitness for purpose), type, number, availability or suitability of any works or assets including those made available to the Contractor by or on behalf of the Principal. [***Drafting note: Inclusion of clause 10.1(e) to be considered on a project specific basis as it will not be required if there are no Works made available by or on behalf of the Principal during the term***.]

***[Note: In some circumstances (particularly where Site Condition risk is low), the State may elect to either:***

* ***Option (1): assign the State's rights in respect of a Site Information Report to the Contractor or***
* ***Option (2): obtain a third party warranty from the Site Information Report Provider in favour of the Contractor.***

***If the State elects to do the above, we have included sample drafting below for guidance.]***

**1.1 Definitions**

**Site Information Report Warranties** means the warranties provided [on or about the date of this Deed], by the author of each Site Information Report (Warranted) in relation to the Site Information Reports (Warranted).

**Site Information Reports** means each Site Information Report identified as a Site Information Report (Warranted) in the Contract Particulars.

**10.1A Site Information Reports Warranties**

The Principal will either:

(a) (**Assignment**): assign to the Contractor the benefit of any warranties provided to the Principal in respect of the Site Information Reports Warranties by the author of the Site Information Reports; or

(b) (**Collateral Site Information Report Warranties**): procure that the author of the Site Information Reports Warranties provides the Contractor with the Site Information Report Warranties on or about the date of this Deed.

***[Note: Further consequential amendments may also be needed throughout this Deed as a result of the above, for example amending the definition of Associate to not capture the author of these reports, clause 10.3(d) and clause 41.3.]***

## No Principal liability for review

### (**No obligation**): The Principal does not owe any duty of care to the Contractor to (including to procure or ensure that any of the Principal Associates (as applicable)) review or inspect:

#### the Contractor Material submitted by the Contractor (even if required to be submitted in accordance with the Review Procedures); or

#### the Contractor's Activities or the Works,

* 1. for Defects, other errors or omissions or for compliance with the Project Documents or any Laws or Standards.

### (**No relief**): No:

#### 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 Contractor Material, Contractor's Activities or the Works by the Principal or any Principal Associate; or

#### failure by (or on behalf of) the Principal or any Principal Associate, to detect any non-compliance by the Contractor with its obligations under the Project Documents or any Laws or Standards,

* 1. will:

#### relieve the Contractor from, or alter or affect, its Liabilities, obligations or responsibilities whether under the Project Documents or otherwise according to Law;

#### 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 Contractor's Activities;

#### prejudice the Principal's rights against the Contractor whether under the Project Documents or otherwise according to Law;

#### constitute an approval by the Principal of the Contractor's performance of its obligations under the Project Documents; or

#### give rise to any entitlement for the Contractor to make any claim against the Principal including a claim for an adjustment to the TOC or KRAs or any extension of time to a Date for Completion.

## Representations and warranties by the Contractor

1. The Contractor acknowledges and agrees that:

### (**entry into Project Documents**): it enters into the Project Documents based on its own investigations, interpretations, deductions, information and determination;

### (**opportunity to investigate**): it was given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations:

#### relating to the subject matter of any Project Information existing prior to the date of this Deed; and

#### of the Site and its surroundings all Site Conditions, and the existence, adequacy, location, condition, completeness or availability of Utility Infrastructure;

### (**Project Information**): any Project Information provided by or on behalf of the Principal or any Principal Associate is provided for the information only of the Contractor;

### (**Site Information Reports**): the Site Information Reports are not provided to the Contractor by or on behalf of the Principal or any Principal Associate;

### (**no invitation, offer or recommendation**): the Project Information does not form part of the Project Documents or constitute an invitation, offer or recommendation by or on behalf of the Principal or any Principal Associate;

### (**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 Principal or any Principal Associate, or the accuracy, adequacy, suitability or completeness of the Project Information, for the purposes of entering into the Project Documents, developing the TOC in accordance with the ITC Development Agreement or delivering the Project;

### (**adequacy of** **PSDR**):without limiting clause 5.7(e),it has satisfied itself that there is nothing in the Project Documents which would prevent the Works from being Fit For Purpose; and

### (**Principal entry into Deed)**: the Principal has entered into the Project Documents relying upon the warranties, acknowledgements, representations and agreements of the Contractor set out in this Deed.

# Setting out the Works

## Setting out

1. The Principal may supply to the Contractor information to enable the Contractor to set out the Works and the Survey Marks specified in this Deed. The Contractor must set out the Works in accordance with this Deed and must provide all instruments and things necessary for that purpose.

## Care of Survey Marks

### The Contractor must keep in their true positions all Survey Marks supplied by the Principal.

### If a Survey Mark is disturbed or obliterated, the Contractor must immediately notify the Principal Representative and, unless the Principal Representative otherwise directs, the Contractor must reinstate the Survey Mark.

## Errors in setting out

1. If the Contractor discovers an error in the position, level, dimensions or alignment of any of the Works, the Contractor must immediately notify the Principal Representative and, unless the Principal Representative otherwise directs, the Contractor must rectify the error.

# The Site

## Environmental issues

### (**Contractor obligations**): The Contractor must:

#### ensure that it does not do or fail to do anything that would or would be likely to cause the Principal to breach the *Environment Protection Act 2017 Act* (Vic); and

#### comply with all reasonable requests of the Principal to assist the Principal to not breach the *Environment Protection Act 2017* (Vic).

### (**No Hazardous Substance**): The Contractor must not and must procure that any Contractor Associate does not:

#### 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 Site or Extra Land; or

#### except as authorised by Law and then, only as necessary to carry out the Contractor's Activities, remove, handle, disturb, discharge or release any Hazardous Substance in, on, over or under the Site or Extra Land or cause any Hazardous Substance to migrate from the Site or Extra Land in a manner which is likely to cause or contribute to an Environmental Hazard.

### (**Environmental responsibility**): The Contractor must:

#### (**Environmental responsibility**): at all times carry out the Contractor's Activities in accordance with the Environmental Requirements and the applicable Environmental Management Plan;

#### (**notification**): immediately notify the Principal of any non‑compliance or alleged or potential non‑compliance with any Environmental Requirement or any applicable Environmental Management Plan;

#### (**notifiable incident and notifiable contamination**): in respect of any 'notifiable incident' or 'notifiable contamination' (as defined in section 30 and section 37 (respectively) of the *Environment Protection Act 2017* (Vic));

##### notify the Principal Representative immediately of its intention to provide such a report or notification to the relevant Authority;

##### prepare and submit to the relevant Authority all required notices under the *Environment Protection Act 2017* (Vic) (including the notice under section 32(2) and section 40(1) (as applicable) of the *Environment Protection Act 2017* (Vic));

##### simultaneously provide the Principal and the Principal Representative with a copy of all required notices or reports submitted to the relevant Authority under the *Environment Protection Act 2017* (Vic) (including the notice under section 32(2) and section 40(1) (as applicable) of the *Environment Protection Act 2017 (*Vic)); and

##### promptly provide the Principal and the Principal Representative with copies of any notice(s) or other documentation issued by the relevant Authority in relation to the notifiable incident or notifiable contamination;

#### (**contaminated land**): immediately notify the Principal if, at any time, land which is in, on or under the Site or Extra Land is 'contaminated land' (as defined in section 35 of the *Environment Protection Act 2017* (Vic));

#### (**contribution to breach**): not cause or contribute to:

##### any breach of any applicable Environmental Requirements by the Principal or the Principal Associates; or

##### the discharge, release or emission of any Hazardous Substance into the Environment by the Contractor or the Contractor Associates;

#### (**reporting**): report to the Principal Representative on all matters relating to the performance or non-performance (as the case may be) of the Contractor's environmental obligations under this Deed upon request by the Principal Representative including if the Contractor receives any notice from a regulatory agency under any applicable Environmental Requirements;

#### (**manage waste disposal**): subject to clause 12.1(c)(viii), manage and be responsible for the receipt, handling and proper disposal or removal of all waste, rubbish, debris, redundant materials, spoil and Hazardous Substances produced by the Contractor's Activities in accordance with all Environmental Requirements, the applicable Environmental Management Plan and the requirements of this Deed;

#### (**directions**): comply with all directions given by the Principal (acting reasonably) regarding the removal from the Site or Extra Land and disposal of any Hazardous Substance;

#### (**Contamination and Pollution**): not cause, contribute to, disturb or interfere with any Pollution or Contamination, other than to the extent expressly permitted by a Project Document;

#### (**Site**): at all times keep the Site and Extra Land clean and tidy; and

#### (**Contaminated Land Notice**): to the extent that the Contractor reasonably believes a person may be affected by Contamination and the Contractor is required to provide information to that person under section 39(1) of the *Environment Protection Act 2017* (Vic) (**Contaminated Land** **Notice**):

##### prior to providing a Contaminated Land Notice to that person, provide the Principal with a copy of the Contaminated Land Notice;

##### provide the Principal with a reasonably opportunity to review and comment on the Contaminated Land Notice;

##### address any comments received by the Principal in accordance with clause 12.1(c)(xi)B prior to providing the Contaminated Land Notice to that person; and

##### simultaneously provide the Principal with a copy of the Contaminated Land Notice provided to that person.

### (**Remediate contaminated land**): The Contractor must Remediate any 'contaminated land' (as defined in section 35 of the *Environment Protection Act 2017* (Vic)) which is in, on or under the Site which the Principal directs the Contractor to Remediate and which the Contractor is not otherwise obliged to Remediate in accordance with this Deed.

### (**Management of Site**): Notwithstanding any other provision of this Deed, the Contractor acknowledges and agrees that for the period during which it has occupation of the Site under clause 14.1:

#### it has management or control of the Site for the purposes of the *Environment Protection Act 2017* (Vic); and

#### must comply with all obligations imposed on a person with management or control of land under Environmental Requirements.

## Native Title Claims and Heritage Claims

### (**Native Title**): As between the Principal and the Contractor, the Principal is responsible for:

#### dealing with any Native Title Claim in connection with any part of the Site; and

#### the payment of any compensation or other amount required to be paid to the native title holders of any part of the Site as a consequence of a successful Native TitleClaim.

### (**Artefacts**): If an Artefact is discovered in, on or under the surface of the Site:

#### as between the Principal and the Contractor, it will be the absolute property of the Principal; and

#### the Contractor must:

##### immediately notify the Principal of the discovery;

##### permit the Principal to watch or examine any excavation or treatment on the Site; and

##### take every reasonable precaution in carrying out the Contractor's 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.

### (**Contractor must continue to carry out**): If there is a:

#### Native Title Claim or Heritage Claim in connection with; or

#### discovery of Artefacts on, under or over,

* 1. any part of the Site, the Contractor must:

#### continue to carry out its obligations under this Deed, except to the extent otherwise:

##### directed by the Principal or the Commonwealth;

##### ordered by an order of a court or tribunal of competent jurisdiction; or

##### required by Law; and

#### provide all reasonable assistance to the Principal in connection with dealing with the Native Title Claim, Heritage Claim or Artefact.

### (**Principal directions**): The Contractor must comply with all reasonable directions of the Principal concerning Artefacts in, on, under or over the Site and the protection of Aboriginal Cultural Heritage.

## Interference, obstruction and nuisance

### (**Contractor obligations**): In undertaking the Contractor's Activities, the Contractor must:

#### not interfere with the free movement of traffic (vehicular or pedestrian) into and out of, adjacent to, around, on or about the Site except to the extent such interference is a direct and unavoidable result of carrying out and completing the Contractor's Activities in accordance with the Project Documents all applicable Laws and Standards and Best D&C Practices;

#### prevent nuisance including any nuisance caused by unreasonable noise, dust, light emission, vibration or disturbance, air pollution, odour on or adjacent to the Site above the levels required in the Environmental Management Plan and the Environmental Requirements;

#### ensure the safety of people and property in accordance with Best D&C Practices;

#### give priority to and minimise the impact on the safety of persons or property; and

#### on completion of any Contractor's Activities, remove all temporary protection or other structures or equipment erected in connection with those Contractor's Activities as soon as practicable, and in accordance with Best D&C Practices.

### (**Unreasonable levels of nuisance or interference**): If, in the reasonable opinion of the Principal, the Contractor has failed to meet its obligations under clause 12.3(a), the Contractor must comply with any reasonable direction of the Principal to:

#### stop or change the manner of undertaking the Contractor's Activities; and

#### amend the applicable Plan to Cure the nuisance or interference and submit it to the Principal for review in accordance with the Review Procedures.

### (**Contractor to comply with the Fences Act 1968 (Vic)**): The Contractor must comply with any notice issued by an occupier of any adjoining land to the Site under the *Fences Act 1968* (Vic).

## Traffic management

### (**Traffic management**): Subject to the Road Management Act, the Relevant Legislation and the powers and functions of any relevant road authority under the Road Management Act, the Contractor must, and must ensure that the Contractor Associates (as applicable), during the carrying out of the Contractor's Activities, manage all traffic on, and to and from, the Site or Extra Land (as the case may be) but only to the extent affected by those Contractor's Activities to ensure:

#### the safe, efficient and continuous movement of traffic;

#### that any traffic congestion, delays or disruptions to roads, public transport, pedestrians, cyclists, or any shared use path are minimised; and

#### that the Contractor otherwise complies with the requirements of this Deed.

### (**Compliance**): The Contractor must:

#### at all times when performing the Contractor's Activities comply with the Traffic Management Strategy, Road Management Act, Relevant Legislation, the *Road Safety Act 1986* (Vic) and the requirements of this Deed in connection with traffic management; and

#### comply with the directions of the Principal and any relevant road authority under the Road Management Act in connection with the management of traffic.

1. [***Drafting note: Traffic management systems may be considered on a project specific basis***.]

## Security

1. Without limiting anything in the PSDR, the Contractor must provide reasonable security measures in accordance with Best D&C Practices or otherwise as are provided on similar projects (by parties performing similar activities to the Contractor) for the protection and security of the Works against theft, vandalism, unauthorised entry into the Site and any other unlawful acts.

## Contamination

1. [***Drafting note: As currently drafted, there are no entitlements for site conditions, including contamination. This should be assessed on a project specific basis.***]

### (**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.

### (**Notification**): If either party discovers any Contamination:

#### in, on, over or under the Site, Extra Land or in the Direct Affected Area: or

#### that has emanated or migrated, or is emanating or migrating, from or to:

##### the Site or Extra Land; or

##### the Direct Affected Area,

* 1. (whether or not that party has caused or contributed to that Contamination), it must:

#### provide an initial notice to the other party as soon as practicable and, in any event within 5 Business Days after the discovery of the Contamination; and

#### provide all details in relation to the Contamination, including:

##### whether the notice relates to 'notifiable contamination' (as defined in section 37 of the *Environment Protection Act 2017* (Vic));

##### the type of Contamination;

##### the location of the Contamination;

##### the nature and extent of the Contamination; and

##### any information required to be provided to the relevant Authority under section 41(2) of the *Environment Protection Act 2017* (Vic).

### (**Further notice**): The Contractor must notify the Principal of any further relevant details of the Contamination in accordance with clause 12.6(b) to the extent such details are not included in the initial notice delivered in accordance with clause 12.6(b)(iv), as soon as reasonably practicable after becoming aware of those details.

### (**Remediation**): The Contractor must Remediate any Contamination:

#### to the extent that:

##### the Contractor or any Contractor Associate has caused or contributed to the Contamination, and which is:

###### in, on, over or under the Site; or

###### in the Direct Affected Area; and

##### such Remediation is required to:

###### comply with any Law;

###### ensure that there is no unacceptable risk of harm to human health or the Environment as a consequence of the Contamination, having regard to Best D&C Practices and the use of the Site for the purposes of the Project;

###### prevent the migration of the Contamination from the Site to adjoining sites; or

###### ensure that the Site is Fit For Purpose (and where the Contamination is located in the Direct Affected Area, that other area is fit for its purpose);

#### to the extent that the Contractor is required to Remediate the Contamination to meet the requirements of an Approval;

#### to the extent that:

##### the Contamination is disturbed or interfered with by the Contractor or any Contractor Associate; and

##### such Contamination is:

###### in, on, over or under the Site; or

###### in the Direct Affected Area where it is part of Contamination that is also in, on, over or under the Site) and the Contractor is required to Remediate such Contamination in accordance with Best D&C Practices; and

##### such Remediation is required to:

###### comply with any Law;

###### ensure that there is no unacceptable risk of harm to human health or the Environment as a consequence of the Contamination, having regard to Best D&C Practices and the use of the Site for the purposes of the Project;

###### prevent the migration of the Contamination from the Site to adjoining sites; or

###### ensure that the Site is Fit For Purpose (and where the Contamination is located in the Direct Affected Area, that other area is fit for its purpose),

* + - 1. provided that the Contractor's obligation to Remediate is limited to that part of such Contamination which is actually disturbed or interfered with in the carrying out of the Contractor's Activities (and not to Remediate the entire mass of such Contamination or trace to the source of the Contamination, where that wider mass or source has not been disturbed or interfered with in the carrying out of the Contractor's Activities);

#### that the extent that Contamination is in, on, over or under an area that is not:

##### the Site: or

##### the Direct Affected Area,

* + 1. because it has migrated from the Site or the Direct Affected Area, and:

##### the Contractor or any Contractor Associate has caused or contributed to that Contamination; and

##### the Contamination is the subject of a Contamination Notice;

#### to the extent that the Contamination is in, on, over or under the Site that is the subject of a Contamination Notice to the Contractor or any Contractor Associate and which the Contractor is not otherwise required to Remediate in accordance with clauses 12.6(d)(i), 12.6(d)(ii), 12.6(d)(iii) or 12.6(d)(iv); or

#### which the Principal directs the Contractor to Remediate and the Contractor is not otherwise obliged to Remediate in accordance with clauses 12.6(d)(i), 12.6(d)(ii), 12.6(d)(iii) or 12.6(d)(iv),

* 1. regardless of whether the Contamination occurred or migrated before or after the Contractor was given access to the Site and provided that the Contractor is not required to trace to the source of such Contamination, except to the extent the Contamination is caused or contributed to by the Contractor or any Contractor Associates.

### (**Disputing a Contamination Notice**): Nothing in this clause 12.6 prevents the Contractor from disputing the issue of a Contamination Notice with the relevant Authority or taking an action against a third party with respect to the Contamination.

### (**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.

### (**Contamination caused by Contractor**): Despite anything to the contrary in this Deed, to the extent the Contractor or any of its Associates has caused or contributed to any Contamination:

#### the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal in connection with such Contamination; and

#### the costs incurred in remediating such Contamination will not be Reimbursable Costs.

# Utilities

1. The Contractor must:

### (**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 Utility Activities;

### (**inform the Principal**): consult with and keep the Principal fully informed as to the Contractor's dealings with the Utility providers and owners of Utility Infrastructure;

### (**risk**): assume all risk in relation to:

#### the existence, location, condition and availability of Utility Infrastructure and the continuous supply and sufficiency of Utilities in connection with the Contractor's Activities;

#### the need to carry out or procure the carrying out of Utility Activities to the extent necessary for or as a consequence of the Contractor's Activities, including in accordance with the requirements of Utility providers; and

#### any access to the Site or interference with the Contractor's Activities by or on behalf of a Utility provider;

### (**Utility works**): undertake, or procure that a Utility provider undertakes, all work in connection with Utility Activities necessary for the Contractor to comply with its obligations under the Project Documents and ensure that any Works that are lost or damaged in connection with such Utility Activities or relevant Utility Infrastructure are replaced or rectified;

### (**supply of Utilities**): ensure the continuous supply and sufficiency of Utilities required for the Contractor's Activities, and if required, install meters to record the Contractor's usage of Utilities;

### (**agreements**): negotiate and enter into all agreements for:

#### the relocation, protection, modification, decommissioning and provision of Utility Infrastructure for the Contractor's Activities; and

#### the supply of Utilities for the Contractor's Activities;

### (**payment**): pay for all Utilities consumed or used in connection with the Contractor's 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;

### (**Principal consent**): obtain the Principal's consent (such consent not to be unreasonably withheld or delayed) to:

#### carry out any Utility Activities outside the Site; and

#### carry out any Utility Activities within the Site;

### (**notice**): notify the Principal at least 10 Business Days before any planned connection, disconnection or interference with existing Utility Infrastructure and liaise with the Principal as to how best to manage the connection, disconnection or interference taking into account the nature and requirements of the Site, the Principal, any Principal Associate, all relevant Interface Parties and all relevant Utility providers;

### (**access**): give all Utility providers reasonable access to any part of the Site to undertake any work or provide any service in respect of the Utilities;

### (**no damage**): not damage, disconnect or destroy the Utility Infrastructure; and

### (**no disruption**): not unreasonably disrupt or interfere with any Utility Infrastructure or the supply of Utilities or with any Utility providers undertaking any work or providing any service in respect of the Utilities.

# Land

## Access

### (**Contractor's Activities Access**): Subject to the Contractor having submitted, reviewed and amended the WHS Management Plan in accordance with clause 18.1 and the Review Procedures, and any other provision of this Deed affecting access [but without limiting clause 14.1(h)], the Principal must:

#### give, or ensure the Contractor has, access to the Site from the Condition Precedent Satisfaction Date; and

#### thereafter continue to allow, or ensure that the Contractor is continued to be allowed, access to the Site until the Date of Practical Completion.

* 1. ***[Drafting note: Further conditions may be placed on access such as the provision of security, insurances, safety plans. This can be considered on a case by case basis.]***

### (**Purpose of access**): The Contractor acknowledges and agrees that:

#### it will be given non-exclusive access to the Site; and

#### access provided under clause 14.1(a) allows the Contractor to use and occupy, and permit the Subcontractors to use and occupy, the Site for the purpose of performing the Contractor's Activities.

### (**Access conditions**): The Contractor must:

#### comply with the terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening or benefitting the land contained in the Site as recorded in the register maintained by Property and Land Titles Victoria under the *Transfer of Land Act 1958* (Vic); and

#### not use the Site for any purpose other than its intended purposes, functions and uses as specified in, or reasonably inferred from, the PSDR or any other parts of this Deed without the prior written consent of the Principal Representative.

### (**Access to Returned Assets for Defect rectification**): The Principal must grant, or procure the grant of, non-exclusive access to the Contractor, and permit the relevant Subcontractors to access the Returned Assets for the purpose of rectifying Defects in those Returned Assets in accordance with clause 28.

### (**Other access**): Except for the Principal's obligation to grant or procure the grant of access under clause 14.1(a) and 14.1(d), the Contractor is responsible for gaining access to and from the Site, to which access is required to carry out the Contractor's Activities in accordance with clause 14.2.

### (**Coordination**): The Contractor bears the risk of coordinating its access to the Site with any other person that uses the access ways to the Site.

### (**Permitted use**): The Contractor must not use or permit the use of the Site for any purpose other than as permitted under this Deed.

### (**Operational sites**): Notwithstanding the remainder of this clause 14:

#### the Contractor acknowledges and agrees that:

##### the Site or any other land or buildings above or adjacent to the Site will continue to be occupied and used during the performance of the Contractor's Activities by the Contractor;

##### all occupiers, tenants and potential tenants of the Site or any other land or buildings above or adjacent to the Site must have uninterrupted access to the Site and other areas; and

##### the Contractor must perform the Contractor's Activities in a manner that minimises disruption and interference to the occupiers, tenants and potential tenants of the Site or any other land or buildings above or adjacent to the Site or a part thereof in their occupation or use of, or attendance upon, any part of the Site, including any occupation or use of the Works or a part thereof; and

#### at any time when the Contractor is accessing any land which is not controlled by the Contractor for the purpose of performing the Contractor's Activities, the Contractor must comply with all site safety and other requirements of the owner or occupier of the relevant land.

1. ***[Drafting note: This is a sample clause only. To be drafted on a project specific basis as required where the site is a brownfields site or otherwise should be marked as "Not Used". Clause 16.2 may also require amendment to address the above.]***

## Management and Control of the Site

### (**Responsibilities**): At all times while the Contractor has access to the Site under clause 14.1(a), the Contractor:

#### (**management and control**): without limiting any right of the Principal or the Principal Representative under this Deed, will be responsible for the management and control of the Site;

#### (**access, security and maintenance**): must control access to, and the security and maintenance of, the Site or that part, except where the Principal Representative advises otherwise;

#### (**public safety**): must ensure public safety on and adjacent to the Site or that part;

#### (**safe passage**): must provide for the continuous safe passage of the public, road and railway system users on existing roads, footpaths access ways, cycleways and rail tracks affected by the Contractor's Activities in accordance with this Deed;

#### (**legitimate interest**): must, subject to clause 14.1, and any relevant Law, limit access to the Site to its employees, Subcontractors and their employees and those with a legitimate interest in being on the Site as part of the Contractor's Activities;

#### (**access to private property**): must not impede access or Utilities to private property without the consent of the Principal Representative and the relevant owner or occupier of that property; and

#### (**damage to existing buildings**): must ensure that existing buildings (including residences, whether occupied or unoccupied) on the Site are preserved and protected from damage (including from theft and vandalism) until (where relevant) they are due for demolition by the Contractor if that forms part of the Contractor's Activities.

### (**Public access areas**): The Contractor acknowledges that those parts of the Site available for public access are not part of the Site controlled by the Contractor for the purposes of this clause 14.2 and nothing in this Deed fetters the Principal's right to access such areas.

### (**Acknowledgement**): The Contractor and Principal acknowledge that nothing in this Deed or any audit by the Principal or the Principal Representative at any time will be construed to mean or imply that:

#### the Principal has any management or control over the Contractor's Activities or the Site; or

#### the Principal has any responsibility for any act or omission by the Contractor or its Subcontractors or agents including compliance or non-compliance with any relevant Laws, Approvals or this Deed.

## Extra Land

1. The Contractor:

### (**occupation**): must procure for itself and at its own cost the occupation or use of or relevant rights over any Extra Land which it may require for the purposes of carrying out the Contractor's Activities or otherwise for the purposes of this Deed;

### (**suitable for use**): must carry out all activities and procure all Utilities necessary to make the Extra Land suitable for use by the Contractor;

### (**acknowledgement**): acknowledges that:

#### (**access**): obtaining access to and using any Extra Land is the responsibility of the Contractor; and

#### (**Approvals**): it is responsible for undertaking any additional work necessary to comply with all Approvals in connection with the use of any Extra Land, including any required vegetation removal or purchase of offsets and the costs incurred by the Principal in carrying out such work will be a debt due and payable by the Contractor to the Principal;

### (**consent and Approvals**): not less than 10 Business Days prior to accessing any Extra Land, must provide to the Principal Representative details of the proposed area and the activities to be undertaken and demonstrate to the satisfaction of the Principal Representative that it has obtained:

#### the consent of the relevant land owner; and

#### all Approvals necessary to perform the Contractor's Activities on the Extra Land;

### (**conditions precedent**): as a condition precedent to Practical Completion, must:

#### (**rehabilitate**): rehabilitate any Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons;

#### (**release**): unless not required by the Principal Representative, provide to the Principal Representative a properly executed certificate or a release on terms otherwise satisfactory to the Principal Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, the Extra Land;

#### (**failure to obtain release**): if the Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the Contractor to the effect that such owner or occupier, or other person having an interest in the Extra Land, has failed or refused to execute such a release within 15 Business Days after it being provided by the Contractor to the owner, occupier or other person following completion of the work on the Extra Land; and

### (**indemnity**): indemnifies the Principal against any damage, expense, loss, cost or liability suffered or incurred by the Principal arising out of or in any way in connection with:

#### a claim by the owner or occupier of any Extra Land; or

#### any other person having any interest in any Extra Land.

## Temporary Works areas

The Contractor must, as soon as reasonably practicable and in any event as a condition precedent to Practical Completion where the Contractor has occupied or made use of a Temporary Works area, reinstate the Temporary Works area to a condition at least equivalent to the condition existing before that occupation or use except for such parts of the Temporary Works area which this Deed specifies need not be reinstated.

## Public access areas

1. The Contractor acknowledges that those parts of the Site available for public access are not part of the Site controlled by Contractor for the purposes of clause 17.2 and nothing in this Deed fetters the Principal's right to access such areas.

## Delivery of materials to and work on the Site before occupation

1. Until occupation of the Site or part of the Site is given to the Contractor, the Contractor must not deliver materials to or perform work on the Site or part of the Site, as the case may be, unless approval in writing is given by the Principal Representative.

# Occupations

1. ***[Drafting note: To be drafted on a project specific basis as required where road or rail occupations are required or otherwise should be marked as "Not Used".]***

# Principal access and Project monitoring

## Principal's right to enter, inspect and test

### (**Right of entry**):Subject to clause 16.1(b), the Contractor must permit the Principal, any Principal Associate and any other person directly authorised by the Principal to do so to enter any part of the Site, Extra Land or any other areas where the Contractor's Activities are being carried out, including unobstructed vehicular access through the Site to:

#### inspect, observe, photograph, film or test any part of the Works or the Contractor's Activities;

#### exercise any right, power or function or carry out any obligation which the Principal has under any Project Document or Law;

#### observe any Completion tests;

#### examine and make copies of all Contractor Material in connection with the Project; or

#### take such other action as the Principal considers necessary to discharge its legal, executive or statutory rights, duties or functions.

### (**Interface Parties access**): Without limiting its obligations under any Direct Interface Deed, the Contractor must permit any Direct Interface Party to enter any part of the Site to carry out the relevant Direct Interface Works subject to and in accordance with the Site Access and Interface Protocols.

### (**Conditions of access**):When entering the Site controlled by the Contractor (or any Contractor Associate), the Principal must, and must ensure any Principal Associate and any other person authorised to enter the Site by the Principal:

#### only does so during Business Hours or upon giving reasonable notice to the Contractor (except in the case of an emergency that occurs on or in respect of the Site when no notice is required);

#### complies with the Site Access and Interface Protocols;

#### does not unnecessarily or unreasonably interfere with the carrying out of the Contractor's Activities; and

#### does not damage the Works or the Site.

### (**Contractor to assist**):If requested by the Principal, the Contractor must assist the Principal, any Principal Associate and any person authorised by the Principal in connection with any access, observation, inspection or testing including:

#### providing access to such part of the Works and all Contractor Material as may be required by the Principal;

#### preparing and providing such samples of materials used in connection with the Works as required by the Principal; and

#### if requested by the Principal, carrying out any tests (including tests reasonably required by the Principal that are not otherwise required by this Deed) and providing the results of those tests to the Principal.

### (**Works not to be covered up**):

#### The Principal may direct that any part of the Works must not be covered up or made inaccessible without the Principal's approval, which will not be unreasonably withheld or delayed.

#### If a direction has been given under clause 16.1(e)(i), and a part of the Works has been covered up or made inaccessible without the Principal's approval and the Principal wishes to inspect or test that part of the Works, the Contractor must uncover or make accessible such part of the Works.

### (**Costs of inspection or testing**): The parties agree that:

#### the Principal will bear the costs incurred by it; and

#### the Contractor will be entitled to claim an adjustment to the TOC, if the Contractor or any Contractor Associate incurs additional costs,

* 1. due to any inspection or test of the Works or the Contractor's Activities undertaken by the Principal, unless the inspection or test:

#### is in connection with Works covered up or made inaccessible without the Principal's approval if such approval was required;

#### reveals a Defect or shows that the Contractor's Activities are not in accordance with the requirements of this Deed; or

#### was otherwise required by this Deed to be carried out by the Contractor or should have been carried out by the Contractor in accordance with Best D&C Practices, and the Contractor did not do so,

* 1. in which case, the Contractor will not be entitled to an Adjustment Event (Cost) in connection with any such inspection or test undertaken by the Principal and the reasonable costs incurred by the Principal in connection with the inspection or test will be treated a debt due and payable by the Contractor to the Principal.

## Auditor-General

1. (**Auditor-General's rights**):The parties acknowledge and agree that, notwithstanding any provision of any Project Document to the contrary:

### 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 Project Document and each party submits to those powers and responsibilities;

### the Principal or the Contractor 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

### without limiting clause 16.2(b), the Contractor undertakes to the Principal that it will, and it will procure that each Contractor Associate will, at its own cost, co-operate and fully comply with the directions and requests of the Auditor-General and the Principal in relation to any audit referred to in clause 16.2(b).

# Work health and safety, Quality Assurance System and industrial relations

## Work health and safety

### (**Employee**): In this clause 17.1 a reference to an 'employee' is a reference to that term as it is defined in the OHS Legislation.

### (**Works**): The Contractor must carry out and must procure that the Works are carried out:

#### safely and in a manner that does not put the health and safety of employees or any other persons at risk; and

#### in a manner that protects property.

### (**Principal direction**): If there is a risk of injury to employees or any other person or damage to property arising from the Works:

#### the Principal Representative may direct the Contractor to change its manner of working or to cease working to minimise that risk; and

#### the Contractor must comply with any direction given by the Principal Representative under clause 17.1(c)(i).

### (**Contractor obligations**): The Contractor must:

#### comply with all Laws and other requirements of this Deed for work, health, safety and rehabilitation management;

#### commit to continuous improvement in work health and safety;

#### ensure that all Subcontractors and their respective employees comply with their respective obligations under the OHS Legislation;

#### ensure that any Subcontracts that they enter into contain the same or substantially the same terms as this clause 17;

#### 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;

#### notify the Principal 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 Contractor's Activities;

#### in respect of any notifiable incident referred to in clause 17.1(d)(vi):

##### immediately provide the Principal Representative with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator;

##### promptly provide the Principal Representative with a copy of all witness statements and the investigation report relating to the notifiable incident;

##### promptly provide the Principal Representative with copies of any notice(s) or other documentation issued by the relevant Commonwealth, State or Territory regulator; and

##### within 10 days of the date of notification to the relevant Commonwealth, State or Territory regulator, provide the Principal 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;

#### within 1 Business Day of receipt, provide to the Principal Representative copies of:

##### 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 the Contractor or a Subcontractor relating to work health and safety matters;

##### all formal notices issued by a health and safety representative of the Contractor or a Subcontractor under or in compliance with the applicable OHS Legislation; and

##### all formal notices, written communications and written undertakings given by the Contractor or a Subcontractor to the regulator or agent of the regulator under or in compliance with the applicable OHS Legislation;

#### institute systems to:

##### obtain regular written audit results from all Subcontractors about their ongoing compliance with OHS Legislation; and

##### ensure that Subcontractors comply with any such audit findings;

#### provide the Principal Representative with a written report of all work health and safety matters (including matters in connection with clauses 17.1 and 17.2) or any other relevant matters as the Principal Representative may reasonably require from time to time, including a summary of the Contractor's (and the Significant Subcontractors') compliance with the OHS Legislation;

#### exercise a duty of utmost good faith to the Principal in carrying out the Contractor's Activities to enable the Principal to discharge its duties under the OHS Legislation;

#### do not do anything or fail to do anything that would or would be likely to cause the Principal to be in breach of the OHS Legislation;

#### if requested by the Principal 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

#### comply with all reasonable requests of the Principal to assist the Principal to discharge any work health and safety obligations of the Principal in connection with the Project under OHS Legislation.

[***Drafting note: More detailed requirements on OHS will be included in the PSDR***.]

## Principal Contractor

### (**Definitions**): In this clause 17.2, 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:

#### any Contractor's Activities, including work under any Subcontract; and

#### any construction work carried out on the Site by the Principal or any Principal Associate:

##### during any period in which the Contractor has been engaged as Principal Contractor in respect of the Site; and

##### which interfaces with the Contractor's Activities,

* 1. is taken to be part of the same "construction project", unless otherwise agreed.

### (**Appointment as Principal Contractor**): Without limiting the Contractor's obligations under any other provision of this Deed, for the purposes of Part 5.1 of the OHS Regulations, the Principal:

#### appoints the Contractor as Principal Contractor:

##### in respect of the Contractor's Activities; and

##### for the rectification of Defects;

#### authorises the Contractor to manage and control the Site and each workplace at which the Contractor carries out construction work, and to discharge the duties of a Principal Contractor under the OHS Legislation in respect of construction work at that workplace,

* 1. in accordance with this Deed.

### (**Acceptance of appointment as Principal Contractor**): The Contractor:

#### accepts its appointment as a Principal Contractor;

#### acknowledges that it has management and control of each workplace at which construction work is to be carried out for the period of its appointment as Principal Contractor; and

#### must comply with all obligations imposed on a Principal Contractor by the OHS Legislation and OHS Regulations.

### (**New OHS Regulations**): The Contractor agrees that if the New OHS Regulations are enacted in Victoria and supersede the OHS Regulations, and under this clause 17.2, the New OHS Regulations provide for the Principal to appoint a Principal Contractor for the Contractor's Activities, the Site or the Project in accordance with the New OHS Regulations, then, if required to maintain the Contractor's appointment as Principal Contractor, the Principal will appoint the Contractor as Principal Contractor within the meaning of the New OHS Regulations, and the Contractor agrees to accept such appointment.

### (**Contractor to ensure compliance**): The Contractor acknowledges and agrees that it will exercise and fulfil all of its functions and obligations as Principal Contractor under the OHS Legislation that are relevant to the Project.

### (**Functions and obligations of Principal Contractor**): If the appointment of the Contractor as Principal Contractor is not effective for any reason, the Contractor 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.

### (**Contractor obligations**): The Contractor must:

#### ensure that if any Law, including in the State or Territory in which the Works are situated or the Contractor's Activities are being carried out (as the case may be), requires:

##### a person:

###### to 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

###### to have 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

##### a workplace, plant or substance (or design) or work (or class of work) to be authorised or licensed, that workplace, plant or substance (or design) or work (or class of work) is so authorised or licensed;

#### not direct or allow a person to carry out work or use plant or a substance at a workplace unless the requirements of clause 17.2(g)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and

#### if requested by the Principal or required by the OHS Legislation in respect of any work, 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 Principal (acting reasonably) before the Contractor or a Subcontractor (as the case may be) commences such work.

## Quality Assurance System

* 1. The Contractor must develop, implement and maintain a quality assurance system that covers:

### (**Contractor's Activities**): the carrying out of the Contractor's Activities; and

### (**personnel**): personnel and human resources, including recruitment, training, and occupational health and safety management of the Contractor and any Contractor Associate,

(**Quality Assurance System**) in accordance with the PSDR.

[***Drafting note: QA Systems used to be considered on a project specific basis***.]

## Industrial relations

* 1. The Contractor must in carrying out the Contractor's Activities:

### assume sole responsibility for and manage all aspects of industrial relations for the Contractor's Activities;

### keep the Principal Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Activities.

# Plans, reports and certificates

## Plans

### (**Submission**): The Contractor must:

#### update the Bid Plans in accordance with [*#*] of the PSDR by the " Plan submission date" set out in [*#*] of the PSDR; and

#### for any other Plan in respect of which there is no Bid Plan, prepare the Plan in accordance with [*#*] of the PSDR,

* 1. and submit those Plans to the Principal for review in accordance with the Review Procedures.

### (**Updates**): The Contractor must update the Plans in accordance with [*#*] of the PSDR.

### (**Not part of this Deed**): The Plans do not form part of this Deed. ***[Drafting note: May be amended on a project specific basis. See Guidance Notes for further detail.]***

### (**Delivery**): Unless otherwise agreed by the Principal, notwithstanding clause 18.1(c), the Contractor must carry out the Contractor's Activities in accordance with the Plans.

### (**Additional information**): The Contractor must provide to the Principal any additional information in connection with the Plans reasonably requested by the Principal.

## Reports

### (**Preparation and submission**): Except in respect of the Monthly Progress Report, which must be submitted in accordance with clause 7.7(d)(i), the Contractor must prepare and submit the Reports to the Principal.

### (**Additional information**): The Contractor must provide to the Principal any additional information in connection with the Reports reasonably requested by the Principal.

## Schedule of Certificates and Notices

1. If a certificate or notice is required to be provided by the Contractor to the Principal under the Project Documents, the Contractor must provide the relevant certificate or notice to the Principal, in the form set out in the Schedule of Certificates and Notices.

# Title and ownership

1. ***[Note: Clause to be developed on a project specific basis.]***

## Fixtures

1. As between the Principal and the Contractor, all things affixed to the Site (**Fixtures**) will be:

### owned by the Principal (other than the Returned Assets which will be owned by the owner of that part of the Site to which the Returned Assets are affixed); and

### free from any Security Interest,

1. from the time they are affixed.

## Moveable Assets

### (**Contractor to acquire title**): The Contractor must acquire title to each Moveable Asset (other than the Hired Moveable Assets):

#### that forms part of the Works, by no later than the earlier of:

##### the date on which that Moveable Asset is paid for; and

##### the Date of Practical Completion; and

#### in all other cases, by no later than the Date of Close-Out.

### (**Date of transfer of ownership**): The Contractor must ensure that all rights, title and interest, in and to the Moveable Assets (other than the Hired Moveable Assets) transfer to the Principal:

#### upon the earlier of:

##### in the case of any such Moveable Asset forming part of the Works, no later than the Date of Practical Completion;

##### the Date of Close-Out; and

#### free from any Security Interest,

* 1. and must deliver, and procure that any relevant Contractor Associate delivers, to the Principal all deeds and documents of title held by or under the control of the Contractor or any Contractor Associate relating to the Moveable Assets (other than the Hired Moveable Assets) no later than when title to the relevant Moveable Asset (other than the Hired Moveable Assets) is transferred to the Principal.

### (**Licence**): The Principal grants the Contractor a licence (including a right to sub-license) to use the Moveable Assets that the Principal owns for the purpose of fulfilling the Contractor's obligations under this Deed. This licence commences in respect of each such Moveable Asset on the date on which ownership of the Moveable Asset transfers to the Principal and terminates on the termination or expiry of this Deed.

### (**No warranty**): The Principal does not give any warranty as to the condition of the Moveable Assets (the subject of a licence under clause 19.2(c)).

### (**Effect of Expiry Date**): The Principal and the Contractor each acknowledge and agree that if this Deed is terminated or expires prior to the Contractor acquiring title to any Moveable Asset (other than Hired Moveable Assets) forming part of the Works, as between the Principal and the Contractor, the Principal owns the relevant Moveable Asset.

### (**Hired Moveable Assets**):

#### The Contractor must not enter into any lease or hire-purchase arrangement in respect of a Moveable Asset unless:

##### the Principal (acting reasonably) agrees to the Contractor hiring or leasing that Moveable Asset and the terms of that lease or hire-purchase arrangement; and

##### the proposed lease or hire-purchase arrangements permit the novation of the rights and obligations under the lease or hire-purchase arrangement to the Principal (or its nominee) at the termination or expiry of this Deed.

#### If, prior to the termination or expiry of this Deed, the Principal gives notice to the Contractor that the Principal wishes to acquire title to a Hired Moveable Asset that is the subject of a hire-purchase arrangement, the Contractor must promptly procure the transfer of the title to that Hired Moveable Asset upon payment by the Principal of the residual value of that Hired Moveable Asset in accordance with the relevant hire-purchase arrangement.

## Moveable Asset register

1. The Contractor must maintain a register of all Moveable Assets and provide it to the Principal upon request by the Principal.

# As-constructed drawings and O&M Manual

### (**Conditions precedent**): As a condition precedent to Practical Completion, the Contractor must provide to the Principal Representative:

#### draft as-constructed documents in accordance with the requirements of the PSDR and the other documentation required by the PSDR; and

#### complete electronic versions of the draft Operation and Maintenance Manual (including operating and maintenance procedures) and other information required for the use, operation and maintenance of the Works in accordance with this Deed.

### (**Final versions**) Within 3 months of the Date of Practical Completion the Contractor must provide to the Principal Representative final versions of the documents referred to in clause 20(a).

### (**Prompt updates**): The Contractor must progressively and promptly update the documents supplied under clause 20(a) and 20(b) as necessary to reflect any adjustments, modifications, additions or rectification work carried out by the Contractor prior to the issue of the Certificate of Close-out.

# Cost planning and control

### (**Responsibilities**): The Contractor must:

#### (**cost control system**): institute a system of cost control, including to enable the preparation and submission of information to the Principal Representative as specified in clause 52.1 on a monthly basis;

#### (**submission**): submit the information referred in clause 21(a)(i) by the 15th day of each month;

#### (**Cost Plan amendments**): together with the Principal Representative, within 10 Business Days after the submission of information under clause 21(a)(ii) and in any case no less than once every month review and, where approved by the Principal Representative, amend the Cost Plan to take account of any item affecting or likely to affect any component of the Cost Plan;

#### (**Cost Plan review**): without limiting clause 21(a)(ii), review the Cost Plan with the Principal Representative as the preparation of the Design Documentation proceeds, to:

##### ensure that the cost of construction of the design is in accordance with the Cost Plan; and

##### advise the Principal Representative how the design should or can be modified to ensure that the cost of construction of the design is in accordance with the Cost Plan;

#### (**exceeding costs**): advise the Principal Representative as to the alternative steps available where:

##### a tender for any part of Contractor's Activities to be performed by a Subcontractor exceeds the amount included for that work in the Cost Plan;

##### Reimbursable Costs incurred in respect of any Contractor's Activities exceed the amount allowed for in the cash-flow which forms part of the Cost Plan or the forecast final Reimbursable Costs of the Contractor's Activities appears likely to exceed the total amount allowed for (including contingency) in the Cost Plan; or

##### no tenders are received for any part of the Contractor's Activities to be subcontracted;

#### (**Cost Plan verification**): if requested at any time by the Principal Representative, provide to the Principal Representative (or any person authorised by the Principal Representative) all information necessary to verify the Cost Plan; and

#### (**audit co-operation**): co-operate in respect of any audit of the information concerning the Cost Plan.

### (**Best endeavours**): The Contractor warrants that it will use its best endeavours to ensure that it achieves Practical Completion of the Works in accordance with the Cost Plan and so that the AOC does not exceed the TOC.

### (**Forecast cost to complete**): Without limiting clause 21(a), the Contractor must provide monthly reports to the Principal setting out the cost to date, forecast cost to complete by month, forecast cost at completion, each on an open book basis.

# Interface Requirements

[***Drafting note: Interface requirements to be amended on a project specific basis***.]

## No restrictions on Principal's planning and development rights

### (**No exclusivity**): The Contractor acknowledges that:

#### neither it nor any Contractor Associate is or will be the exclusive provider or supplier of works or services to the Principal, any Principal Associate or any third party on, in, under or over the Site or in the direct vicinity, but outside, of the Site; and

#### the Principal, any Principal Associate or any third party may procure works and services to be performed on, in, under or over the Site or in the direct vicinity, but outside, of the Site, in each case from any third party.

### (**Rights of Principal and Authorities**): The Principal 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:

#### construct or install new transport infrastructure, including on, in, under or over the Site or in the direct vicinity of, but outside, the Site;

#### extend, alter or upgrade existing transport infrastructure (including roads and road intersections);

#### introduce or construct new public transport infrastructure, routes or services;

#### extend, alter or upgrade existing public transport infrastructure, routes or services;

#### otherwise implement government transport policies;

#### privatise or otherwise sell any existing public transport infrastructure or services; or

#### otherwise do anything which it is empowered to do by Law.

### (**Participation**): The Contractor must participate as reasonably required by the Principal) in the development and implementation of transport planning that may impact the Project, which may include:

#### attending meetings, consultation forums and other similar events;

#### reviewing and contributing to the development of proposals and strategies put forward by the Principal or other stakeholders;

#### providing comments on the impact of proposals and strategies on the Contractor's Activities and the Works; and

#### cooperating in good faith in the implementation of the Principal's public transport policy objectives, as notified to the Contractor.

## General Interface Requirements

### (**Coordination**): The Contractor acknowledges that Direct Interface Parties may carry out Direct Interface Works.

### (**Co-operation**): The Contractor must, subject to the terms of the Direct Interface Deed with the Direct Interface Party:

#### permit the Direct Interface Parties to undertake their Direct Interface Works on in, under or over the Site or in the direct vicinity of the Site;

#### fully co-operate with the Direct Interface Parties, including to facilitate the implementation of the Direct Interface Works, including:

##### providing information to co-ordinate and permitting reasonable temporary closure of parts of the Site, and other areas affected by the Direct Interface Works and rescheduling or otherwise adjusting Contractor's Activities; and

##### providing information and assistance reasonably requested by the Principal, and within the timeframe reasonably required by the Principal, to facilitate the delivery of the Direct Interface Works;

#### carefully co-ordinate and interface the Contractor's Activities with the Direct Interface Works carried out or to be carried out by the Direct Interface Parties;

#### carry out the Contractor's Activities so as to minimise interference, disruption or delay to the Direct Interface Works;

#### notify the Principal of any matter in connection with the undertaking or intended undertaking of the Direct Interface Works that may have an adverse effect upon the carrying out of the Contractor's Activities or the safety of persons as soon as possible after becoming aware of such matter;

#### provide sufficient, safe access to the Site to a Direct Interface Party to enable the relevant Direct Interface Party to undertake the Direct Interface Works;

#### assist the Principal with the tender process for any Direct Interface Works by providing information required by the Principal and meeting with tenderers as required by the Principal;

#### attend any meetings called by the Direct Interface Parties that relate to Direct Interface Works;

#### use its best endeavours and act in accordance with Best D&C Practices to ensure that the Works are protected from accidental damage by the Direct Interface Parties;

#### not tender, and must:

##### ensure that none of the Key Significant Subcontractors; and

##### use reasonable endeavours to ensure that none of the Significant Subcontractors,

* + 1. tender, for or carry out any element of the Direct Interface Works without the approval of the Principal; and

#### notify the Principal of any matter which the undertaking or intended undertaking of any Direct Interface Works by the Direct Interface Parties may have on the carrying out of the Contractor's Activities or the safety of any persons as soon as possible after becoming aware of such matter.

### (**Compliance**): The Contractor must enter into, and comply with all of its obligations under each Direct Interface Deed.

### (**No Principal liability**): Except to the extent set out in an agreement between the Principal and a relevant Significant Subcontractor for the carrying out of the Direct Interface Works:

#### the Principal will not have any Liability to the Contractor or any Contractor Associate; and

#### neither the Contractor nor any Contractor Associate will be entitled to make any Claim against the Principal,

* 1. in connection with any Direct Interface Works carried out by a Significant Subcontractor and any such Significant Subcontractor will not be a Principal Associate.

### (**Principal obligations**): The Principal must, subject to the terms of any Direct Interface Deed, procure that any Direct Interface Party provides the Contractor with all as-built drawings and any other Material in respect of the Direct Interface Works as may be reasonably requested by the Contractor and that are relevant to the carrying out of the Contractor's Activities (provided that the Contractor complies with any reasonable confidentiality requirements of the Direct Interface Party):

### (**No adjustment**): Except to the extent that the Contractor is expressly entitled to relief under clauses 27.8 or 34, the Contractor will not be entitled to make any Claim against the Principal, including for any adjustment to the TOC, Date for Completion or KRAs in respect of Direct Interface Parties, the Principal's Associate and any other person authorised by or on behalf of the Principal.

PART F — DEVELOPMENT OBLIGATIONS

# Development Obligations

## Design

### (**FFP obligation**): The Contractor must design the Works and develop the Design Documentation in accordance with the Delivery Requirements and so that the Works, when manufactured or constructed in accordance with the Construction Documentation will satisfy the relevant FFP Warranty.

### (**Design Development Process**): The Contractor must:

#### prepare the Design Documentation; and

#### submit it for review by the Principal Representative,

* 1. in accordance with the design development process set out in the Delivery Requirements (**Design Development Process**).

### (**No Claim**): The Design Development Process itself does not constitute a Variation and the Contractor is not entitled to make any Claim against the Principal or any Principal Associate for any Liabilities suffered or incurred by the Contractor in connection with the conduct of the Design Development Process.

## Construction

1. The Contractor must undertake the Works:

### (**Construction requirements**): in accordance with:

#### the PSDR;

#### the Construction Documentation; and

#### the other requirements of this Deed; and

### (**standard**): so that:

#### at the Date of Practical Completion, the Works satisfy the relevant FFP Warranty; and

#### at all relevant times, the Temporary Works are Fit For Purpose.

## Works to be constructed within Site

The Contractor must ensure that the Works are constructed within the relevant boundaries of the Site.

## ITC Development Agreement

The Contractor acknowledges and agrees that:

### any Development Phase Services and Early Delivery Activities performed under the ITC Development Agreement are deemed to form part of the Contractor's Activities for the purposes of this Deed (whether performed before or after the Contract Date);

### the Development Phase Costs paid by the Principal to the Contractor under the ITC Development Agreement:

#### already included an amount in respect of the Contractor's Corporate Overhead and Profit and therefore no further margin is applied to the Development Phase Costs under this Deed; and

#### form part of the AOC; and

### the Contractor will not be relieved from compliance with any of its obligations under this Deed as a result of any Development Phase Services or Early Delivery Activities performed under the ITC Development Agreement.

## Training

1. ***[Drafting note: To be drafted on a project specific basis as required or otherwise should be marked as "Not Used"]***

## Whole of Life Costs

### (**Contractor obligations**): The Contractor must use its best endeavours to procure that the Works minimise Whole of Life Costs.

### (**Contractor Selected Items**): If at the point in time when Equipment is being selected by the Contractor, the Principal, (acting reasonably), considers the Equipment selected by the Contractor (**Contractor Selected Item**), may not comply with the requirements of clause 23.6(a), the Principal may request the Contractor to:

#### submit evidence of the basis on which it considers the Contractor Selected Item complies with the requirements of clause 23.6(a); and

#### without limiting clause 23.6(b)(i), provide details of the Whole of Life Costs of the Contractor Selected Item relative to alternative Equipment proposed by the Principal.

### (**Principal right to direct Contractor**): If the Contractor is unable to demonstrate to the satisfaction of the Principal (acting reasonably) that the Contractor Selected Item complies with the requirements of clause 23.6(a), the Principal may direct the Contractor to purchase Equipment that minimises Whole of Life Costs and otherwise satisfies the requirements of the Project Documents (**Principal Selected Item**).

### (**Contractor response to Principal direction):** The Contractor must procure the Principal Selected Item in accordance with clause 23.6(c), unless, within 10 Business Days of receipt of the direction from the Principal, it demonstrates to the reasonable satisfaction of the Principal that the Principal Selected Item will:

#### not enable the Contractor to satisfy the FFP Warranty;

#### cause a delay to Practical Completion; or

#### cause the Contractor to breach the requirements of the PSDR.

### (**Contractor right to procure Contractor Selected Item**): If the Contractor demonstrates, to the reasonable satisfaction of the Principal, that a circumstance contemplated by clauses 23.6(d)(i) 23.6(d)(ii), or 23.6(d)(iii) exists, the Contractor may procure the relevant Contractor Selected Item.

### (**Issues**): Any Issue between the parties in respect of this clause 23.6 may be referred by either party to an expert for determination in accordance with clause 48.

### (**Not Variations**): Any change in the selection of a Contractor Selected Item pursuant to this clause 23.6 is not a Variation and the Contractor is not entitled to make any Claim in connection with a direction to procure a Principal Selected Item in accordance with this clause 23.6.

## Commissioning

***[Drafting note: Optional provision to address commissioning. Further amendments which could be made to address commissioning may include:***

***- a specific commissioning plan;***

***- requirement for a specified amount of time for commissioning before Practical Completion can be achieved;***

***- the Principal to be invited to specific commissioning tests and provided with all results.***

***This will need to be considered on a case by case basis.]***

1. The Contractor acknowledges that:

### (**Part of Contractor's Activities**): commissioning of certain aspects of the Works is part of the Contractor's Activities, as specified in the PSDR;

### (**Compliance with deed**): to the extent commissioning is part of the Contractor's Activities, it must be completed in accordance with this Deed; and

### (**Cooperation with Principal**): to the extent commissioning of any part of the Works is carried out by the Principal or a Direct Interface Party, the Contractor must co-operate with the Principal or Direct Interface Party (as applicable) and provide all reasonable assistance that the Principal may request in connection with any such commissioning.

# Procurement and Installation of Equipment

1. ***[Drafting note: To maintain clause numbering, to be [Not Used] if no Equipment procurement or installation by the Contractor is contemplated on a project.]***

## Equipment List

The parties acknowledge and agree that:

### (**preparation**): the Equipment List has been prepared prior to the completion of the design of the Works and significantly in advance of when the Contractor is required to select and procure the Equipment in accordance with this clause 24; and

### (**indicative only**): given clause 24.1(a) and subject to clause 24.2, the Equipment List is indicative only.

## General requirements

### (**Consultation process**): Unless the Principal agrees otherwise, the Contractor must consult with the Principal:

#### generally in connection with the selection of all items (or group of items) of Equipment;

#### prior to the submission of an Equipment Selection Notice and the purchase of any item of Equipment; and

#### otherwise in accordance with the requirements set out in this clause 24.

### (**Timing of consultation process**): The Contractor must allow a reasonable period of time to conduct the consultation process which should occur in sufficient time to enable the Contractor to achieve Practical Completion by the Date for Practical Completion.

### (**Principal obligation**): The Principal must co-ordinate and co-operate with any reasonable requirements notified by the Contractor which are necessary for the Contractor to perform its obligations in accordance with this clause 24.

### (**Delay purchase**): Subject to clauses 24.2(c) and 24.2(e), the Contractor must:

#### delay the selection and purchase of the Equipment to a time as late as reasonably possible;

#### without limiting clause 24.2(d)(i), not select or purchase an item of Equipment earlier than [#] Months prior to the Date for Practical Completion to ensure, among other things, that, so far as possible, the Principal has the benefit of the Contractor purchasing the most technically up to date Equipment; and ***[Drafting note: Timing to be considered on a project specific basis based on the program. The selected timeframe will also need to be reflected in clause 24.2(e)(i)]***

#### update the then current Program as necessary to identify the proposed dates for the selection and purchase of all items of Equipment in accordance with the requirements of this clause 24.2.

### (**Early purchase/ agreement on specifications**):

#### At any time prior to the Date of Practical Completion, the Contractor (acting reasonably) may advise the Principal that it is necessary to agree on certain specifications in respect of, or to purchase, an item of Equipment earlier than [#] Months prior to the Date for Practical Completion to achieve Practical Completion by the Date for Practical Completion.

#### It will be reasonable for the Contractor to advise the Principal in accordance with clause 24.2(e)(i) that early agreement on specifications is necessary where those specifications will impact on elements of the design or construction of the Works that must be determined or undertaken prior to the timing required by clause .

#### The Principal may request the Contractor to submit to the Principal for review in accordance with the Review Procedures evidence of the basis on which the Contractor has formed the view regarding the necessity for early agreement on specifications, or purchase, of an item of Equipment.

#### If the Principal agrees that early agreement on specifications is necessary:

##### the Principal must advise the Contractor of those specifications in a timeframe that is consistent with the then current Program;

##### the Contractor must perform its obligations under this Deed on the basis of those specifications; and

##### any later change by the Principal from those specifications which are required to accommodate the item of Equipment which is ultimately purchased by the Contractor in accordance with this clause 24 will constitute a Scope Variation and the Principal will be deemed to have issued a Variation Order under clause 34.1 with a request to prepare a Variation Proposal.

#### Provided the Contractor complies with the requirements set out in clauses 24.3, if the Principal agrees with the Contractor regarding the necessity for the early purchase of an item of Equipment, the Contractor may purchase the item of Equipment prior to the timing required by clause 24.2(d).

#### If the parties fail to agree on the necessity for early agreement on specifications or purchase of an item of Equipment, either party may refer the matter to expert determination in accordance with clause45.2.

#### The Contractor must use reasonable endeavours to minimise the costs associated with Variations arising under clause 24.2(e)(iv)C including by building no more than the minimum that is required (to avoid delay) prior to the final selection of the relevant item of Equipment.

#### The Principal may direct the Contractor to purchase an item of Equipment earlier than [#] Months prior to the Date for Practical Completion notwithstanding the Principal has not received a request to do so from the Contractor under clause 24.2(e)(i).

### (**Installation**): The Contractor must connect, install or locate (as applicable depending on whether the item of Equipment is loose or fixed) all items of Equipment in the Works:

#### to the satisfaction of the Principal Representative; and

#### in the locations designated in the Construction Documentation or, if not designated in the Construction Documentation, as otherwise required by the Principal.

### (**Equipment location**): If an item of Equipment will be located in a specific location within the Site and the Contractor is notified of this prior to submitting the relevant Equipment Selection Notice, the Contractor must provide written confirmation as part of its Equipment Selection Notice:

#### that the item may be accommodated in that specific location within the Site;

#### that the item and its location do not present any consequential design issues (including with respect to aesthetics or interior design issues) or issues with respect to functionality or access for ongoing replacement or maintenance after the Date of Practical Completion; and

#### that the item and its location will not adversely impact on the Contractor's ability to deliver the Works which satisfy the FFP Warranty.

### (**Commissioning and testing**): Subject to clause 24.2(a), the Contractor must:

#### commission or procure the commissioning of all of the items of Equipment located in the Site; and

#### successfully complete all of the relevant tests required to determine Practical Completion in respect of all of the items of Equipment located in the Site.

## Selection of Equipment

### (**Standard of Equipment**): The Contractor must select and purchase items of Equipment:

#### which have at least the equivalent standard, quantity, quality and functionality of the corresponding items of Equipment in the Equipment List;

#### which comply with the Delivery Requirements;

#### which minimise Whole of Life Costs;

#### in accordance with any direction to procure a Principal Selected Item in accordance with clause 24; and

#### without limiting clauses 24.3(a)(i) to 24.3(a)(iv), in such quantities and of such quality as is necessary for the Contractor to ensure the Works satisfy the relevant FFP Warranty.

### (**Nature of consultation process**): The Contractor:

#### must consult with the Principal before purchasing an item (or group of items) of Equipment to ensure that the Principal's requirements are appropriately identified and addressed;

#### without limiting clause 24.3(b)(i), must:

##### consult with the Principal in developing the Equipment Specification; and

##### if requested by the Principal, procure samples or the demonstration of any item of Equipment (for review by the Principal);

#### acknowledges and agrees that the Principal may (acting reasonably and by exception only) request that the Contractor seek tenders for an item (or group of items) of Equipment, in which case:

##### the Contractor must consult with the Principal in respect of the tender process and the terms of the proposed tender documents;

##### the Principal may review the tenders received by the Contractor; and

##### the Principal may direct the Contractor to accept a particular tender.

### (**Equipment Selection Notice**): Prior to purchasing any item (or group of items) of Equipment, the Contractor must submit to the Principal, for review in accordance with the Review Procedures, an Equipment Selection Notice for the item (or group of items) of Equipment, which notice must include:

#### details of the proposed supplier;

#### the Equipment Specification;

#### if requested by the Principal:

##### arrangements in respect of a sample or demonstration of the selected item (to the extent possible); and

##### if applicable, a summary of the reasons for the Contractor's recommendation; and

#### any other particulars reasonably required by the Principal.

### (**The Principal right to direct the Contractor during the consultation process for Equipment**): The Principal may as part of the consultation process for any item (or group of items) of Equipment issue a direction to the Contractor in writing in respect of any of the following:

#### the selection of the item;

#### the quantity of the item;

#### to direct the Contractor to seek pricing or tenders for the item from one or more particular suppliers;

#### to direct the Contractor to procure the item from a particular supplier; or

#### to notify the Contractor of additional requirements or terms and conditions for inclusion in the proposed procurement process for the item including in respect of:

##### the provision of accessories; or

##### optional specifications.

### **(Contractor response to Principal's direction**): The Contractor must procure the Equipment in accordance with the Principal's direction, unless, within 10 Business Days of receipt of the direction from the Principal, it demonstrates to the reasonable satisfaction of the Principal that the direction will:

#### not enable the Contractor to satisfy the FFP Warranty;

#### cause the Contractor to breach the requirements of the PSDR; or

#### cause a delay to Practical Completion.

### (**Procurement**): The Contractor must procure the item (or group of items) of Equipment in accordance with the relevant Equipment Selection Notice and, in respect of Equipment, any direction of the Principal under clause 24.3(d) unless the Contractor demonstrates, to the reasonable satisfaction of the Principal, that a circumstance contemplated by clause 24.3(e) exists.

# Practical Completion

## Practical Completion tests

1. The Contractor must develop, conduct and satisfy all tests required to determine Practical Completion in accordance with the PSDR.

## Practical Completion Plan

1. The Contractor must prepare a Practical Completion Plan which must contain the Contractor's methodology for achieving Practical Completion and must include:

### (**Strategy**): the Contractor's overarching strategy for achieving Practical Completion, consistent with the Contractor's obligations under this clause 25;

### (**Methodology**): a Practical Completion methodology in accordance with the PSDR, including details of each of the requirements for Practical Completion and the Contractor's proposed methodology for achieving each of the requirements for Practical Completion;

### (**Practical Completion tests**): details of each of the Practical Completion tests developed and conducted in accordance with clause 25.1 including a methodology for the conduct of each test, details of the systems and parties involved in the conduct of each, the objectives of each test, the methodology for re-tests should a Practical Completion test be failed and the procedure for reporting the results of Practical Completion tests;

### (**Certificates and permits**): a list of all certificates and permits required from all Authorities for the Contractor's Activities;

### (**Certificates required**): a list of all certificates of compliance required for the Contractor's Activities and the time at which they are required;

### (**Returned Works Completion**): planned dates for completion of Returned Assets and Returned Works Completion; and

### (**Other information**): any other information reasonably requested by the Principal Representative.

## Notice before Practical Completion

### (**Notice**): The Contractor must give the Principal and the Principal Representative notice:

#### 90 Business Days;

#### 60 Business Days; and

#### 20 Business Days,

* 1. prior to the date upon which it reasonably expects to achieve Practical Completion. [***Drafting note: Notification period to be amended as required on a project specific basis***.]

### (**Revised date**): If, after the Contractor gives the Principal and the Principal Representative a notice under clause 25.3(a), the date upon which the Contractor reasonably expects to achieve Practical Completion changes, the Contractor must notify the Principal and the Principal Representative promptly of the revised date.

## Practical Completion

### (**Notice by the Contractor**): When the Contractor considers that Practical Completion has been achieved, the Contractor must issue a notice in the form required by the Schedule of Certificates and Notices to the Principal and the Principal Representative which:

#### states that it considers that Practical Completion has been achieved; and

#### lists all Returned Assets and states that Returned Works Completion has been achieved in respect of all Returned Assets;

#### asks the Principal Representative to issue a Certificate of Practical Completion.

### (**Inspection of the Works**): Within 5 Business Days of the issue of a notice by the Contractor under clause 25.4(a), the Contractor must arrange a joint inspection of the Works with the Principal, any Principal Associate or invitee of the Principal.

### (**Notice by Principal**): Notwithstanding that the Contractor may not have issued a notice under clauses 25.4(a) or 25.4(g)(ii), if the Principal considers that Practical Completion has been achieved, the Principal may:

#### notify the Contractor and the Principal Representative of its opinion; and

#### ask the Principal Representative to issue a Certificate of Practical Completion.

### (**Principal Representative to make determination**): As soon as reasonably practicable and, in any event, within 10 Business Days after the Contractor issues a notice under clauses 25.4(a) or 25.4(g)(ii), or the Principal issues a notice under clause 25.4(c), the Principal Representative must determine whether Practical Completion has been achieved.

### (**Principal and Contractor right to agree Practical Completion**): Whether or not the Principal Representative considers that Practical Completion has been achieved, the Principal and the Contractor may agree to require the Principal Representative to issue a Certificate of Practical Completion at any time.

### (**Principal Representative determines Practical Completion is achieved**): If the Principal Representative determines under clause 25.4(d) that Practical Completion has been achieved, the Principal Representative must issue a Certificate of Practical Completion to the Principal and the Contractor:

#### certifying that Practical Completion has been achieved; and

#### stating the Date of Practical Completion.[***Drafting note: For roads projects, the Date of Practical Completion must be the date of the certificate but, where not a road project, the Date of Practical Completion may be able to be prior to the date of the Certificate of Practical Completion. Consider on a Project specific basis having regard to relevant regulatory framework.]***

### (**Principal Representative determines** **Practical Completion is not achieved**): If the Principal Representative determines under clause 25.4(d) that Practical Completion has not been achieved:

#### the Principal Representative must issue a notice to the Principal and the Contractor:

##### listing the work remaining to be undertaken by the Contractor to achieve Practical Completion; or

##### stating that Practical Completion is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 25.4(g)(i)A,

* + 1. after which the Contractor must continue to expeditiously and diligently progress the Contractor's Activities to achieve Practical Completion;

#### the Contractor must give notice to the Principal and the Principal Representative in accordance with clause 25.4(a) when the work listed in a notice issued by the Principal Representative under clause 25.4(g)(i)A has been completed or, if clause 25.4(g)(i)B applies, when the Contractor is otherwise of the view that Practical Completion has been achieved; and

#### clauses 25.4(b) to 25.4(f)(ii) will apply in connection with the Contractor's notice under clause 25.4(g)(ii) in the same way as if it was the original notice given under clause 25.4(a).

### (**No restriction on Principal Representative**): The Principal Representative, in making its determination as to whether Practical Completion has been achieved, will:

#### save to the extent (if any) expressly stated in the PSDR, not be restricted by any notice, list or opinion which it previously provided to the Contractor under clause 25.4(f)(ii); and

#### be entitled to raise any other items of work which are required to be completed in order to achieve Practical Completion in accordance with this Deed which have not been so completed as a ground for determining that Practical Completion has not been achieved.

### (**Certificate of Practical Completion**): The issue of a Certificate of Practical Completion in accordance with clause 25.4(f) does not constitute:

#### evidence that the Contractor has satisfied the relevant FFP Warranty;

#### an approval by the Principal of the completion or acceptance of the relevant Works under this Deed; or

#### evidence that all or any other obligations under this Deed have been satisfied.

## Returned Works Completion

### (**Consultation**): The Contractor must:

#### fully consult with each Returned Asset Owner within a reasonable time prior to, and while undertaking, any work in connection with the Returned Works that will be returned to that Returned Asset Owner so as to ensure that:

##### the Contractor understands the usual requirements of that Returned Asset Owner for the relevant Returned Works (which, in the case of a Direct Interface Party, must be consistent with any corresponding requirements in any relevant Direct Interface Deed); and

##### the requirements of clause 25.5(b) are satisfied;

#### complete the Returned Works in accordance with the relevant Returned Works Completion Requirements; and

#### develop, conduct and satisfy all tests required in accordance with the PSDR, or as otherwise required to determine whether the relevant Returned Works Completion Requirements have been met in respect of the Returned Works.

### (**General obligations**): The Contractor must progressively complete the Returned Works so as to ensure that:

#### Returned Works Completion for all Returned Works is achieved as soon as reasonably possible to minimise any loss of amenity and inconvenience to each Returned Asset Owner (subject to any timing for completion of any Returned Works being expressly agreed by the Returned Asset Owner and the Contractor under a relevant Direct Interface Deed);

#### Returned Works Completion for all Returned Works is achieved by the Date for Practical Completion; and

#### achievement of Returned Works Completion occurs in a smooth and orderly manner (rather than in a compressed period immediately prior to Practical Completion) which:

##### is consistent with the Program; and

##### provides the Principal Representative and the Returned Asset Owners with sufficient time to progressively inspect the relevant Returned Works, consider whether the relevant Returned Works have been completed in accordance with the Returned Works Completion Requirements relevant to those Returned Works and carry out any reinspection or other activities required by the Principal Representative in order to determine whether the Returned Works Completion Requirements have been met.

### (**Notice by the Contractor**): When the Contractor considers that it has met the Returned Works Completion Requirements for any Returned Works, the Contractor must issue a notice in the form required by the Schedule of Certificates and Notices to the Principal, the Principal Representative and the relevant Returned Asset Owner which states that it considers that it has achieved all the Returned Works Completion Requirements in respect of those Returned Works:

### (**Notice by the Principal**): Notwithstanding that the Contractor may not have issued a notice under clause 25.5(c) or clause 25.5(l)(i), if the Principal considers that Returned Works Completion has been achieved for any Returned Works, the Principal may:

#### notify the Contractor, the relevant Returned Asset Owner and the Principal Representative of its opinion; and

#### ask the Principal Representative to issue a Certificate of Returned Works Completion for those Returned Works

### (**Joint inspection**): No more than 5 Business Days after receipt of the Contractor's notice under clause 25.5(c) or clause 25.5(l)(i) or the Principal's notice under clause 25.5(d), the Contractor, the Principal Representative, the Principal and the relevant Returned Asset Owner (unless otherwise agreed between them) must jointly inspect the relevant Returned Works at a time agreed (or in the absence of agreement, determined by the Principal Representative).

### (**Right to agree Returned Works Completion**): The Principal, the Contractor and the relevant Returned Asset Owner may agree, no later than 5 Business Days after the date of inspection under clause 25.5(e) that the Returned Works Completion Requirements have been met for the relevant Returned Works, in which case, the Principal must promptly notify the Principal Representative accordingly and, whether or not it agrees with the Principal, the Returned Asset Owner and the Contractor, the Principal Representative must issue a Certificate of Returned Works Completion in respect of the relevant Returned Works within 10 Business Days of the date of the inspection under clause 25.5(e) in accordance with clause 25.5(i).

### (**Principal Representative to make determination**): Subject to any agreement under clause 25.5(f), as soon as reasonably practicable and, in any event, within 10 Business Days following the date of inspection under clause 25.5(e), the Principal Representative must determine whether the Returned Works Completion Requirements for the relevant Returned Works have been met.

### (**Principal Representative to consider comments of Returned Asset Owner**): In determining whether the Returned Works Completion Requirements for the relevant Returned Works have been met, the Principal Representative must consider any reasonable comments of the relevant Returned Asset Owner provided within 5 Business Days after the date of the inspection under clause 25.5(e).

### (**Principal Representative determines Returned Works Completion Requirements met**): If:

#### the Principal Representative is required to issue a Certificate of Returned Works Completion under clause 25.5(f); or

#### the Principal Representative determines under clause 25.5(g) that the Returned Works Completion Requirements have been met for certain Returned Works,

* 1. the Principal Representative must issue a Certificate of Returned Works Completion for the relevant Returned Works to the Principal, the Contractor and the relevant Returned Asset Owner:

#### certifying that the Returned Works Completion Requirements have been met in respect of the relevant Returned Works; and

#### setting out the date on which Returned Works Completion will occur for the relevant Returned Works, which must be agreed between the Contractor and the relevant Returned Asset Owner and notified to the Principal Representative no later than 5 Business Days after the date of inspection under clause 25.5(e), or if not agreed by that time, determined by the Principal Representative, provided that the Principal Representative must not determine a date of Returned Works Completion that is less than 5 Business Days after the issue of the Certificate of Returned Works Completion (**Date of Returned Works Completion**).

### (**If Certificate of Returned Works Completion is issued**): If the Principal Representative issues a Certificate of Returned Works Completion in respect of Returned Works in accordance with clause 25.5(i):

#### notwithstanding that a Certificate of Returned Works Completion has been issued for the Returned Works, Returned Works Completion will not occur until the Date of Returned Works Completion; and

#### the Contractor must:

##### continue to maintain and repair the Returned Works and have control of the Returned Works until the Date of Returned Works Completion;

##### handover that Returned Asset to the Returned Asset Owner on the Date of Returned Works Completion; and

##### provide the Principal and the relevant Returned Asset Owner with all such assistance as may be reasonably required in relation to the Returned Asset Owner taking over that Returned Asset on the Date of Returned Works Completion;

### (**Principal Representative determines Returned Works Completion Requirements not met**): If:

#### the Principal Representative determines under clause 25.5(g) that the Returned Works Completion Requirements have not been met for any Returned Works; and

#### the Principal, the Contractor and the relevant Returned Asset Owner have not otherwise required the Principal Representative to issue a Certificate of Returned Works Completion in accordance with clause 25.5(f) for those Returned Works,

* 1. the Principal Representative must issue a notice to the Principal, the Contractor and the relevant Returned Asset Owner:

#### listing the work remaining to be undertaken in order to meet the relevant Returned Works Completion Requirements for those Returned Works; or

#### stating that the Returned Works Completion Requirements for those Returned Works are so far from being met that it is not practicable to provide a list of the type referred to in clause 25.5(k)(iii),

* 1. after which the Contractor must continue to expeditiously and diligently progress the Contractor's Activities for those Returned Works to meet the Returned Works Completion Requirements.

### (**Notification of Returned Works Completion**): When, after the Principal Representative has issued a notice under clause 25.5(k), the Contractor is of the view that the Returned Works Completion Requirements for the relevant Returned Works have been met:

#### the Contractor must give notice to the Principal, the relevant Returned Asset Owner and the Principal Representative when the work listed in a notice issued by the Principal Representative under clause 25.5(k)(iii) has been completed or, if clause 25.5(k)(iv) applies, when the Contractor is otherwise of the view that Returned Works Completion has been achieved; and

#### clauses 25.5(c) to 25.5(k) will apply in connection with the Contractor's notice under clause 25.5(l)(i) in the same way as if the Contractor's notice given under clause 25.5(l)(i) was the original notice given under clause 25.5(c).

### (**No restriction on Principal Representative**): The Principal Representative, in making its determination as to whether the Returned Works Completion Requirements have been met in respect of any Returned Works will:

#### not be restricted by any notice, list or opinion which it previously provided to the Contractor under clause 25.5(k); and

#### be entitled to raise any other items of work which are required to be completed in order to meet the relevant Returned Works Completion Requirements for those Returned Works in accordance with this Deed which have not been so completed as a ground for determining that the relevant Returned Works Completion Requirements have not been met.

### (**Certificate of Returned Works Completion**): The issue of a Certificate of Returned Works Completion in accordance with clause 25.5(i) does not constitute:

#### evidence that the Contractor has satisfied the relevant FFP Warranty;

#### an approval by the Principal of the completion or acceptance of the relevant Returned Works under this Deed; or

#### evidence that all or any other obligations under this Deed have been satisfied.

## Use of partly completed works

### (**Use of partly completed works**): The Principal has the right to use or occupy any part of the Works that the Principal Representative certifies to be usable notwithstanding that that part of the Works or some other part of the Works has not been completed provided that the Principal Representative directs such use or occupation by way of a Variation Order or Scope Variation Order (as applicable) under clause 34.6.

### (**Contractor's rights and obligations**): The use or occupation in a proper and normal manner of any part of the Works by the Principal under this clause 25.6 will not limit or affect the Contractor's rights and obligations under this Deed, including its responsibility for the care of the Works.

### (**Practical Completion**): In using any part of the Works pursuant to this clause 25.6 that has reached Practical Completion, the Principal must not unreasonably hinder the Contractor in the performance of the Contractor's Activities.

# Close-out

### (**Close-out tests**): The Contractor must develop, conduct and satisfy all tests required to determine Close-out in accordance with the PSDR.

### (**Notice**): The Contractor must give the Principal and the Principal Representative notice 10 Business Days prior to the date upon which it reasonably expects to achieve Close-out.

### (**Notice by the Contractor**): When the Contractor considers that Close-out has been achieved, the Contractor must issue a notice in the form required by the Schedule of Certificates and Notices to the Contractor and the Principal Representative which:

#### states that it considers that Close-out has been achieved; and

#### asks the Principal Representative to issue a Certificate of Close-out.

### (**Inspection of the Works**): Within 5 Business Days of the issue of a notice by the Contractor under clause 26(c), the Contractor must arrange a joint inspection of the Works with the Principal, the Principal Representative, any Principal Associate or invitee of the Principal.

### (**Notice by the Principal**): Whether or not the Contractor has issued a notice under clause 26(b) or clause 26(i), if, at any time after the Date of Practical Completion, the Principal considers that Close-out has been achieved, the Principal may:

#### notify the Contractor and the Principal Representative of its opinion; and

#### direct the Principal Representative to issue a Certificate of Close-out.

### (**Principal Representative to make determination**): Subject to clause 26(g) and no later than 10 Business Days after the Contractor issues a notice in accordance with clause 26(c) or clause 26(i)(i), the Principal Representative must determine whether Close-out has been achieved.

### (**Close-out achieved**): If:

#### the Principal Representative determines that Close-out has been achieved under clause 26(f); or

#### the Principal directs the Principal Representative to issue a Certificate of Close-out in accordance with clause 26(e)(ii),

* 1. the Principal Representative must issue a Certificate of Close-out to the Principal and the Contractor:

#### certifying that Close-out has been achieved; and

#### stating the Date of Close-out.

### (**Close-out not achieved**): If the Principal has not directed the Principal Representative to issue a Certificate of Close-out in accordance with clause 26(e)(ii) and the Principal Representative otherwise determines that Close-out has not been achieved, the Principal Representative must issue a notice to the Principal and the Contractor:

#### listing the work remaining to be undertaken to achieve Close-out; or

#### stating that Close-out is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 26(h)(i),

* 1. after which the Contractor must continue to expeditiously and diligently progress the Contractor's Activities to achieve Close-out.

### (**Resubmission**): If the Principal Representative issues a notice under clause 26(h):

#### the Contractor must give notice to the Principal and the Principal Representative in accordance with clause 26(b) when the work listed in the Principal Representative's notice under clause 26(h)(i) has been completed, or if clause 26(h)(ii) applies, when the Contractor is otherwise of the view that Close-out has been achieved; and

#### clauses 26(c) to 26(h) will apply in the same way as if the notice given under clause 26(i)(i) was the original notice under clause 26(b).

* + 1. (**No restriction by Principal Representative**): The Principal Representative, in making a determination as to whether Close-out has been achieved, will:

#### not be restricted by any Certificate of Practical Completion;

#### not be restricted by any notice, list or opinion already provided in accordance with this Deed; and

#### be entitled to raise any other items of work which are required to be completed in order to achieve Close-out in accordance with this Deed which have not been so completed as a ground for determining that Close-out has not been achieved.

### (**Certificate of Close-out**): The issue of a Certificate of Close-out in accordance with clause 26(g) does not constitute:

#### evidence that the Contractor has satisfied the relevant FFP Warranty;

#### an approval by the Principal of the completion or acceptance of the relevant Works under this Deed; or

#### evidence that all or any other obligations under this Deed have been satisfied.

***[Drafting note: project teams to include any training regimes required in relation to the Works in the PSDR]***

# Time

## Primary obligation

1. The Contractor must:

### (**commence**): promptly commence performance of the Contractor's Activities on the Site following the Condition Precedent Satisfaction Date;

### (**progress**): regularly, expeditiously and diligently carry out and progress the Contractor's Activities to achieve Completion; and

### (**achieve Completion**): achieve Completion by the relevant Date for Completion;

## Program

### (**Submission**): The Contractor must amend the Bid Program in accordance with [#] of the PSDR and otherwise in accordance with this Deed and submit it to the Principal and the Principal Representative for review in accordance with the Review Procedures.

### (**Resubmission**): The parties acknowledge and agree that the Bid Program including as submitted and amended in accordance with [#] of the PSDR and this Deed will be the Program.

### (**Accuracy**): The Program must accurately reflect the status and progress of the Contractor's Activities.

### (**Not part of Deed)**: The Contractor acknowledges and agrees that:

#### the Program does not form part of this Deed;

#### subject to clause 27.9(c), neither the Principal nor the Principal Representative is required to use the 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 the Contractor, but may do so in their sole and absolute discretion; and

#### to the extent that the Program seeks to impose any obligation on the Principal, the Contractor will not be entitled to make any Claim against the Principal in connection with that obligation (unless that same obligation is expressly imposed on the Principal in a clause or Schedule of this Deed).

### (**Departure**): Subject to complying with its obligations under this clause 27, the Contractor may depart from the Program if it is necessary to do so to comply with the requirements of this Deed, except that any such departure will not relieve the Contractor from its obligations under this Deed to achieve Completion by the relevant Date for Completion.

### (**Notice of departure**): The Contractor must give notice to the Principal and the Principal Representative promptly upon becoming aware of any proposed or likely departure from the critical path in the then current Program, together with the reasons why it is necessary to do so to comply with the requirements of this Deed.

### (**Updated Program**): A notice under clause 27.2(f) must include a Program updated to reflect any changes to the critical path in accordance with the requirements of [#] of the PSDR for review by the Principal and the Principal Representative in accordance with the Review Procedures.

### (**Warranty**): The Contractor warrants that each update of the Program accurately reflects the status and progress of the Contractor's Activities, the critical path for the Contractor's Activities and the date by which the Contractor will achieve Completion.

## Expert's review of progress

### (**Review of Contractor's Activities**): The Contractor acknowledges that the Principal Representative will (including if requested to do so by the Principal) continually review (including by general overview, reasonable checking, visits to the Site and Extra Land and review of Contractor Material) the carrying out of the Contractor's Activities to ensure that:

#### Practical Completion will be achieved by the Date for Practical Completion; and

#### the Program accurately reflects the actual progress of the Works in all material respects.

### (**Expert appointment**): If, at any time after the date that is 6 months after the Condition Precedent Satisfaction Date, the Principal Representative forms a view that: [***Drafting note: Timing of review by Expert to be determined on a project specific basis having regard to the Program***.]

#### subject to clause 27.3(n), Practical Completion will not be achieved by the Date for Practical Completion; or

#### the Program does not accurately reflect the actual progress of the Works in all material respects,

* 1. an expert must be appointed who is either:

#### agreed between the parties; or

#### appointed by the President of the Victorian Chapter of the Resolution Institute (or the person acting in that position at the time),

and the appointment of the expert will be in accordance with the requirements set out in clauses 48.1, 48.3(b), 48.3(c), 48.4, 48.5 and 48.6.

### (**Notice of non-compliance by expert**): If the expert forms a view that:

#### subject to clause 27.3(n), Practical Completion will not be achieved by the Date for Practical Completion; or

#### the Program does not accurately reflect the actual progress of the Works in all material respects,

the expert may make a determination to that effect and give notice to the Principal and the Contractor of that determination, together with its reasons for making that determination.

### (**Frequency of review**): The expert must not make a determination under clause 27.3(c) more frequently than [once every 3 months]. [***Drafting note: Timing to be determined on a project specific basis having regard to the Program***.]

### (**Contractor's response**): Within 15 Business Days after receipt of the expert's notice referred to in clause 27.3(c) 27.3(b), the Contractor must:

#### notify the Principal and the expert of any matters in connection with that notice with which it disagrees with the expert's opinion, together with its reasons for doing so (**Explanation**); and

#### to the extent it does not disagree, provide to the Principal and the expert a plan and a program for the rectification of any non-compliance, in accordance with the requirements set out in clause 27.3(g) (**Remediation Plan**),

* 1. for review in accordance with the Review Procedures.

### (**Explanation**): The expert must, within 10 Business Days after receipt of the Explanation from the Contractor under clause 27.3(e)(i), give notice to the Principal and the Contractor whether the Explanation:

#### adequately addresses its concerns such that it will withdraw the determination under clause 27.3(c), in which case, no further action is required from the Contractor in connection with the notice issued by the expert under clause 27.3(c); or

#### does not adequately address its concerns (and the reasons for this) such that it is not prepared to withdraw the determination under clause 27.3(c), in which case the Contractor will have 10 Business Days after receipt of the expert's notice under this clause 27.3(f)(ii), within which to provide a Remediation Plan (which complies with the requirements set out in clause 27.3(g)), for review in accordance with the Review Procedures.

### (**Remediation Plan requirements**): To the extent that a Remediation Plan has been prepared by the Contractor in response to a notice under clause 27.3(c) or clause 27.3(f)(ii), a Remediation Plan will not be considered to be satisfactory unless at a minimum:

#### if the determination of the expert under clause 27.3(c) is that the Program does not accurately reflect the actual progress of the Contractor's Activities in all material respects, it includes a revised Program which complies with the requirements of the Program set out in this Deed and accurately reflects the actual progress of the Works in all material respects;

#### if the determination of the expert under clause 27.3(c) is that Practical Completion will not be achieved by the Date for Practical Completion, it includes:

##### the date by which Practical Completion will be achieved, which date may be later than the Date for Practical Completion, but cannot be later than [24] months after the Date for Practical Completion; [***Drafting note: To be aligned with the period set out in clause 43.4(h).***]

##### a program for Curing the issues set out in the expert's notice referred to in clause 27.3(c) or clause 27.3(f)(ii) (as applicable), which must include:

###### 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

###### any temporary measures that will be undertaken to ameliorate the impact of the delay;

##### if it sets out a date by which Practical Completion will be achieved that is after the Date for Practical Completion, evidence satisfactory to the expert (acting reasonably) that the date is the earliest date by which Practical Completion can be achieved if the Contractor takes those steps a prudent, experienced and competent person in the position of the Contractor exercising Best D&C Practices would reasonably be expected to undertake to satisfy all requirements for Practical Completion as expeditiously as possible (including a reasonable expenditure of amounts); and

##### any further information reasonably required by the expert.

### (**Review of Remediation Plan**): The expert must review any Remediation Plan submitted by the Contractor in accordance with the Review Procedures.

### (**Progress**): If the expert notifies the Principal and the Contractor that, in its opinion, a Remediation Plan satisfactorily addresses the requirements of clause 27.3(g), where the Remediation Plan is prepared as a consequence of a determination by the expert that:

#### the Program does not accurately reflect the actual progress of the Contractor's Activities, no further action will be taken by the Principal Representative under this clause 27.3; or

#### Practical Completion will not be achieved by the Date for Practical Completion, the Contractor must:

##### diligently pursue that Remediation Plan; and

##### update that Remediation Plan and the Program monthly (and in respect of the Program, in accordance with the requirements of [#] of the PSDR) to reflect actual progress of the Remediation and submit them to the expert and the Principal for review in accordance with the Review Procedures.

### (**Amended Remediation Plan**): If the expert notifies the Principal and the Contractor that, in its opinion, a Remediation Plan does not satisfactorily address the requirements of clause 27.3(g), the Contractor must, within 10 Business Days after the date of the expert’s notice, submit an amended Remediation Plan to the expert for review in accordance with the Review Procedures (**Amended Remediation Plan**).

### (**Outcome of Amended Remediation Plan**): If the expert notifies the Principal and the Contractor that, in its opinion, an Amended Remediation Plan satisfactorily addresses the requirements of clause 27.3(g), then clause 27.3(i) will apply to that Amended Remediation Plan.

### (**Deemed Major Default**): If the expert notifies the Principal and the Contractor:

#### that, in its opinion:

##### an Amended Remediation Plan does not satisfactorily address the requirements of clause 27.3(g); or

##### where the Amended Remediation Plan is prepared as a consequence of a determination that Practical Completion will not be achieved by the Date for Practical Completion, the Contractor is not diligently pursuing or updating the Remediation Plan or the Amended Remediation Plan (as applicable);

#### after it has received any Remediation Plan or Amended Remediation Plan (including any update) where the Amended Remediation Plan is prepared as a consequence of a determination that Practical Completion will not be achieved by the Date for Practical Completion, that, in its opinion, the Contractor will not be able to achieve Practical Completion by the date that is [24] months after the Date for Practical Completion; or

#### that the Contractor has not provided any Explanation, Remediation Plan or Amended Remediation Plan that complies with this Deed when it is obliged to do so under this clause 27.3,

* 1. then a Major Default will be deemed to have occurred.

### (**Issue**): If either party does not agree with a determination of the expert under this clause 27.3 either party may refer the matter by notice to the other party to expert determination in accordance with clause 45.2 within 20 Business Days after the expert's determination, save that neither party can refer a determination made by the expert under clause 27.3(c) to expert determination unless the Contractor has first provided the expert and the Principal with an Explanation under clause 27.3(e)(i).

### (**Subsequent reviews**): While the Contractor is diligently pursuing a Remediation Plan in accordance with clause 27.3(i)(ii) or an Amended Remediation Plan in accordance with clause 27.3(k) and clause 27.3(i)(ii), any subsequent review of the Contractor's Activities under clause 27.3(a) must take into consideration that Remediation Plan or Amended Remediation Plan (as applicable).

## Delay to Completion

1. If the Contractor becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Completion, it must promptly give the Principal and the Principal Representative notice of the matter and the delay it is likely to cause.

## Events entitling Claim

1. Subject to this clause 27, if:

### the Contractor has been or will be delayed by an Adjustment Event (Time) in a manner which has delayed or will delay the Contractor in achieving Completion, the Contractor will be entitled to claim an extension of time to the relevant Date for Completion for the period of the delay; or

### an Adjustment Event (Cost) or Adjustment Event (KRA) occurs, the Contractor will be entitled to claim an adjustment to the TOC or the KRAs.

## Notice of claim

1. To claim an extension of time to the relevant Date for Completion under this Deed or an adjustment to the TOC or the KRAs, the Contractor must submit a notice for that Adjustment Event (Time), Adjustment Event (Cost) or Adjustment Event (KRA), to the Principal and the Principal Representative no later than 20 Business Days after the earlier of the date on which the Contractor:

### in the case of an extension of time:

#### (**became aware of delay**): first became aware of the relevant delay to the Contractor achieving Completion; and

#### (**ought to have become aware**): ought reasonably to have become aware of the relevant delay to the Contractor achieving Completion; or

### in the case of an adjustment to the TOC or the KRAs:

#### (**became aware of event**): first became aware of the relevant event; or

#### (**ought to have become event**): ought reasonably to have become aware of the relevant event,

1. and must continue to update the Principal and the Principal Representative in respect of the Adjustment Event (Time), Adjustment Event (Cost) or Adjustment Event (KRA).

## Conditions precedent to extension

### (**Conditions precedent**): Subject to clause 27.9, it is a condition precedent to the Contractor's entitlement to an extension of time, adjustment to the TOC or the KRAs that:

#### (**submission of notice**): the Contractor complies with clause 27.6;

#### (**effect of delay**): in the case of an extension of time, the Contractor demonstrates that:

##### it has been or will be delayed from carrying out the Contractor's Activities by the relevant Adjustment Event (Time) in a manner which has delayed or will delay the achievement of Completion; and

##### the relevant Adjustment Event (Time) has caused or will cause activities on the critical path contained in the then current Program to be delayed; and

#### (**updated program**): in the case of an extension of time, subject to clauses 27.7(c) to 27.7(e), the Contractor, at the time it submits the relevant notice referred to in clause 27.6, submits an updated Program to the Principal and the Principal Representative which:

##### complies with all the relevant requirements of this Deed;

##### takes into account the impact of the relevant Adjustment Event (Time); and

##### contains a level of detail which is sufficient to enable the Principal Representative to determine the Contractor’s entitlement to an extension of time.

### (**Principal Representative determines**): The Principal Representative will determine whether or not the requirements of this clause 27.7 have been satisfied.

### (**Determination of non-compliance**): If the Principal Representative determines that the updated Program submitted in accordance with clause 27.7(a)(iii) does not comply with the requirements in clause 27.7(a)(iii), it must notify the Contractor of that determination together with detailed reasons of the non-compliance, within 5 Business Days after receipt of the relevant notice in accordance with clause 27.6.

### (**Updated Program**): The Contractor may submit an updated Program to the Principal Representative, within 10 Business Days after the notification from the Principal Representative under clause 27.7(c).

### (**Failure to submit**): If the Contractor does not submit an updated Program in accordance with clause 27.7(d), the Contractor will be deemed not to have met the requirements set out in clause 27.7(a)(iii).

### (**Determination by Principal Representative**): If the Principal Representative determines that the updated Program submitted by the Contractor:

#### addresses the non-compliances previously notified by the Principal Representative to the Contractor in accordance with clause 27.7(c), the Contractor will be deemed to have met the requirements in clause 27.7(a)(iii); or

#### does not address the non-compliances previously notified by the Principal Representative to the Contractor under clause 27.7(c) such that the requirements of clause 27.2(h) and clause 27.7(a)(iii)C are not (or it is not reasonably practicable to determine whether they are) satisfied, the Contractor will be deemed not to have met the requirements in clause 27.7(a)(iii).

### (**Only one further update**): The Contractor acknowledges and agrees that it will have only one opportunity to update the Program in accordance with clause 27.7(d) for each Adjustment Event (Time).

## Claim determined by Principal Representative

### (**Extension of time**): If the conditions precedent in clause 27.7(a) have been satisfied then, unless:

#### the parties otherwise agree an extension to the relevant Date for Completion;

#### clause 27.8(b) applies; or

#### the Principal issues a direction under clause 27.12 beforehand (or the parties agree the adjustment to the TOC or KRAs),

the Principal Representative must:

#### extend the relevant Date for Completion and, the relevant Date for Completion will be extended (if at all) in accordance with the determination of the Principal Representative; and

#### adjust the TOC or KRAs and, the TOC or KRAs will be adjusted (if at all) in accordance with the determination of the Principal Representative,

* 1. within 10 Business Days after the later of:

#### receipt of the relevant notice referred to in to in clause 27.6; and

#### where clause 27.7(c) applies, receipt of a compliant updated current program as determined by the Principal Representative in accordance with clause 27.7(f).

### (**Interim determinations**): In the circumstances contemplated by clause 27.8(a), the Principal Representative must, if it is reasonably able to do so, give interim determinations of the Contractor's entitlement to an extension of time notwithstanding that the effects of the relevant Adjustment Event (Time) are continuing. In such circumstances, any interim determination of the Contractor's entitlement to an extension of time must be made:

#### initially, on an interim basis and within the time for responding to the relevant notice and (where applicable) an updated current program under clause 27.8(a);

#### as an update to that initial interim determination, within 20 Business Days of receipt of an update submitted by the Contractor to the Principal in accordance with clause 27.6; and

#### thereafter, as an update to the previous interim assessment, on an interim basis (except for where a final update in accordance with clause 27.6 has been provided, in which case as a final determination) within 20 Business Days of receipt of an update submitted by the Contractor to the Principal in accordance with clause 27.6.

### (**Principal Representative must consider evidence**): In dealing with an extension of time claim, the Principal Representative must consider all relevant evidence presented by the parties (but is not bound by any of that evidence).

### (**Adjustment to the TOC or the KRAs where an interim determination is made**): If the Principal Representative makes an interim determination of the Contractor's entitlement to an extension of time under clause 27.8(b), the Contractor's entitlement to an adjustment to the TOC or the KRAs (if any) will not be calculated and determined by the Principal Representative until the Principal Representative has given a final determination of the Contractor's entitlement to an extension of time in relation to the relevant Adjustment Event (Time).

## Unilateral extensions

### (**Unilateral extensions**): Whether or not the Contractor has made, or is entitled to make, a claim for, or is entitled to, an:

#### extension of time under this clause 27, the Principal may at any time and from time to time, by notice to the Contractor, unilaterally extend a Date for Completion; or

#### adjustment to the TOC or KRAs under this clause 27, the Principal may at any time and from time to time, by notice to the Contractor, unilaterally adjust the TOC or a KRA.

### (**Acknowledgements**): The parties acknowledge that:

#### without limiting clause 2.1(t), the Principal is not required to exercise the Principal's power under clause 27.9(a) for the benefit of the Contractor; and

#### other than in accordance with clause 27.9(c), the exercise or non-exercise of the Principal's power under clause 27.9(a) is not capable of being the subject of an Issue or otherwise subject to review.

### (**Right to dispute**): If:

#### the Principal exercises its power under clause 27.9(a) in respect of an Adjustment Event (Time), Adjustment Event (Cost), Adjustment Event (KRA) for which, but for the exercise by the Principal of its powers under clause 27.9(a), the Contractor would otherwise be entitled to an extension of time to a Date for Completion or adjustment to the TOC or KRAs under clause 27.8; and

#### the Contractor disputes that the determination made by the Principal under clause 27.9(a) in respect of the Adjustment Event (Time), Adjustment Event (KRAs) or Adjustment Event (Cost) accurately reflects the extension of time, adjustment to the TOC or KRAs the Contractor would have been entitled to under clause 27.8, but for the exercise of the Principal's power under clause 27.9(a),

* 1. the Contractor may refer the dispute to expert determination in accordance with clause 45.2 provided that the Contractor does so within 10 Business Days after the Principal's exercise of its power under clause 27.9(a).

### (**Entitlements**): If:

#### the Principal has:

##### extended a Date for Completion under clause 27.9(a)(i); or

##### adjusted the TOC or KRAs under clause 27.9(a)(ii); and

#### the Contractor subsequently claims, in respect of the same events or circumstances that gave rise to that extension to a Date for Completion or adjustment to the TOC or KRAs (as applicable), to be entitled to:

##### an extension to a Date for Completion; or

##### an adjustment to the TOC or KRAs,

* 1. then:

#### the extension to the Date for Completion to which the Contractor is entitled (if any) will be reduced to the extent of the extension granted by the Principal under clause 27.9(a)(i) (if applicable); and

#### the adjustment to the TOC or KRAs to which the Contractor is entitled (if any) will be reduced or increased (as applicable) to the extent of the adjustment made by the Principal under clause 27.9(a)(ii) (if applicable).

## Concurrent Delays

### (**No entitlement**): Subject to clause 27.10(b), if:

#### there are two or more events each of which by itself, if the other event(s) had not occurred, would cause a delay to Completion, and at least one event is an Adjustment Event (Time) and at least one event is not an Adjustment Event (Time); and

#### any period of delay caused by the Adjustment Event (Time) referred to in clause 27.10(a)(i) is occurring at the same time as a period of delay caused by an event referred to in clause 27.10(a)(i) that is not an Adjustment Event (Time) (**Concurrent Delay**),

* 1. the Contractor is not entitled to an extension of time in accordance with clause 27.8 or 34.6(b) for the period of that Concurrent Delay.

### (**Entitlement for Principal acts**): Subject to clause 27.10(c), the Contractor's rights under clauses 27.8, and 27.18 are not limited by clause 27.10(a) if:

#### an event as referred to in clause 27.10(a)(i) is a:

##### Adjustment Event (Cost) referred to in:

###### [Item 1 of the Adjustment Event Schedule]; ***[Note: a breach by the Principal of any Project Document]***

###### [Item 2 of the Adjustment Event Schedule]; or ***[Note: an act or omission of the Principal or any Principal Associate which is not a Permitted Act or contemplated by clause 7.1 where the Authority is acting in accordance with its statutory power]***

##### an event referred to in Item 8 of the Adjustment Events Schedule, ***[Note: a Scope Variation]***

(a **Principal Concurrent Event**); and

#### that Principal Concurrent Event occurs before any of the events referred to in clause 27.10(a)(i) that are not an Adjustment Event (Time).

### (**No entitlement**): If, in accordance with clause 27.10(b), the Contractor is granted an extension of time to the Date for Practical Completion under clauses 27.8 for a Concurrent Delay, the Contractor will have no entitlement to claim compensation.

## Acceleration by the Contractor

1. If the Contractor chooses to compress the Contractor's Activities or otherwise accelerate progress other than in accordance with a direction of the Principal under clause 27.15:

### (**no Principal or Principal Representative action**): the Principal, the Principal Representative and the Principal Associates will not be obliged to take any action to assist or enable the Contractor to achieve any particular sequencing or rate of progress of the Contractor's Activities; and

### (**Principal obligations not affected**): the time for the carrying out of the Principal’s or the Principal Representative’s obligations will not be affected.

## Acceleration Notice

### (**Direction to accelerate**): The Principal may, by written notice expressly stated to be pursuant to this clause 27.12, direct the Contractor to complete the Contractor's Activities in advance of the dates for completion of those activities shown on the Program, including to:

#### achieve Completion prior to the relevant Date for Completion; or

#### overcome or minimise the extent and effects of some of all of a delay caused by an Adjustment Event (Time) for which the Contractor is or would have been entitled to an extension of time to a Date for Completion for that Adjustment Event (Time) under this clause 27.

### (**Notice**): Within 10 Business Days after the Principal issues a direction under clause 27.13(a) the Contractor must submit a written claim to the Principal and the Principal Representative setting out the estimated time and cost consequences of accelerating any part or the whole of the Contractor's Activities the subject of the notice provided under clause 27.13(a).

### (**Contractor entitlements**): If the Principal Representative directs the Contractor that the Principal Representative accepts an acceleration proposal, then the Contractor's entitlements (including as to extensions of time and adjustments to the TOC and KRAs) in connection with the acceleration will be governed by the proposal which was accepted by the Principal Representative.

## Reasonably achievable

### (**Acceleration reasonably achievable**): In any notice submitted under clause 27.6 or in response to a direction under clause 27.12, the Contractor must identify whether and to what extent the acceleration is reasonably achievable in the circumstances.

### (**Consequences if not reasonably achievable**): If some or all of the acceleration is not reasonably achievable in the circumstances, then the Principal must not direct the acceleration to the extent that it is not reasonably achievable.

## Partial acceleration

1. If the Principal gives the Contractor a written notice to accelerate in response to a notice submitted by the Contractor under clause 27.6 or clause 27.12 (as applicable) and it only applies to part of the delay, any entitlement to an extension of time the Contractor would have had but for the acceleration will only be reduced to the extent to which the instruction to accelerate requires the Contractor to accelerate the relevant part or the whole of the Contractor's Activities to overcome the delay.

## Acceleration

### (**Notice to accelerate**):If the Principal gives the Contractor a written notice to accelerate in response to a notice submitted by the Contractor under clause 27.6 or clause 27.12 (as applicable):

#### (**Contractor must accelerate**): the Contractor must accelerate the relevant part, or the whole, of the Contractor's Activities in accordance with the written notice from the Principal; and

#### (**entitlement to actual costs**): the Contractor will be entitled to claim as Reimbursable Costs the direct, reasonable and properly evidenced extra costs necessarily incurred by the Contractor by reason of the direction as determined by the Principal Representative, except that the Contractor will have no entitlement to claim Reimbursable Costs for a direction to accelerate to the extent:

##### the need for acceleration arises out of or in connection with a Contractor Act or Omission (including a failure to reach Completion by the Date for Completion); or

##### the direction for acceleration is in effect a direction to the Contractor to take corrective action to rectify any non-compliance with the requirements of the Project Documents.

#### (**Adjustment**): if compliance causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the notice, such notice will constitute an Adjustment Event (Cost), except to the extent:

##### the need for acceleration arises out of or in connection with a Contractor Act or Omission (including a failure to reach Completion by the Date for Completion); or

##### the direction for acceleration is in effect a direction to the Contractor to take corrective action to rectify any non-compliance with the requirements of the Project Documents.

## Principal's rights and the Contractor's obligations and liabilities not affected and time not at large

1. The Principal's rights and the Contractor's liabilities for any failure by the Contractor to achieve Completion by the relevant Date for Completion as set out in this Deed are not limited or affected by:

### (**acceleration**): the giving of any notice, to accelerate under clause 27.15; or

### (**other circumstances**): any:

#### breach of any Project Document by the Principal;

#### Variation directed or Variation Order issued by the Principal or the Principal Representative;

#### other act or omission of the Principal, any Principal Associate or any Direct Interface Party;

#### failure by the Principal Representative to grant any extension of time under clause 27.8 or to do so within the time required by that clause; or

#### other default, act or omission of the Principal Representative or any of its Associates,

1. and none of the matters mentioned in this clause 27.16 will set a Date for Completion or any other time at large.

## Claim disputes

1. Subject to clause 27.9, if either party disputes a determination of the Principal Representative under clause 27.7(b), clause 27.7(f) or clause 27.8, either party may refer the matter to expert determination in accordance with clause 45.2, provided that the party disputing the Principal Representative's determination under clause 27.7(b), clause 27.7(f) or clause 27.8 (as applicable) gives a notice to the other party within 10 Business Days after the determination.

## Liquidated Damages

***[Drafting note: This document includes two alternative regimes addressing the Contractor's failure to reach Completion by the Date for Completion.***

* ***Alternative A is a Liquidated Damages regime only***
* ***Alternative B is both a KRA regime and a Liquidated Damages regime (Liquidated Damages are applied where the Performance Reward Potential Pool under the KRA regime is reduced to zero).]***

***[Drafting note: Select either Alternative A or Alternative B in relation to clause 26.19(b) and clause 26.19(k).]***

### (**Acknowledgement**): The parties acknowledge and agree that:

#### the Principal is pursuing a policy of delivering the Project and the Works for purposes that include achieving the Project Objectives;

#### the Contractor's Activities represent a most important element of the building of the Project;

#### if the Contractor fails to achieve Completion by the relevant Date for Completion, this will not only result in direct losses to the Principal, but will also lead to the failure of the Principal to achieve its objectives to the immediate detriment of the Principal and of those on whose behalf the objectives are pursued and the loss arising from this failure of the Principal to achieve its objectives is not capable of easy or precise calculation.

### **Alternative A – paragraph (b)** [(**Liquidated Damages**): If the Contractor does not achieve Completion by the relevant Date for Completion, the Contractor must pay to the Principal liquidated damages at the daily amount specified in the Contract Particulars for every day after the relevant Date for Completion to and including:

#### the date of the relevant Completion;

#### termination of this Deed; or

#### the Principal taking the Works out of the hands of the Contractor,

* 1. whichever occurs first. The amount payable under this clause 27.18 will be a debt due and payable from the Contractor to the Principal.]

(b) **Alternative B - paragraph (b)** [(**Liquidated Damages**): If:

#### the Contractor does not achieve Completion by the relevant Date for Completion; and

#### the proportion of the Performance Reward Potential Pool allocated to KRA No. 1 (Time) has been reduced to zero,

* 1. the Contractor must pay to the Principal liquidated damages at the daily amount specified in the Contract Particulars for every day after the date the proportion of the Performance Reward Potential Pool allocated to KRA No. 1 (Time) is reduced to zero to and including:

#### the date of the relevant Completion;

#### termination of this Deed; or

#### the Principal taking the Works out of the hands of the Contractor,

* 1. whichever occurs first. The amount payable under this clause 26.19 will be a debt due and payable from the Contractor to the Principal.]

### (**Cap on Liquidated Damages**): The Contractor's total aggregate liability to the Principal under this clause 27.18 is limited to an amount equal to 10% of the Initial TOC.

### (**Extension of time**): If an extension of time to the relevant Date for Completion is granted after the Contractor has paid or the Principal has set off liquidated damages for the Contractor's failure to achieve Completion by the relevant Date for Completion, the Principal must repay to the Contractor the amount of liquidated damages as represented by the days the subject of the extension of time.

### (**Amount of Liquidated Damages**): The Contractor acknowledges and agrees that:

#### the amounts of liquidated damages under this Deed:

##### have been agreed by the parties in good faith; and

##### are:

###### a genuine pre-estimate of the anticipated or actual loss the Principal will or may suffer; and

###### a sum commensurate with the Principal's interests which will be adversely affected,

* + - 1. if Completion does not occur by the relevant Date for Completion;

#### each party wishes to avoid the difficulties of proof of damages in connection with a failure to achieve Completion by the relevant Date for Completion; and

#### the liquidated damages payable in accordance with this Deed are reasonable and are not otherwise exorbitant, extravagant or unconscionable and do not constitute, nor are they intended as a penalty.

### (**Waiver and enforceability**): The Contractor agrees:

#### to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon breach occurring as penalties or the enforceability or recoverability of such liquidated amounts; and

#### that if this clause 27.18 (or any part of this clause 27.18) is found to be void, voidable or unenforceable in any way or on any basis so that the Principal is not entitled to Claim or recover the liquidated damages, the Principal will be entitled to claim any Liability suffered or incurred by the Principal due to the Contractor's failure to achieve Completion by the relevant Date for Completion, but the Contractor's Liability for such damages (whether per day or in aggregate) will not be any greater than the liability which it would have had if the clause had not been void, invalid or otherwise inoperative.

### (**Right and obligations**): The Principal and the Contractor acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this Deed.

### (**Payment of Liquidated Damages**): The Contractor agrees to pay the liquidated damages under clause 27.18(b) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.

### (**Binding** **obligation**): The Contractor entered into the obligation to pay the amounts specified in clause 27.18(b) with the intention that it is a legally binding, valid and enforceable contractual provision against the Contractor in accordance with its terms.

### (**Provisional assessment**): The Principal Representative, when issuing a Payment Certificate pursuant to clauses 30.2 or 30.7 after a relevant Date for Completion, may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing under clause ‎‎27.18(b) to the date of the payment schedule (despite the relevant Completion not having occurred).

### (**Sole remedy**): Without limiting the Principal's right to terminate this Deed, the amount payable under this clause 27.18 will be the Principal's sole monetary remedy and the Principal will have no entitlement to and the Contractor will not be liable for, any other Claim arising out of or in connection with:

#### the Contractor's delay in achieving Completion by the Date for Completion; and

#### a breach of clause 27.1.

### (**Contractor obligations**): The Contractor acknowledges and agrees that the payment of liquidated damages pursuant to clause 27.18(b) and where applicable, the payment of common law damages pursuant to clause 27.18(h), will not relieve the Contractor of any of its obligations under this Deed.

# Defects

## Notification of Defects

### (**Notification by the Contractor**): If the Contractor identifies a Defect or likely Defect in:

#### the Works from the commencement of the Contractor's Activities until the end of the relevant Defects Liability Period;

#### a Returned Asset until the end of the relevant Returned Asset DLP,

* 1. the Contractor must notify the Principal and the Principal Representative of that Defect or likely Defect.

### (**Notification by the Principal**): If at any time prior to the expiry of the Defects Liability Period or the relevant Returned Asset DLP (as applicable), the Principal or the Principal Representative believes there is a Defect or likely Defect in the Works, or a Returned Asset, the Principal may give notice to the Contractor and the Principal Representative of that Defect or likely Defect.

### (**Likely Defects**): In this clause 28, the term "likely Defect" means any aspect of the Works or the Returned Assets which will, or is likely to, result in a Defect.

## Defects during Defects Liability Period

### (**Defects Liability Period**): The Works have a Defects Liability Period which:

#### commences on the Date of Practical Completion; and

#### subject to clause 28.2(b), expires [12/24] Months after the Date of Practical Completion.

### (**Extension of Defects Liability Period**): Subject to clause 28.2(c), if the Contractor is required to rectify a Defect in the Works in the Defects Liability Period, the Defects Liability Period for that part of the Works or will expire on the date which is 12 months after the rectification of the Defect.

### (**No further extension**): No Defects Liability Period for the Works (or any part of them) will extend beyond [24/36] Months after the Date of Practical Completion.

## Defects list

### (**Defects list**):The Contractor must prepare, maintain and update a register of all Defects identified by or notified to it in accordance with clause 28.1 which must:

#### meet the requirements of [#] of the PSDR; and ***[Note: Principal to also include any references to sections in the PSDR that require information in respect of Defects, other than those listed in paragraph (ii) below.]***

#### in respect of Defects that the Principal accepts or rectifies in accordance with clause 28.6(a)(ii) or clause 28.7(g)(i), include details of:

##### any information provided by the Principal Representative or the Contractor in accordance with clause 28.6(d) or clause 28.7(h);

##### any reasonable conditions imposed by the Principal in accordance with clause 28.6(e)(iii) or clause 28.7(i)(i); and

##### changes to this Deed that will be deemed to be made in accordance with clause 28.6(e)(v) or clause 28.7(i)(iii).

### (**Submit register**):The Contractor must submit the register referred to in clause 28.3(a) to the Principal and the Principal Representative for review in accordance with the Review Procedures each time it is updated.

[***Drafting note: On a project specific basis, the Principal may prefer to prepare and update the Defects register.***]

## Defect Corrective Action Plan

### (**Development of plan**): The Contractor must review and analyse the cause of all Defects and develop a plan of corrective action to minimise the likelihood of recurrence of each Defect (**Defect Corrective Action Plan**) and update the Defect Corrective Action Plan for each Defect that is identified.

### (**Submission**): The Contractor must submit the Defect Corrective Action Plan and any update of the Defect Corrective Action Plan to the Principal for review in accordance with the Review Procedures.

### (**Compliance**): The Contractor must comply with the Defect Corrective Action Plan.

## Rectification of Defects in the Works

### (**Rectification**): The Contractor must promptly rectify all Defects in the Works as soon as they are identified, unless the Defect is a Defect which the Principal accepts or rectifies in accordance with clause 28.6(a).

### (**Direction**): Without limiting clause 28.5(a), the Principal or the Principal Representative may direct the Contractor to correct the Defect or a part of it and specify the reasonable time within which this must occur, unless the Principal or the Principal Representative considers that the Defect is an Urgent Defect in which case the Principal or the Principal Representative may specify the time within which this must occur.

## Principal right to accept or rectify Defects in Works

### (**Principal’s right to accept or rectify**): Notwithstanding any other term of this Deed:

#### the Principal and the Contractor may agree that the Principal will accept or rectify (including engaging others to rectify) a Defect in the Works; or

#### subject to clause 28.6(d), the Principal may notify the Contractor that the Principal will accept or rectify (including engaging others to rectify) that Defect.

### (**Principal may not accept**): Unless the Principal Representative considers that a Defect is an Urgent Defect, the Principal may not accept or rectify (including engaging others to rectify) that Defect pursuant to clause 28.6(a)(ii), unless the Principal or the Principal Representative has first given the Contractor a direction under clause 28.5(b) and the Contractor has:

#### failed to comply with such direction; or

#### otherwise failed to comply with its obligations under clause 28.5.

### (**Urgent Defects**): Where the Principal considers that a Defect is an Urgent Defect, the Principal may give the Contractor a direction under clause 28.6(a)(ii) whether or not a direction has first been given under clause 28.5(b).

### (**Notice to the Principal Representative**): Before it agrees or determines to accept or rectify any Defect in accordance with clause 28.6(a), the Principal may:

#### issue a notice to the Contractor requiring the Principal Representative to determine, within 20 Business Days of the issue of that notice:

##### the cost necessary to rectify the relevant Defect; and

##### the relevant diminution in value of the Works as a consequence of the Defect; and

#### require the Contractor to provide details of:

##### the Defect;

##### the impact of the Defect on the Operations;

##### any impact of the Defect on the Works, the Returned Assets or other assets in the vicinity of the Works or Returned Assets and the Contractor's Activities;

##### whether the Defect can be rectified and the work required to rectify the Defect if it is capable of rectification;

##### its view of the impact that any acceptance or rectification of the Defect by the Principal will have on the Contractor's ability to satisfy its obligations and warranties under this Deed;

##### its assessment of any risks associated with the Defect being accepted or rectified by the Principal and the risk management strategy, including risk mitigation actions, the Contractor will put in place if the Defect is accepted or rectified by the Principal; and

##### any other information the Principal may reasonably require.

### (**Principal rectification or acceptance**): If:

#### the Principal and the Contractor agree under clause 28.6(a)(i); or

#### the Principal gives notice under clause 28.6(a)(ii),

* 1. that the Principal will accept or rectify (or engage others to rectify) a Defect in the Works:

#### the greater of:

##### the costs necessary to rectify that Defect; and

##### the relevant diminution in value of the Works as a consequence of that Defect,

* + 1. as determined by the Principal Representative in accordance with clause 28.6(b) will be a debt due and payable by the Contractor to the Principal;

#### if the Principal accepts the Defect, the Principal may impose reasonable conditions on any such acceptance and provide notice of these to the Contractor and the TOC will be reduced by the resulting decrease in the value to the Principal of the Works, as determined by the Principal Representative; and

#### the Principal must (acting reasonably) determine and notify the Contractor of the changes that will be deemed to be made to this Deed to reflect any acceptance or rectification of the Defect by the Principal including appropriate amendments to the requirements for Completion and the purposes, functions, uses and requirements set out in the PSDR.

### (**No other release**): Other than to the extent reflected in changes to this Deed made in accordance with clause 28.6(e)(v), no acceptance or rectification of a Defect in the Works by the Principal will otherwise relieve the Contractor of its obligations and Liabilities, or limit the Principal's rights, under this Deed or in connection with the Project in respect of the Defect or the events that gave rise to the Defect.

## Defects during Returned Asset DLP

### (**Returned Asset DLP**): Each Returned Asset has a Returned Asset DLP which:

#### commences on the Date of Returned Works Completion relating to that Returned Asset; and

#### subject to clause 28.7(c), expires 24 Months after the Date of Practical Completion.

### (**Notification of Defects**): If at any time during the relevant Returned Asset DLP:

#### either party identifies a Defect or likely Defect in a Returned Asset, that party must notify the other party, the relevant Returned Asset Owner and the Principal Representative of that Defect; or

#### the Principal Representative believes there is a Defect or likely Defect in a Returned Asset, the Principal Representative will give notice to the Contractor, the Returned Asset Owner and the Principal of that Defect or likely Defect.

### (**Program**): Within 10 Business Days after a notice is provided under clause 28.7(b) notifying the Contractor of a Defect, the Contractor must submit to the Principal, for review in accordance with the Review Procedures, a program for the rectification of the Defect in the Returned Asset, that ensures that the Defect is, to the extent reasonably possible, rectified no later than the end of the relevant Returned Asset DLP.

### (**Rectification**): The Contractor must rectify the Defect in the Returned Asset in accordance with the program referred to in clause 28.7(c) to the satisfaction of the Principal Representative.

### (**Extension of Returned Asset DLP**): If the Contractor is required to rectify a Defect identified during the relevant Returned Asset DLP, the Returned Asset DLP for that part of the Returned Asset which contains the Defect will expire on the later of:

#### the date which is 24 Months after the Date of Practical Completion; and

#### the date which is 12 Months after the rectification of the Defect.

* 1. No Returned Asset DLP for the Returned Assets (or any part of them) will extend beyond [36] months after the Date of Practical Completion.
  2. ***[Note: The Returned Asset DLP is to be considered on a project specific basis to take into account the staged handover of any Returned Assets. The standard form document assumes all Returned Assets will be completed by Practical Completion. This may not be the case.]***

### (**No rectification after Returned Asset DLP**): Without limiting the Principal's or the Returned Asset Owners' rights for breach of this Deed or otherwise at Law, the Contractor is not required to rectify any Defect in a Returned Asset which is discovered after the end of the relevant Returned Asset DLP.

### (**Failure to rectify Defect**): If the Principal Representative determines that the Contractor has failed to rectify a Defect in accordance with clause 28.7(d), the Principal may elect to:

#### accept or rectify (or engage others to rectify) the relevant Defect in which case the Principal will notify the Contractor and the Principal Representative accordingly and may exercise its rights under clause 28.7(i); or

#### require the Contractor to continue to rectify the Defect.

### (**Notice to Principal Representative**): Before the Principal agrees to accept or rectify any Defect in a Returned Asset in accordance with clause 28.7(g)(i), the Principal may:

#### issue a notice to the Principal Representative and the Contractor requiring the Principal Representative to determine within 20 Business Days of its receipt of that notice:

##### the cost necessary to rectify the relevant Defect; and

##### the relevant diminution in value of the Returned Asset and any Works as a consequence of the Defect; and

#### require the Contractor to provide the information referred to in clause 28.6(d)(ii) as if the Defect in the Returned Asset was a Defect in the Works.

### (**Principal rectification or acceptance**): If the Principal gives notice under clause 28.7(g)(i):

#### the greater of:

##### the costs necessary to rectify that Defect; and

##### the relevant diminution in value of the Works or relevant Returned Assets as a consequence of that Defect,

#### as determined by the Principal Representative in accordance with clause 28.7(g)(i) will be a debt due and payable by the Contractor to the Principal;

#### if the Principal accepts the Defect, the Principal may impose reasonable conditions on any such acceptance and provide notice of these to the Contractor and the TOC will be reduced by the resulting decrease in the value to the Principal of the Works, as determined by the Principal Representative; and

#### the Principal must (acting reasonably) determine and notify the Contractor of the changes that will be deemed to be made to this Deed to reflect any acceptance or rectification of the Defect by the Principal including appropriate amendments to the requirements for Completion and the purposes, functions, uses and requirements set out in the PSDR.

### (**No other release**): Other than to the extent reflected in changes to this Deed made in accordance with clause 28.7(i)(iii), no acceptance or rectification of a Defect in the Returned Asset by the Principal will otherwise relieve the Contractor of its obligations and Liabilities, or limit the Principal's rights, under this Deed or in connection with the Project in respect of the Defect or the events that gave rise to the Defect.

## Disputed Defects

### (**Dispute**): If the Contractor disagrees:

#### that anything alleged by the Principal Representative or by the Principal to be a Defect or likely Defect in the Works, or the Returned Assets, under clause, 28.1(b) or 28.7(b) is a Defect;

#### with any determination by the Principal Representative under clauses 28.6(d), 28.7(d) or 28.7(h)(i);

#### any conditions imposed by the Principal in accordance with clauses 28.6(e)(iii) or 28.7(i)(i); or

#### with a determination by the Principal of the changes that will be deemed to be made to this Deed to reflect the acceptance of the Defect by it in accordance with clauses 28.6(e)(v) or 28.7(i)(iii),

* 1. the Contractor must notify the Principal and the Principal Representative of such disagreement not later than 10 Business Days after the Contractor receives the relevant notice or determination, and the Principal and the Contractor must use reasonable endeavours to resolve the disagreement.

### (**Determination by Principal Representative**): If the disagreement is not resolved within 10 Business Days after the notice given by the Contractor under clause 28.8(a) and the disagreement is in respect of any notice or determination by the Principal under clauses 28.1(b), 28.6(e)(iii), 28.6(e)(v), 28.7(b), 28.7(i)(i) or 28.7(i)(iii), either party may, by notice to the other party and the Principal Representative refer the matter for determination by the Principal Representative, who must, within 20 Business Days after the date of the notice referring the matter to the Principal Representative, make a determination as to the matter and notify the parties of its determination and reasons, in which case, the parties must comply with that determination.

### (**Determination by expert**): If the disagreement is in respect of any:

#### notice given by the Principal Representative under clause 28.7(b); or

#### determination by the Principal Representative under clauses 28.6(d), 28.7(d), 28.7(h)(i) or 28.8(b); or

* 1. either party may, by notice to the other party, refer the matter to expert determination in accordance with clause 45.2, provided that, if applicable, the party disputing any Principal Representative's determination or notice gives a notice to the other party within 20 Business Days after the Principal Representative's determination.

PART G — PAYMENT AND SECURITY

# Payment

## General

1. Unless otherwise expressly provided in this Deed, no matter what events, circumstances, contingencies, conditions or degree of difficulty is encountered by the Contractor in performing the Contractor's Activities, the Contractor's entitlement, and only entitlement, to payment by the Principal for the Contractor's Activities is for:

### reimbursement of Reimbursable Costs reasonably and actually incurred by the Contractor up until the date being 1 month after the Date of Practical Completion;

### Corporate Overhead and Profit;

### amounts relating to Provisional Sum Work in accordance with clause 32;

### any Gainshare Amount payable under the Risk or Reward Regime; and

### any Performance Reward Amount payable under the Risk or Reward Regime.

## Acknowledgements

1. The Contractor acknowledges that:

### it will not be entitled to make, and the Principal will not be liable upon, a Claim in respect of any amounts which are identified in Schedule 3 as not being Reimbursable Costs incurred or payable by the Contractor arising out of or in connection with the Contractor's Activities or this Deed; and

### the Principal has entered into this Deed in reliance on representations by the Contractor that, other than as expressly provided for in Schedule 3, the Reimbursable Costs do not include any element of profit, mark up or overhead component to the Contractor or any Related Body Corporate of the Contractor.

## Not used

## Overpayments and underpayments

### (**Overpayment**): Without limiting clause 29.10, if, on completion of any inspection or audit it is discovered that the total payment made to the Contractor is greater than the Contractor's entitlement to payment under this Deed, the Principal Representative may either:

#### deduct an amount equal to the excess from moneys due or becoming due to the Contractor whether under this Deed or otherwise; or

#### require the Contractor to reimburse the excess to the Principal.

### (**Underpayment**): If, on completion of any inspection or audit it is discovered that the total payment made to the Contractor is less than the Contractor's entitlement to payment under this Deed, the Principal must pay any shortfall to the Contractor.

### (**Application**): This clause 29.4 applies even if the Certificate of Close-out has been issued under clause 26(g) or this Deed has terminated.

### (**Timing for payment**): If the Principal or Contractor is required to make a payment under this clause 29.4, it must make that payment within 20 Business Days of a request for payment being made.

## Other proceeds

### (**Third party Claims**): Where the Contractor has a Claim against a third party in respect of any monetary amount that is a Reimbursable Cost (including insurance rights), the Contractor must, at its cost, take all reasonable steps to pursue a claim against the relevant third party to recover the relevant monetary amount.

### (**Amounts received from a third party**): Without limiting clause 42.12, if any monetary amount is recovered by the Contractor from a third party as a result of any right in favour of the Contractor in connection with the Contractor's Activities (excluding insurance rights), the Contractor must, within 20 Business Days of receipt of that payment:

#### account to the Principal for such amount; and

#### if the amount reimburses any costs and expenses that were reimbursed or are reimbursable under this Deed, pass on full payment to the Principal, and that amount will be credited against the AOC.

## Suspension of payment of 50% Corporate Overhead and Profit

### (**Suspension of payment**): If, following receipt of a Report, a recommendation from the Principal Representative or otherwise (including as a result of a review of the Cost Plan), it is evident to the Principal that the Contractor's performance has resulted in or will result in a Painshare Amount being payable, then the Principal may immediately, by notice in writing to the Contractor, suspend the payment of (but not the entitlement to) 50% of the Corporate Overhead and Profit to the Contractor to the extent necessary to cover the Contractor's potential liability to pay any Painshare Amount under the Risk or Reward Regime.

### (**Suspension period**): The suspension of payment of 50% of the Corporate Overhead and Profit to the Contractor under clause 29.6(a) will be effective for the period commencing on the date specified by the Principal, and ending on the date on which the Principal Representative calculates the Risk or Reward Amount, or any earlier date determined by the Principal Representative.

## Trend analysis

1. The Contractor must prepare and submit to the Principal for review in accordance with the Review Procedures, a trend analysis which will be used to measure the Contractor's performance against each element of the Risk or Reward Regime.

## Interest

### (**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:

#### from the date on which payment was due and payable until the date on which payment is made;

#### calculated daily at the Overdue Rate; and

#### capitalised Monthly.

### (**Sole entitlement**): Subject to clause 44, the amount specified in clause 29.8(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.

## Refund

1. If:

### (**payment**): the Principal pays the Contractor, or the Contractor pays the Principal, any amount under clause 30.3(b) or otherwise; and

### (**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,

1. the recipient will immediately refund that payment (or such part as constitutes an overpayment) as a debt due and payable to the party that made the payment together with interest calculated in accordance with clause 29.8 on that amount.

## Set-off

### (**Principal's payments**): The Principal may deduct from any amounts due and payable by the Principal to the Contractor under any of the Project Documents or otherwise at Law in connection with the Project:

#### any amount due and payable by the Contractor to the Principal; and

#### the amount of any Claim that the Principal may have against the Contractor.

### (**Contractor's payments**): The Contractor must make all payments to the Principal free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless the Contractor is compelled by Law to make such a deduction or withholding.

### (**Deduction or withholding**): If a party is compelled by Law to make a deduction or withholding for the benefit of an Authority, it must:

#### remit the deducted or withheld amount to the relevant Authority within the time required by Law; and

#### 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.

### (**Failure to withhold**): Failure by the Principal to deduct from an amount otherwise due to the Contractor any amount which the Principal is entitled to deduct under this clause 29.10, will not prejudice the Principal’s right to subsequently exercise its right of deduction under this clause 29.10.

# Payment procedures

## Payment claims

### (**Time for payment claim**): The Contractor will be entitled to claim payment progressively on the later of:

#### satisfaction of the conditions precedent to the Contractor's entitlement to make a payment claim set out in clause 30.9; and

#### the 25th day of each month up until the month following the Date of Practical Completion.

### (**Form of payment claim**): The Contractor must deliver to the Principal Representative claims for payment supported by all invoices, accounts, time sheets and other evidence of the amount due to the Contractor and such information as the Principal Representative may reasonably require. Claims for payment must:

#### detail, for the period to which the payment claim relates:

##### the Reimbursable Costs reasonably and actually incurred by the Contractor;

##### the amount payable for Provisional Sum Work (if any) in respect of Provisional Sum Work;

##### the entitlement of the Contractor to Corporate Overhead and Profit calculated in accordance with this Deed; and

##### if the Principal Representative has made a determination under clause 30.5(c), the Contractor's:

###### entitlement, if any, to receive an Reward Amount; or

###### obligation, if any, to pay an Risk Amount;

#### indicate the work to which the claim for payment relates; and

#### be in such form as the Principal Representative may require.

### (**Business Days**): If the time for any payment claim under the preceding clause 30.1(b) falls due on a day which is not a Business Day the Contractor must submit the claim either on the day before or next following that date which is a Business Day.

### (**Deemed lodgement date**): If the Contractor submits a payment claim before the time for lodgement of that payment claim, the payment claim will be deemed to be received by the Principal Representative on the date for lodgement of the payment claim under this Deed or the next Business Day thereafter if the date for lodgement is not a Business Day.

## Payment Certificates

### (**Payment certificate**): Within 10 Business Days of receipt of a claim for payment (including the Final Payment Claim made under clause 30.6), the Principal Representative must assess the claim and must issue to the Contractor on behalf of the Principal, a payment certificate which sets out:

#### the payment claim to which it relates;

#### the amount of the payment which is to be made by the Principal to the Contractor or by the Contractor to the Principal in accordance with this Deed;

#### the calculations employed to arrive at the amount;

#### amounts otherwise due under this Deed from:

##### the Principal to the Contractor;

##### the Contractor to the Principal;

#### amounts paid previously under this Deed;

#### any other amount which the Principal is entitled to retain, deduct, withhold or set-off under this Deed;

#### the amount (if any) which the Principal Representative believes to be payable by the Principal to the Contractor or by the Contractor to the Principal (as the case may be); and

#### if the amount in clause 30.2(a)(v) is less than the amount claimed in the payment claim:

##### the reason why the amount in clause 30.2(a)(v) is less than the amount claimed in the payment claim; and

##### if the reason for the difference is that the Principal has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or set-off.

### (**Failure to claim**): If the Contractor fails to make a claim for payment under clause 30.1, the Principal Representative may nevertheless issue a payment certificate.

### (**Early claim**): If the Contractor makes a claim for payment earlier than at the times specified under clause 30.1(a), the Principal Representative will not be obliged to issue the payment certificate in respect of that claim for payment earlier than it would have been obliged had the Contractor submitted the claim for payment in accordance with this Deed .

### (**No prejudice to deduct**): Failure by the Principal Representative to set out in a payment certificate an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal’s right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Deed.

## Tax invoice and payment

### (**Tax invoice**): Within 5 Business Days of receipt of a payment certificate, the Contractor must issue a tax invoice in the name of the Principal to the Principal Representative for the amount stated as then payable in the payment certificate.

### (**Payment by the Principal**): Within 20 Business Days following receipt of a payment claim, the Principal must pay the amount stated in the payment certificate, subject to any suspension of payment of Corporate Overhead and Profit pursuant to clause 29.6(a).

### (**Payment by the Contractor**): Where a payment certificate indicates that an amount is due from the Contractor to the Principal, the Contractor must pay to the Principal that amount within 7 days of the issue by the Principal Representative of the payment certificate or Certificate of Close-out.

### (**Right to dispute**): A payment made pursuant to clause 30.1 will not prejudice the right of either party to dispute under clause 45 whether the amount so paid is the amount properly due and payable and on determination (whether under clause 45 or as otherwise agreed) of the amount so properly due and payable, the Principal or the Contractor, as the case may be, will be liable to pay the difference between the amount of such payment and the amount properly due and payable.

### (**No admission of liability**): Payment of moneys will not be evidence of the value of work or an admission of liability or evidence that work has been performed satisfactorily but will be a payment on account only.

## Unfixed plant and material

### (**Principal liability**): The Principal will pay for any item of unfixed plant and materials (notwithstanding that the item has not been incorporated into the Works) where that item is listed in the Contract Particulars (or the Principal agrees in writing that an item may be deemed to be included in the Contract Particulars) if the Contractor:

#### provides the amount of additional Security stated in the Contract Particulars separately approved by the Principal under clause 33.1(a);

#### complies with clause 60.13;

#### establishes to the satisfaction of the Principal Representative that the Contractor has paid for the item, the item has been insured, the item is properly stored, labelled the property of the Principal and is adequately protected; and

#### provides such evidence as the Principal may require that upon payment by the Principal to the Contractor of the amount to be claimed by the Contractor in respect of the item that title in the item will vest in the Principal free of any security interest within the meaning of the PPSA.

### (**Property of the Principal**): Upon any payment to the Contractor of the amount which includes the value of the item, the item will be the property of the Principal free of any lien or charge.

### (**Release of additional Security**): Any additional Security provided for any item of unfixed plant and materials must be released in accordance with clause 33.4 once the applicable unfixed plant and materials are incorporated into the Works and are fit for their intended purpose.

### (**Excluded items**): Except as provided in this clause 30.4, the Principal will not be obliged to pay for any item of unfixed plant and materials which is not incorporated in the Works.

## Payment procedure for Risk Amount or Reward Amount

### (**Contractor notice**): As soon as practicable and in any event within 20 Business Days after the Calculation Date, the Contractor must:

#### calculate, for the period from the Contract Date until the Calculation Date, the Reward Amount or Risk Amount (if any) that it considers is payable in accordance with the Risk or Reward Regime; and

#### prepare and deliver a notice to the Principal Representative which details the amounts calculated to be payable (if any) in accordance with this clause 30.5(a).

### (**Supporting documentation**): All supporting documentation relating to the amount set out in the notice prepared under clause 30.5(a) must be available for inspection and audit.

### (**Principal Representative determination**): Within 10 Business Days after receipt of the Contractor’s notice under clause 30.5(a), the Principal Representative, after independently considering and applying the Risk or Reward Regime, must determine the Reward Amount or Risk Amount (if any) that is payable in accordance with the Risk or Reward Regime and issue a notice to the Contractor of its determination including reasons for any differences to the Contractor’s calculation and, if there is:

#### an Reward Amount, that amount may be claimed by the Contractor in the next payment claim submitted in accordance with clause 30.1; or

#### an Risk Amount, that amount must be paid by the Contractor to the Principal within 20 Business Days of receipt of the Principal Representative’s determination.

### (**Acknowledgement**): The parties acknowledge and agree that the payment of any Reward Amount or Risk Amount under clause 30.1 is payment on account only.

## Final Payment Claim

### (**Timing and form**): Within 10 Business Days after the expiry of the last Defects Liability Period, the Contractor may provide the Principal Representative with a final payment claim in such form as the Principal Representative may require and endorse it 'Final Payment Claim' (**Final Payment Claim**).

### (**All Claims**): In addition to claims for payment required to be included in a payment claim under clause 30.1, the Contractor must include in the Final Payment Claim all other Claims whatsoever in connection with the subject matter of this Deed which the Contractor may have against the Principal including damages arising out of any alleged breach of this Deed.

### (**Claims barred**): All such Claims, whether under clause 30.1 or this clause 30.6, will be barred after the expiration of the period for lodging a Final Payment Claim unless included in the Final Payment Claim and the Principal will be taken as released and forever discharged from such Claims.

### (**Right to defend or counter-claim**): Notwithstanding anything else contained in this clause 30.6, this clause 30.6 does not affect the Contractor’s right to defend or set-off by way of counter-claim, a claim made by the Principal or a Principal Associate against the Contractor.

## Final Certificate

### (**Principal Representative to issue Final Certificate**): Within 10 Business Days of receipt of the Contractor's Final Payment Claim or, where the Contractor fails to provide such claim, the expiration of the period specified in clause 30.6 for the lodgement of the Final Payment Claim by the Contractor, the Principal Representative must issue to the Contractor on behalf of the Principal a final payment certificate which complies with clause 30.1 endorsed 'Final Certificate' (**Final Certificate**).

### (**Amounts due**): In addition to satisfying the requirements of clause 30.1, the Principal Representative must set out in the Final Certificate the amount which is due from the Principal to the Contractor or from the Contractor to the Principal under this Deed.

### (**Principal Representative to certify**): In issuing the Final Certificate the Principal Representative must:

#### certify the amount which is due from the Principal to the Contractor or from the Contractor to the Principal arising out of this Deed or any alleged breach thereof; and

#### set out such of the allowances or deductions in clauses 30.2(a)(iv) to 30.2(a)(iv)B inclusive as are appropriate to such Final Certificate.

### (**All Claims made**): The Final Certificate will itself be evidence that all the Contractor's Claims under this Deed or otherwise at Law in respect of all Works performed under this Deed at or before the date of the Final Certificate have been made by the Contractor and that there are no other Claims outstanding as at the date of the Final Certificate.

### (**Tax invoice**): The Contractor must within 5 Business Days of receipt of the Final Certificate issue a tax invoice in the name of the Principal to the Principal Representative for the amount stated as then payable in the Final Certificate together with a duly completed and executed release.

### (**Payment**): Within 20 Business Days after receipt of the Final Payment Claim, subject to clause 29.6(a):

#### the Contractor must pay to the Principal the moneys certified as due and payable in the Final Certificate; or

#### provided the Contractor has provided the Principal Representative with a duly completed and executed release, the Principal must pay to the Contractor the moneys certified as due and payable in the Final Certificate,

* 1. as the case may be.

### (**Release of Security**): On the date of payment under clause 30.7(f), the Principal must release to the Contractor any Security, retention moneys or both then held by the Principal.

### (**Right to defend or counter-claim**): Notwithstanding anything else contained in this clause 30.7, this clause 30.7 does not affect the Contractor’s right to defend or set-off by way of counter-claim, a claim made by the Principal or the Principal Associates against the Contractor.

## Security of Payment Act

### (**Security of Payment Act**): The Contractor acknowledges and agrees that:

#### a claim for payment submitted to the Principal Representative under clauses 30.1 or 30.6 which also purports to be a payment claim under the Security of Payment Act is received by the Principal Representative as agent for the Principal;

#### unless otherwise notified to the Contractor by the Principal in writing, the Principal Representative will give progress payment certificates and the Final Certificate (**Payment Certificates**) and carry out all other functions of the Principal under the Security of Payment Act as the agent of the Principal;

#### to the extent permitted by and for the purposes of the Security of Payment Act, the “reference dates” are those of the dates prescribed in clauses 30.1 and 30.6 on which the Contractor has satisfied the requirements of clause 30.9;

#### a reference to a Payment Certificate is also a reference to a “payment schedule” for the purposes of the Security of Payment Act; and

#### a claim for payment submitted to the Principal Representative under clauses 30.1 and 30.6 is not a document notifying an obligation on the Principal to make any payment and the Principal will have no liability to make a payment of any amount in respect of a claim for payment unless the amount has been included in the Payment Certificate.

### (**Principal right to retain**): Failure by the Principal Representative to set out in a Payment Certificate issued under the Security of Payment Act or otherwise an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice:

#### the Principal Representative's ability or power to set out in a subsequent Payment Certificate an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal; or

#### the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Deed.

### (**Rights under this Deed)**: Nothing in this Deed will be construed to:

#### make any act or omission of the Principal in contravention of the Security of Payment Act (including failure to pay an amount becoming due under the Security of Payment Act), a breach of this Deed (unless the Principal would have been in breach of this Deed if the Security of Payment Act had no application); or

#### subject to clause 30.8(c)(i), give to the Contractor rights under this Deed which extend or are in addition to rights given to the Contractor by the Security of Payment Act in respect of any act or omission of the Principal in contravention of the Security of Payment Act.

### (**Payment Certificate amount**): The Contractor agrees that the amount set out in a Payment Certificate in accordance with clause 30.1 and 30.6 is, to the extent permitted by and for the purposes of the Security of Payment Act, the amount of the “progress payment” calculated in accordance with the terms of this Deed, which the Contractor is entitled to in respect of this Deed.

### (**Authorised nominating authority**): Upon an adjudication application under the Security of Payment Act, the authorised nominating authority for the purposes of the Security of Payment Act will be the Resolution Institute.

### (**Adjudicator powers**): In dealing with any adjudication application made by the Contractor, or any adjudication review application made by either party, under the Security of Payment Act, an adjudicator or review adjudicator (as applicable) under the Security of Payment Act will:

#### have no power to open up, review or revise any Payment Certificate issued under this Deed by the Principal Representative except to the extent required to meet the requirements of section 23 or 28I of the Security of Payment Act (as applicable); and

#### at all times act impartially between the parties, in accordance with all applicable Laws.

### (**Payment of adjudicated amount**): When an adjudication occurs under the Security of Payment Act, and the Principal has paid an adjudicated amount to the Contractor:

#### the amount will be taken into account by the Principal Representative in issuing a Payment Certificate under clause 30.2;

#### if it is subsequently determined pursuant to this Deed that the Contractor was not entitled under this Deed to payment of some or all of the adjudicated amount that was paid by the Principal (overpayment), the overpayment will be a debt due and payable by the Contractor to the Principal;

#### if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount will be a debt due and payable by the Contractor to the Principal; and

#### the Principal:

##### is not bound by the adjudication determination;

##### may reassess the value of the work that was valued by the adjudicator; and

##### may, if it disagrees with the adjudication determination, express its own valuation in any Payment Certificate.

### (**Subcontractor suspension**): The Contractor must promptly and without delay give the Principal Representative a copy of any written communication in relation to suspension or threatened suspension under the Security of Payment Act which the Contractor receives from a Subcontractor.

### (**Major Default**): The Contractor acknowledges that a failure to provide the Principal Representative copies of the written communication under clause 30.8(h) represents a fundamental term of this Deed, a breach of which is a Major Default of this Deed by the Contractor.

### (**Contractor suspension**): If the Contractor suspends the whole or part of the Contractor's Activities pursuant to the Security of Payment Act:

#### the suspension will not affect the Contractor's obligation to achieve Completion by the relevant Date for Completion but may entitle the Contractor to an extension of time under clause 27.8;

#### except as otherwise provided in section 29(4) of the Security of Payment Act, the Principal will not be liable for any losses including delay or disruption costs whatsoever suffered or incurred by the Contractor as a result of the suspension; and

#### the Contractor must recommence the part of the Contractor's Activities suspended within 1 Business Day after the Contractor receives payment of the amount due to be paid to the Contractor pursuant to the Security of Payment Act.

### (**Disclosure**): Neither party may at any time, without the written consent of the other party (**Disclosing Party**), divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Disclosing Party or any details thereof in respect of an adjudication application or an adjudication review application made under the Security of Payment Act (in this clause 30.8, the **SOP Information**).

### For the avoidance of doubt:

#### a party's obligation in respect of the SOP Information applies in respect of any subsequent proceedings before a court, arbitrator, expert or tribunal save where a party is unable by requirement of Law to comply with its obligation in respect of the SOP Information;

#### a party may divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the other party or any details thereof in respect of an adjudication application or an adjudication review application made under the Security of Payment Act; and

#### any SOP Information which a party provides or relies upon in respect of an adjudication application or an adjudication review application made under the Security of Payment Act is made without prejudice to that party's right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.

## Conditions precedent

1. To the extent permitted by Law, the Contractor is not entitled to make a payment claim under clause 30.1 and 30.6 unless the Contractor has:

### provided the Principal with Security as required by clause 33.1;

### provided the Principal Representative with evidence of effected insurances as required by this Deed;

### where the Contractor is required to procure deeds pursuant to clause 8.14, has delivered to the Principal all such deeds executed by the relevant Subcontractors;

### submitted a Bid Program and any updated Program required to be provided in accordance with this Deed which complies with the requirements of this Deed; and

### complied with clauses 31.1 and 31.2.

# Payment of workers and subcontractors

## Payment of workers

1. As a condition precedent to the Contractor's entitlement to make a payment claim, the Contractor must provide to the Principal Representative:

### (**statutory declaration**): a completed statutory declaration in the form of Schedule [18] by the Contractor from time to time made out not earlier than the date of the relevant payment claim for which the payment is to be made; and

### (**certificates of currency**): copies of all relevant certificates of currency in respect of workers compensation insurance which the Contractor has in place in connection with the Contractor's Activities.

## Payment of Subcontractors

1. As a condition precedent to the Contractor's entitlement to make a claim for payment under clause 29.1, the Contractor must give to the Principal Representative]a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared from time to time that all Subcontractors have been paid all moneys due and payable to them in respect of the Contractor's Activities.

# Provisional Sum Work

[***Drafting note: This is an optional clause. The ITC Deed may not include provisional sums.***]

### (**Provisional Sum**): The Contractor acknowledges and agrees that:

#### a Provisional Sum has been included in the TOC in respect of each Provisional Sum Item; and

#### unless otherwise provided in this Deed, it must not perform any Provisional Sum Work unless directed to do so by the Principal Representative.

### (**Provisional Sum Work**): The Principal Representative may, from time to time, at its absolute discretion direct the Contractor to perform Provisional Sum Work.

### (**Timing for direction**): Without limiting clause 32(b), the Principal Representative must give a direction to the Contractor whether or not to proceed with any Provisional Sum Work within 5 Business Days of the Contractor seeking the Principal Representative's direction in respect of that Provisional Sum Work.

### (**Contractor tender**): The Contractor may only tender for a Subcontract (other than a Minor Subcontract) in respect of Provisional Sum Work in accordance with the Subcontract Packaging and Procurement Plan.

### (**No Adjustment Event**): A direction to undertake Provisional Sum Work is not an Adjustment Event.

### (**TOC adjustment**): If the Reimbursable Costs incurred by the Contractor in performing any Provisional Sum Work in respect of a Provisional Sum Item or Provisional Quantity Item exceed the relevant Provisional Sum included in the TOC for that Provisional Sum Item or Provisional Quantity Item, the TOC will be adjusted accordingly.

### (**Timing for TOC adjustment**): The Principal Representative will determine and undertake any such adjustment to the TOC under clause 32(f):

#### on a quarterly basis or at such other time or interval agreed between the parties; and

#### on the Calculation Date.

### (**TOC reduction**): Upon the Date of Practical Completion, the TOC will be reduced by an amount equal to the unexpended Provisional Sums.

# Security

## Provision of Security

### (**Security**): On or before the Condition Precedent Deadline, the Contractor must provide to the Principal in accordance with this clause 33:

#### one or more Performance Bonds with an aggregate face value of 5% of the TOC (**Bond**); and

#### one or more Performance Bonds with an aggregate face value of 2.5% of the TOC (**DLP Bond**).

### (**Costs**): The costs (including all stamp duty or other Taxes) of and incidental to the transfer and retransfer of Security, must be paid by the Contractor and such costs will be Reimbursable Costs.

### (**TOC adjustments**): If, as a consequence of adjustments to the TOC, the TOC is adjusted upwards or downwards by [3%] or more, the Principal may direct the Contractor to provide a replacement Security so that the Security provided by the Contractor has an aggregate face value that complies with clause 33.1(a). Within 20 Business Days of such direction, the Contractor must provide to the Principal a replacement Security which:

#### is for the amount directed by the Principal under this clause 33.1(c); and

#### meets the requirements of the definition of Performance Bond.

## Form of Security

### (**Form**): The Security must be a Performance Bond approved by the Principal or another form approved by the Principal.

### (**Principal approval**): The Principal has a discretion to approve or disapprove of the form of an unconditional undertaking and the financial institution or insurance company giving the Security.

### (**Replacement**): If at any time:

#### the financial institution or insurance company that has given the Security no longer has the Required Rating; or

#### the Security is, or may become, unenforceable,

* 1. the Contractor must promptly notify the Principal of the circumstance and within [10] Business Days of being requested to do so, provide a replacement Security from a financial institution or insurance company that has the Required Rating and otherwise meets the requirements of the definition of Performance Bond.

### (**Expiry date**): If any Security provided under this Deed has an expiry date:

#### the Contractor must:

##### give the Principal at least 30 Business Days' prior written notice of the date on which it intends to provide a replacement Security under clause 33.2(d)(i)B; and

##### no later than [10] Business Days prior to the relevant expiry date, provide the Principal with a replacement Security for the same amount as the Security that it is to replace and which satisfies the requirements of the definition of Performance Bond; and

#### promptly following receipt of such replacement Security, the Principal must deliver to the Contractor the Security that has been replaced.

## Recourse to Security

### (**Recourse**): Without limiting any of the Principal’s rights, the Principal may have recourse to Security and may at any time convert into money any Security that does not consist of money:

#### to satisfy amounts due and payable by the Contractor to the Principal;

#### in respect of any liquidated damages due in accordance with this Deed;

#### for bona fide Claims by the Principal arising out of or in connection with a Project Document or in connection with the Contractor's Activities; or

#### for the amount of the relevant Security where the Contractor fails to replace a Performance Bond as required by clause 33.2(a).

### (**Conversion**): The Principal will not be liable for any loss occasioned by such conversion under clause 33.3(a).

### (**No restraint**): The Contractor must not at any time take any steps to enjoin or otherwise restrain:

#### any issuer of the Security from paying the Principal pursuant to the Security;

#### the Principal from taking any steps (such as making a demand) which may be a precondition to obtaining payment under the Security; or

#### the Principal using the proceeds of any Security.

## Release of Security

### Subject to clause 33.3, the Principal must:

#### (**Bond**): release the Bond within 10 Business Days after the Date of Practical Completion; and

#### (**DLP Bond**): subject to clause 33.4(b), release the DLP Bond within 10 Business Days after the date which is 24 months after the Date of Practical Completion.

### (**Outstanding Defect Cost Amount**): If, prior to the date specified in clause 33.4(a)(ii), the Principal has required the Contractor to correct one or more Defects pursuant to clause 28.5(b) and the Contractor has not corrected such Defects by the date specified in clause 33.4(a)(ii), the Principal's entitlement to the DLP Bond will, from the date specified in clause 33.4(a)(ii), be reduced to the higher of:

#### $[2] million; and [***Drafting note: This amount will be determined on a case by case basis.***]

#### an amount which represents [120]% of the reasonable cost of completing the rectification of the relevant Defects (as determined by the Principal Representative),

* 1. (**Outstanding Defect Cost Amount**). The Principal's entitlement to the Security for the Outstanding Defect Cost Amount will cease 20 Business Days after the Date of Close-out after which the Principal must release such Security to the Contractor.

### (**Additional Security**): If the Contractor has provided additional Security for any item of unfixed plant and materials pursuant to clause 30.4, release that additional Security within 10 Business Days of the incorporation into the Works of the unfixed plant or materials.

## Holding of and interest on Security

### (**Moneys not held on trust**): The Principal does not hold any Security, or any moneys resulting from the conversion of Security, on trust for the Contractor and is not obliged to hold any moneys resulting from the conversion of Security in any particular or defined account.

### (**Interest**): If the Principal converts any Security into money, any interest earned on those moneys will be retained by the Principal, save that if the Principal is required to repay any of those moneys to the Contractor, the Principal will also pay to the Contractor any interest earned by the Principal on the repaid moneys.

## Parent Company Guarantees

[***Drafting note: Depending on the country of incorporation of the Parent Guarantor, a legal opinion may be sought.***]

On or before the Condition Precedent Deadline, the Contractor must:

### (**provision of guarantee**): provide to the Principal a Parent Company Guarantee duly executed by each Parent Guarantor in favour of the Principal; and

### (**form and substance satisfactory**): ensure that all stampings, registrations and filings required by Law (or by the law of any foreign jurisdiction) or the Principal in relation to each Parent Company Guarantee have been completed in a form and substance satisfactory to the Principal.

PART H — CHANGE IN CIRCUMSTANCES

# Variations

## Variation Request by the Principal

### (**Variation Request**): Without limiting its rights under clause 34.6, the Principal may, at any time prior to the issue of the Final Certificate, issue to the Contractor, a notice entitled "Variation Request" for a Variation (including a Scope Variation) which must include details of:

#### the proposed Variation or Scope Variation (as applicable) which the Principal is considering; and

#### any specific information that the Principal requires the Contractor to include in its Variation Proposal or that may be relevant to the preparation of the Variation Proposal, including whether the Contractor considers that the proposed Variation is a Scope Variation,

(**Variation Request**).

### (**No obligation to proceed**): The Principal will not be obliged to proceed with any Variation or Scope Variation (as applicable) proposed in a Variation Request.

### (**Risk & Contingency Provisions**): The Contractor acknowledges and agrees that an amount for Variations, other than Variations determined to be Scope Variations, is included in the:

#### Program; and

#### Risk & Contingency Provisions component of the TOC.

## Variation Proposal

### (**Variation Proposal**):Within 10 Business Days after the receipt of the Variation Request under clause 34.1(a), the Contractor must submit a notice to the Principal entitled "Variation Proposal" (**Variation Proposal**). The Variation Proposal must:

#### include the effect which the Contractor anticipates that the Variation or Scope Variation (as applicable) will have on the Program and each Date for Completion;

#### if the Contractor considers that the proposed Variation (which is not stated to be a Scope Variation) is a Scope Variation, notify the Principal that the Contractor considers that the proposed Variation is a Scope Variation and include the basis on which the Contractor considers the proposed Variation is a Scope Variation;

#### include submissions or recommendations that the Contractor believes are appropriate to reduce or optimise the impact of the Variation or Scope Variation (as applicable) on the AOC, the Contractor's performance against the KRAs and the achievement of Completion by the Date for Completion;

#### include submissions or recommendations on any alteration to the TOC, the KRAs and any Date for Completion (as the case may be) which are required as a result of the Scope Variation, which must be based on the assumptions made by the Contractor in developing the TOC to the extent applicable; and

#### include the likely changes to, or additional, permits and approvals required to implement the Variation or Scope Variation (as applicable).

### (**Extension**): If the size and complexity of the proposed Variation or Scope Variation (as applicable) and the information to be included in the Variation Proposal, is such that it is not reasonably practicable for the Contractor to prepare the Variation Proposal within the period referred to in clause 34.2(a) or clause 34.4(b), the Principal must, on the request of the Contractor, extend the date for submitting the Variation Proposal by a reasonable period of time.

## Principal's response to Variation Proposal

### (**Principal's response to Variation Proposal**): Subject to clause 34.3(b), once a Contractor has provided the Principal with the Variation Proposal in accordance with clause 34.2:

#### the Contractor must promptly provide the Principal with any additional information the Principal notifies the Contractor that it reasonably requires to assess the Variation Proposal; and

#### the Principal must issue a written notice to the Variation Proposal within 10 Business Days after the later of the receipt of the Variation Proposal by the Principal and the provision to the Principal of any further information reasonably required by the Principal to assess the Variation Proposal. The Principal must:

##### if the Contractor has indicated in the Variation Proposal that the Contractor considers that the Variation is a Scope Variation, determine whether the Principal agrees with the Contractor's assessment;

##### advise the Contractor that the Principal either:

###### accepts the Variation Proposal, in which case the notice must be entitled "Variation Order" or "Scope Variation Order" (as applicable) and the Contractor must comply with the Variation Order or Scope Variation Order (as applicable), and will be entitled to the remedies and entitlements set out in the Variation Proposal on the terms set out in the Variation Order or Scope Variation Order (as applicable);

###### does not accept the Variation Proposal on the basis that:

the information contained in the Variation Proposal is not correct;

the remedies claimed in the Variation Proposal (including any compensation claimed) are not in accordance with or are not calculated in accordance with this Deed; or

the Variation Proposal otherwise fails to comply with this Deed,

* + - * 1. in which case, the Principal can either:

direct the Contractor to amend and resubmit the Variation Proposal in accordance with clause 34.2; or

issue a written notice entitled "Variation Order" or "Scope Variation Order" (as applicable) and determine the terms of the Variation or Scope Variation (as applicable);

###### does not accept the Variation Proposal because the Principal does not wish to proceed with the proposed Variation or Scope Variation (as applicable), in which case the Variation Request will be deemed to be withdrawn.

### (**Extension to response time**): The period of time in which the Principal is required to issue a written notice to a Variation Proposal will be extended by such period as the Principal reasonably requires and notifies to the Contractor having regard to the nature of the relevant Variation or Scope Variation (as applicable), the content and quality of the Variation Proposal, and the time within which any further information was provided in respect of the Variation Proposal.

### (**Varies Deed**): A Variation Order or Scope Variation Order (as applicable) provided by the Principal under clause 34.3(a)(ii)B.1) has the effect of varying this Deed to the extent provided in the relevant Variation Order or Scope Variation Order (as applicable) with effect from the date of receipt by the Contractor of that Variation Order or Scope Variation Order (as applicable) or such other date specified in that Variation Order or Scope Variation Order (as applicable).

### (**No adjustments**): No Variation Order or Scope Variation Order will:

#### invalidate this Deed; or

#### unless the Variation is a Scope Variation, entitle the Contractor to Claim any adjustment to the TOC, KRAs or any Date for Completion.

## Directions giving rise to Variation or Scope Variation

### (**Direction**): In this clause 34.4, "direction" means any direction, approval, consent, requirement, determination, request, claim, notice, agreement, demand or the like.

### (**Principal direction**): If the Contractor considers that a direction by the Principal constitutes or involves a Variation or Scope Variation and the Principal has not given that direction by way of a Variation Order or Scope Variation Order (as applicable), the Contractor must:

#### within 10 Business Days after receiving the direction and before commencing work on the subject matter of the direction, give written notice to the Principal that it considers the direction constitutes or involves a Variation or Scope Variation (as applicable); and

#### within 10 Business Days after providing the notice under clause 34.4(b)(i) and before commencing work on the subject matter of the direction, give the Principal a Variation Proposal in accordance with the requirements set out in clause 34.2 or clause 34.4(b), as if that direction by the Principal was a Variation Request issued under clause 34.1.

### (**Confirmation**): If, within 10 Business Days after the Principal receives a Variation Proposal in accordance with clause 34.4(b)(ii):

#### the Principal does not:

##### issue a notice which is a which is a "Variation Order" or "Scope Variation Order" (as applicable) in respect of the relevant direction in accordance with clause 34.3;

##### withdrawing the direction; or

##### inform the Contractor that, in the Principal's view, the direction does not constitute or involve a Variation or Scope Variation (as applicable),

* + 1. the direction will be deemed to be withdrawn and the Contractor must not comply with the direction; or

#### the Principal:

##### issues a notice which is a "Variation Order" in respect of the relevant direction in accordance with clause 34.3(a)(ii)B.1), the Contractor must comply with the Variation Order in accordance with clause 34.3(a)(ii)B.1);

##### withdraws the direction, the Contractor must not comply with the direction; or

##### informs the Contractor that, in the Principal's view, the direction does not constitute or involve a Variation, The Contractor must comply with the direction but may refer the matter to expert determination in accordance with clause 45.2.

### (**Conditions for Contractor claim**): The Contractor is not entitled to make any Claim for an extension of time to any Date for Completion or an adjustment to the TOC or KRAs in respect of a direction that may constitute or involve a Scope Variation unless it has given a Variation Proposal under clause 34.4(b)(ii) within the period identified in that clause.

## Omission by Principal

### (**Scope**): Subject to clause 34.5(d), the parties acknowledge and agree that a Variation or Scope Variation may decrease, omit, delete or remove any of the Contractor's Activities.

### (**Principal Associate to perform**): The parties acknowledge and agree that the Principal may itself or may engage any Principal Associate or Direct Interface Party to undertake any decreased, omitted, deleted or removed Contractor's Activities.

### (**Coordination with Contractor's Activities**): The Contractor must:

#### permit the Principal, a Principal Associate or Direct Interface Party to carry out any decreased, omitted, deleted or removed Contractor's Activities;

#### co-operate with the Principal, any Principal Associate and any Direct Interface Party in carrying out any decreased, omitted, deleted or removed Contractor's Activities; and

#### co-ordinate and interface the remaining Contractor's Activities with the work carried out or to be carried out by the Principal, any Principal Associate or any Direct Interface Party in performing any decreased, omitted, deleted or removed Contractor's Activities.

### (**Limits on omission by Principal**): Notwithstanding anything else in this Deed, the Principal must not instruct a Variation or Scope Variation (whether by issuing a Variation Request or a Variation Order or Scope Variation Order, or by some other method) which decreases, omits, deletes or removes all or substantially all of the Contractor's Activities.

## Unilateral Variation Order

### (**Variation Order or Scope Variation Order**): Notwithstanding any other term of this Deed, whether or not:

#### the Principal has issued a Variation Request under clause 34.1;

#### the Contractor has issued a Variation Proposal under clause 34.2; or

#### the parties have reached agreement on any disputed matters in the Variation Proposal in accordance with this clause 34, or otherwise,

* 1. the Principal may at any time direct the Contractor to implement a Variation or Scope Variation by issuing a written notice entitled "Variation Order" or "Scope Variation Order" (as applicable).

### (**Extension of time**): In circumstances where the Principal has issued a Scope Variation Order and the Contractor has not issued a Variation Proposal prior to the Scope Variation Order, subject to clauses 27.10, the Principal may determine and calculate the extension of time to which the Contractor is entitled.

### (**Dispute**): If the Contractor disputes that the extension of time or entitlements determined by the Principal under clause 34.6(b) has been correctly determined in accordance with this Deed:

#### the Contractor must proceed with the Scope Variation in accordance with the Scope Variation Order but may submit a notice to the Principal and the Principal Representative; and

#### the Principal Representative will determine any extension to the relevant Date for Completion as a consequence of the Scope Variation Order.

## Variations proposed by the Contractor

### (**Contractor may propose a Variation**): The Contractor may request the Principal to direct a Variation by submitting a notice to the Principal entitled "Contractor Variation Proposal" (**Contractor Variation Proposal**).

### (**Principal may approve or reject**): Upon receipt of a Contractor Variation Proposal, the Principal may, but is under no obligation to, issue a Variation Order requiring the Contractor to proceed with the Variation proposed by the Contractor under clause 34.7(a).

# Pre-Agreed Scope Variations

### The Principal may (but is not obliged to), at any time on or before the relevant Election Date, direct a Pre-Agreed Scope Variation by issuing to the Contractor a notice titled "Pre-Agreed Scope Variation Notice" (**Pre-Agreed Scope Variation Notice**)**.**

### If a Pre-Agreed Scope Variation Notice is issued on or before the relevant Election Date then, from the date of the Pre-Agreed Scope Variation Notice, this Deed will be deemed to be amended in accordance with the Pre-Agreed Scope Variations Schedule for the relevant Pre-Agreed Scope Variation.

### If the Principal directs a Pre-Agreed Scope Variation in accordance with cause 35(a), then the Contractor, in respect of that Pre-Agreed Scope Variation must:

#### perform its obligations under this Deed as amended in accordance with clause 35(b); and

#### implement the Pre-Agreed Scope Variation in accordance with the Pre-Agreed Scope Variations Schedule.

### In respect of any Pre-Agreed Scope Variation directed by the Principal in accordance with clause 35(a), the Contractor acknowledges that the adjustment of the TOC, Date for Completion and KRAs (if any) in accordance with the Pre-Agreed Scope Variations Schedule will be full compensation for any loss or delay that the Contractor (or its Associates) suffers or incurs arising out of or in connection with the issue of the Pre-Agreed Scope Variation Notice or the implementation of that Pre-Agreed Scope Variation.

### Nothing in this clause 35 prevents the Principal from directing a Variation under clause 34 that involves the same (or similar) changes to the Contractor Activities as a Pre-Agreed Scope Variation after the relevant Election Date, and the parties acknowledge and agree that the amount payable by or to the Contractor for undertaking the Variation will be calculated and determined in accordance with clause 34.

### No reference to a Pre-Agreed Scope Variation in this Deed or inclusion of requirements relevant to a Pre-Agreed Scope Variation in this Deed will:

#### require the Principal to direct a Pre-Agreed Scope Variation under this clause 35; or

#### be read to imply that the Principal has issued a direction under clause 35(a), unless such direction has in fact been given by the Principal under clause 35(a).

# Change in Law and Change in Policy

## Change in Law and Change in Policy

### (**Notification**): The Contractor must submit to the Principal 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 Contractor's Activities or the Project Documents and identify:

#### whether it is or will be a Change in Law or a Change in Policy;

#### if it is or will be a Change in Policy:

##### whether it is a Change in EPA Standard;

##### if it is a Change in EPA Standard, whether the Contractor is obliged to comply with the Change in EPA Standard in accordance with an EPA Statutory Instrument; and

##### if it is a Change in Policy that is not a Change in EPA Standard, whether the Contractor is bound to comply with the Change in Policy as a matter of Law; and

#### the likely impact (if any):

##### of the Change in Law or Change in Policy on the Project cost and Contractor's Activities and in the case of a Change in EPA Standard, whether the Change in EPA Standard has a material adverse effect on the Contractor's Activities; and

##### on the Contractor's Activities of not adopting any Change in Policy (if the Contractor is not bound to comply with the Change in Policy as a matter of Law or in accordance with an EPA Statutory Instrument).

### (**Change in Policy**): If the Contractor's notice under clause 36.1(a) is a consequence of a Change in Policy occurring after the date of this Deed and the Contractor is not obliged to comply with that Change in Policy as a matter of Law or in accordance with an EPA Statutory Instrument, the Principal must, within 20 Business Days after the date of the notice referred to in clause 36.1(a), direct the Contractor as to whether or not the Contractor is required to comply with the Change in Policy.

### (**Principal may request**): If the Principal considers that a Change in Law or Change in Policy has occurred and the Contractor has not provided notice under clause 36.1(a), the Principal may direct the Contractor to submit a notice under clause 36.1(a) in respect of that Change in Law or Change in Policy.

### (**Contractor to comply**): The Contractor must comply with a Change in Policy, unless the Principal directs the Contractor not to comply with the relevant Change in Policy (as changed) in accordance with clause 36.1(b).

### (**Further direction regarding Change in Policy**): Notwithstanding any other provision of this Deed, if the Principal directs the Contractor to comply with a Change in Policy in accordance with clause 36.1(b), the Principal may subsequently direct the Contractor not to comply with such Change in Policy at any time.

## Change in Mandatory Requirements

### (**Change in Mandatory Requirements**): If a Change in Mandatory Requirements occurs, it will be deemed to be a Variation and:

#### the Contractor may submit a Variation Proposal in accordance with clause 34.2; and

#### the Contractor's entitlements will be determined in accordance with clause 34.

### (**Conditions for Contractor Claim**): The Contractor is not entitled to make any Claim against the Principal in respect of any Change in Mandatory Requirements (including its impact) unless it has given notice in accordance with clauses 36.1(a).

# Suspension and step-in by the Principal

## Principal right to suspend

### (**Suspension**): the Principal:

#### may direct the Contractor to suspend, and after a suspension has been directed, to recommence, the carrying out of all or any part of the Contractor's Activities; and

#### is not required to exercise its power under clause 37.1(a) for the benefit of the Contractor .

### (**Result of suspension**):

#### Except to the extent the circumstances leading to the suspension under clause 37.1(a):

##### are caused or contributed to by a Contractor Act or Omission; or

##### are, or are caused by, a Force Majeure Event,

* + 1. a direction to suspend all or any part of the Contractor's Activities by the Principal under clause 37.1(a) will be an Adjustment Event (Cost) and an Adjustment Event (Time) and the Principal must continue to pay any Reimbursable Costs incurred by the Contractor during the period of suspension and any Corporate Overhead and Profit in respect of those costs.

#### To the extent the circumstances leading to the suspension are a Force Majeure Event, a direction to suspend the Contractor's Activities (while that Force Majeure Event or its effects are subsisting) by the Principal under clause 37.1(a)(i) will be a Force Majeure Event.

#### The parties must endeavour to mitigate any Reimbursable Costs incurred during the period of any suspension.

### (**Lift suspension**): If a suspension is due to a Contractor Act or Omission or Force Majeure Event, the Principal must lift the suspension once the Contractor Act or Omission (and its effects) or, the Force Majeure Event (and its effects), no longer prevents:

#### the Contractor from carrying out all or a material part of the Contractor's Activities; or

#### the Principal from carrying out all or a material part of its obligations,

* 1. in accordance with the Project Documents.

## The Principal may act

### (**Principal's right to act**): If the Contractor fails to perform an obligation under this Deed, then the Principal may take such action as may be necessary to remedy the failure by the Contractor and the Principal may for this purpose enter the Site and any other land on which the Contractor's Activities are being carried out.

### (**Liability for Principal's costs**): The costs, losses, expenses, damages and liability suffered or incurred by the Principal in so performing such an obligation will be a debt due and payable from the Contractor to the Principal on demand.

# Probity Investigations and Probity Events

## Probity Investigation

[***Drafting note: To be amended on a project specific basis depending on nature of asset.***]

### (**Requirement for Probity Investigation**): The Contractor agrees that the Principal may conduct an investigation into the character, integrity or honesty of:

#### a Relevant Person or any person who is proposed to become a Relevant Person; or

#### a Subcontractor in respect of whom a Probity Event has occurred,

* 1. including:

#### investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges; and

#### 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,

* 1. (**Probity Investigation**).

### (**Consents required for Probity Investigation**): The Contractor must procure all relevant consents from people who will be the subject of the Probity Investigation.

### (**No appointment of Relevant Person without consent**): The Contractor must not appoint a person to a position of Relevant Person unless the Principal has given its approval to the appointment (including following a Probity Investigation if required by the Principal).

### (**Relevant Person**): For the purpose only of clause 38.1(c), a reference to "Relevant Person" will be deemed to exclude paragraph (b) of the definition of Relevant Person (except in relation to a Subcontractor to whom that paragraph applies in respect of whom the Principal has required a Probity Investigation).

## Probity Event

### (**Notice**): The Contractor must give notice to the Principal 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.

### (**Meeting**): Within 10 Business Days after receipt of a notice under clause 38.2(a) or either party becoming aware of a Probity Event (including by way of a Probity Investigation undertaken in accordance with clause 38.1):

#### the Principal and the Contractor 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

#### the Contractor must comply with any agreement made under clause 38.2(b)(i) (if any) including in accordance with any timeframe agreed.

### (**Failure to agree**): If the Contractor and the Principal fail to agree to a course of action under clause 38.2(b)(i), must take any action as required by the Principal to Cure or otherwise address 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 Principal.

### (**Failure by the Contractor to act**): A failure by the Contractor to take any action agreed in accordance with clause 38.2(b)(i) or determined in accordance with clause 38.2(c) is a Major Default.

## Principal costs of Probity Investigation and Probity Events

### (**Principal costs**): Subject to clause 38.3(b), costs incurred by the Principal in connection with a Probity Event or Probity Investigation will be a debt due and payable by the Contractor to the Principal.

### (**Contractor not liable**): The Contractor will not be liable for the Principal's costs of any further Probity Investigations required by the Principal if an initial Probity Investigation has already been undertaken in respect of the same person.

PART I — RISK, INDEMNITIES AND INSURANCE

# Damage

## Risk of loss or damage to Works

### (**Contractor bears risk**): Unless otherwise expressly provided in this Deed, the Contractor is responsible for the care of, and bears the risk of destruction, loss or damage to:

#### the Contractor's Activities, the Works, Temporary Works and any Extra Land, from the date of this Deed; and

#### the relevant parts of the Site, from the date on which access is granted under clause 14.1(a),

* 1. which occurs up to and including the Date of Practical Completion.

### (**Risk extends to DLP**): Subject to clause 39.1(d), the Contractor will also bear the risk of any destruction, loss of or damage to a part of the Works or any other thing referred to in clause 39.1(a) caused by, arising out of, or in any way in connection with the performance of those Contractor's Activities (including the rectification of any Defect) occurring after the Date of Practical Completion.

### (**Risk**): Subject to clause 39.1(d), the Contractor must:

#### in accordance with clause 39.2, promptly make good destruction, loss or damage to anything caused during the period the Contractor is responsible for its care; and

#### indemnify the Principal against such destruction, loss or damage.

### (**Limitation**): This clause 39.1 does not apply to the extent that any destruction, loss or damage for which the Contractor would otherwise have been responsible or bears the risk of or is obliged to indemnify the Principal against under this clause results from an Uninsurable Risk.

## Reinstatement

### (**Reinstatement**): If, prior to the time the Contractor ceases to be responsible under clause 39.1(a) for the care of a part of the Works or the Temporary Works or any other thing referred to in clause 39.1(a), any destruction, damage or loss occurs to the Works or the Temporary Works (other than destruction, damage or loss caused by an Uninsurable Risk), the Contractor must rectify such destruction, damage or loss so that the thing conforms in every respect with the provisions of this Deed.

### (**Insurance proceeds**): All insurance proceeds in respect of that destruction, damage or loss that are payable under any Insurance (Principal) will:

#### (**payment**): be paid to the Principal; and

#### (**Progress payments**): despite anything to the contrary in this Deed, be paid by the Principal to the Contractor under clause 30 as and when the Contractor rectifies the Works or the Temporary Works or the other thing referred to in clause 39.1(a) (but such costs will not form part of the Reimbursable Costs).

### (**Uninsurable Risks**): In the event of loss or damage being caused by an Uninsurable Risk (whether or not in combination with other risks), the Contractor must, if and to the extent directed by the Principal Representative, rectify the loss or damage, which will be deemed to be a Scope Variation. In the case of loss or damage being caused by a combination of an Uninsurable Risk and other risks, any such direction and consequential TOC adjustment under clause 34 must take into account the proportional responsibility of the Contractor and the Principal.

## Care of the Works in the absence of the Contractor

1. In the absence of the Contractor or the Contractor's Representative, or where the Contractor or its Associates fail to comply with a direction of the Principal or the Principal Representative, the Principal may take such action as the Principal considers necessary to protect or prevent loss of or damage to the Works, the Temporary Works or any other property or to prevent injury to any person. The costs reasonably and actually incurred by the Principal in taking such action will be a debt due and payable by the Contractor to the Principal.

## Damage to third party property

### (**Contractor interference**): Other than in accordance with its rights or obligations under this Deed, the Contractor must not interfere with, obstruct, damage or destroy any property on, under, over, in or in the vicinity of the Site or Extra Land.

### (**Contractor to rectify and compensate**): Subject to the terms of any Direct Interface Deed, if the Contractor or any Contractor Associate interferes with, obstructs, damages or destroys any property (other than the Works) on, under, over, in or in the vicinity of the Site or Extra Land other than in accordance with its obligations under this Deed, the Contractor must:

#### promptly rectify any such loss or damage; and

#### 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 Principal may have to compensate the affected person.

# Urgent protection

### (**Urgent protection**):If urgent action is necessary to protect, or to prevent or minimise the risks to, the Contractor's Activities, the Works or other property or the health or safety of people and the Contractor fails to take the action, in addition to any other remedies of the Principal, the Principal may take the necessary action. The costs reasonably and actually incurred by the Principal in taking such action will be a debt due and payable by the Contractor to the Principal.

### (**Prior notice**):If time permits, the Principal Representative must give the Contractor prior written notice of the intention to take action pursuant to this clause 40.

# Indemnities and limits of liabilities

## General indemnity

1. The Contractor indemnifies the Principal and each Principal Associate from and against any Claim or Liability suffered or incurred by the Principal or the Principal Associate, respectively, arising in connection with:

### (**property damage**): any loss, damage or destruction to, or loss of use of, property including any real or personal property, whether the Works or other property belonging to the Principal or a Principal Associate or a third party (including the Principal or a Principal Associate) (other than property referred to in clause 39.1 while the Contractor is responsible for its care); or

### (**injury, illness or death**): any injury to, illness or death of, any person,

1. in connection with any act or omission of the Contractor or any Contractor Associate in connection with the Project.

## Indemnity for Contractor breach

1. Subject to clause 29.8(b), the Contractor indemnifies the Principal and each Principal Associate from and against any Claim or Liability suffered or incurred by the Principal or any Principal Associate respectively, in connection with any breach by the Contractor or any Contractor Associate of any Project Document.
2. ***[Drafting note: Sole remedy clauses to be checked on a project specific basis.]***

## Project Information indemnity and release

### (**Project Information**): The Contractor indemnifies the Principal and each Principal Associate from and against any Claim or Liability suffered or incurred by the Principal or any Principal Associate, respectively, in connection with the provision of, or the purported reliance upon, or use of, the Project Information by the Contractor, a Contractor Associate or any other person to whom the Project Information is disclosed by the Contractor, a Contractor Associate or any person on the Contractor's or a Contractor Associate's behalf.

### (**Failure to provide information**): Save where the Principal or a Principal Associate, has an express obligation under a Project Document to provide or procure the provision of information, data or material relating to the Project to the Contractor or a Contractor Associate, the Contractor:

#### releases the Principal and the Principal Associates from any Claim made by the Contractor; and

#### indemnifies the Principal and each Principal Associate from and against any Claim made by any Contractor Associate,

* 1. in connection with any failure by the Principal or the Principal Associate to make available to the Contractor any information, data or material relating to the Project.

## Utility and Contamination indemnities

[***Drafting note: The template position is that the utility indemnity is included in this ITC Contract. However, on a case by case basis, agencies may consider removing this indemnity.***]

### (**Utility indemnity**): The Contractor indemnifies the Principal and each Principal Associate, from and against any Claim or Liability suffered or incurred by any of them in connection with:

#### any disruption to any Utility Infrastructure or disruption to the supply of Utilities;

#### any damage to any Utility Infrastructure; or

#### the removal, relocation or carrying out of works to Utility Infrastructure,

* 1. to the extent caused or contributed to by a Contractor Act or Omission.

### (**Contamination** **indemnity**): The Contractor indemnifies the Principal and each Principal Associate from and against any Claim or Liability suffered or incurred by any of them in connection with any Contamination to the extent that:

#### such Contamination was caused or contributed to by the Contractor or any Contractor Associate; or

#### where the Contamination is not caused or contributed to by the Contractor or any Contractor Associate, but is emanating or migrating from the Site or Extra Land and the Contractor or any Contractor Associate has caused or contributed to such Contamination emanating or migrating from the Site or Extra Land,

* 1. whether or not the Contractor is obliged to Remediate that Contamination in accordance with clause 12.6(d).

## Intellectual Property and Moral Rights indemnity

### (**Definitions**): For the purposes of this clause 41.5 those indemnified are the Principal, each Principal Associate and any third party duly authorised or licensed by the Principal to exercise any Intellectual Property Rights assigned, granted or licensed to the Principal under this Deed and any Principal Associates or any such third party (each an **Indemnified IP Person**).

### (**Indemnity**): The Contractor indemnifies each Indemnified IP Person from and against:

#### any Claim or Liability suffered or incurred by an Indemnified IP Person in connection with any alleged or actual infringement or violation of Intellectual Property Rights or Moral Rights:

##### by the Contractor or a Contractor 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 Principal IP; and

##### by an Indemnified IP Person using, exercising or enjoying:

###### the Contractor Material or the Works as delivered by or on behalf of the Contractor to the Principal 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 Principal, or third parties engaged by the Principal, which is not as directed or approved by the Contractor) in connection with this Deed; or

###### its rights in respect of such Intellectual Property Rights or Moral Rights in the manner authorised by this Deed;

#### any Claim or Liability suffered or incurred by an Indemnified IP Person in connection with a breach of the warranties set out in clause 54; and

#### any Claim or Liability suffered or incurred by an Indemnified IP Person in connection with the Intellectual Property Rights necessary for the continuation of the Contractor's Activities being unavailable as a result of or in connection with the Contractor not fulfilling its obligations under clause 54, to obtain the licenses referred to in clause 54.

### (**Moral Rights indemnity**): The Contractor 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 Contractor's Activities or the Works.

## Limits on Contractor Liability to indemnify

The Contractor's Liability to indemnify the Principal and each Principal Associate and each other Indemnified IP Person under the Project Documents will be reduced to the extent that any such Liability is caused or contributed to by:

### (**breach**): any breach by the Principal of any Project Document;

### (**certain** **acts or omissions**): any fraudulent, negligent, reckless, unlawful or malicious act or omission of:

#### the Principal or any Principal Associate; or

#### in respect of the indemnity provided by the Contractor under clause 41.5 only, any other Indemnified IP Person;

### (**events**): without limiting clause 41.6(a) or clause 41.6(b), any Adjustment Event (Time);

### (**compliance with directions**): the Contractor complying strictly with a direction from the Principal or the Principal Representative (except to the extent that the direction is a direction to comply with a Project Document, is permitted under a Project Document or was given as a result of a Contractor Act or Omission), provided that prior to complying with the direction:

#### the Contractor notified the Principal or the Principal 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 the Contractor to the Principal or any Principal Associate; and

#### notwithstanding having received the notification referred to in clause 41.6(d)(i), the Principal or the Principal Representative (as the case may be) confirms that the Contractor should comply or continue to comply with the direction; or

### (**mitigation**): a failure by the Principal, any Principal Associate, or any other Indemnified IP Person (as relevant) to use reasonable endeavours to mitigate the extent or consequences of the Liability,

1. other than to the extent that the Contractor or any Contractor Associate is entitled to recover the amount for which they are liable to indemnify the Principal, any Principal Associate, or any other Indemnified IP Person (as relevant) under any of the Insurances (or would have been entitled to so recover but for an Insurance Failure Event).

## Third party claim under indemnity

### (**Management of Claims**): Subject to clause 41.7(c) and clause 41.7(d), if a Claim is made by a third party against the Principal or any Principal Associate, the Principal or any Principal Associate (or in respect of the indemnity provided by the Contractor under clause 41.5 only, any other Indemnified IP Person) in respect of which and to the extent for which the Contractor is required to indemnify the Principal or the Principal Associate or other Indemnified IP Person (as applicable) under this Deed, the Principal must or must procure that the relevant Principal Associate or other Indemnified IP Person (as applicable), as soon as reasonably practicable:

#### notifies the Contractor of the alleged Claim;

#### subject to clause 41.7(c), gives the Contractor the option to conduct the defence of the Claim; and

#### provides the Contractor (at the Contractor's expense) with reasonable assistance in negotiating, defending or otherwise taking action or proceedings in respect of that Claim, if the Contractor chooses to do so.

### (**Settling Claims**): The Principal must not and must procure that any relevant Principal Associate or other Indemnified IP Person (as applicable) does not settle a Claim:

#### of the type referred to in clause 41.7(a) without the Contractor's involvement in and agreement to (acting reasonably) any such settlement; and

#### managed by the Principal under clauses 41.7(c) or 41.7(d), without giving the Contractor prior notice and consulting with the Contractor in good faith before agreeing to any compromise or settlement of such a Claim.

### (**Urgent proceedings**): If:

#### interlocutory proceedings are commenced against the Principal, any Principal Associate or any other Indemnified IP Person (as applicable) on an urgent basis; and

#### the Principal reasonably considers that there is insufficient time to notify the Contractor and for the Contractor to notify its requirements under clause 41.7(a)(iii) or to commence the defence of such proceedings on behalf of the Principal, Principal Associate or other Indemnified IP Person (as applicable),

* 1. then:

#### unless the Principal and the Contractor otherwise agree, the Principal, Principal Associate or other Indemnified IP Person (as applicable) will initially defend such proceedings; and

#### as soon as reasonably practicable after commencement of the proceedings, the Principal must, or must procure that the Principal Associate or other Indemnified IP Person (as applicable), gives the Contractor the option to conduct the defence of such proceedings, and if the Contractor chooses to do so, clause 41.7(a)(iii) will then apply.

### (**Other matters**): Clause 41.7(a) does not apply to any Claim which:

#### the Principal considers should be conducted by the Principal, a Principal Associate or other Indemnified IP Person (as applicable) for public policy reasons; or

#### would prevent the continued development or operation of the Project or continued conduct of the Contractor's Activities,

* 1. and the Principal, to the extent reasonably practicable, consults and procures that any relevant Principal Associate or other Indemnified IP Person (as applicable) consults in good faith with the Contractor with respect to such Claim.

### (**Management of Claims by the Contractor**): In respect of a Claim managed by the Contractor under clause 41.7(a), the Contractor must:

#### use reasonable endeavours to give the Principal prior notice before agreeing to any compromise or settlement of such a Claim; and

#### consult in good faith with the Principal prior to agreeing to any such compromise or settlement.

## Continuing obligation

### (**Indemnity continues**): Each indemnity in the Project Documents is a continuing obligation, separate and independent from the other obligations of the parties.

### (**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 Project Documents.

### (**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 Project Documents.

### (**Limitation period**):Despite anything to the contrary in this Deed or any other Project Document, neither the Principal nor any other person who has the benefit of an indemnity or other promise given by the Contractor under the Project Documents, is entitled to bring any Claim whatsoever under, arising out of, or in connection with this Deed or any other Project Document, against the Contractor on or after the date occurring:

#### subject to clause 41.8(d)(ii), 15 years after the last Date of Practical Completion; or

#### for a Claim arising out of or in connection with any Defect notified under clause 28.1 during the applicable Defects Liability Period, 15 years after the expiry of the applicable Defects Liability Period for that Defect,

* 1. and the Principal and those other parties irrevocably release the Contractor from any such Claims.

## Responsibilities as if owner

1. The Contractor 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 Site.

## Non-recovery of Reimbursable Costs

### Notwithstanding any other provision of this Deed, the Principal will have no Claim against the Contractor, and releases the Contractor from any Claim, for recovery of Reimbursable Costs that the Contractor is entitled to be paid under this Deed (including any Claim for breach of contract, under indemnity or otherwise).

### For the avoidance of doubt, clause 41.10(a) does not limit the operation of clause 29.4 or 42.12(a).

## Limitation of Liability

1. Subject to clause 41.13, the Contractor's total aggregate liability under or in connection with this Deed or any other Project Document, howsoever caused or arising, whether in contract, tort (including negligence), equity statute, by way of indemnity, contribution, unjust enrichment, warranty or guarantee or otherwise at Law is limited to [50]% of the Initial TOC (**Limitation of Liability**).

## Indirect or Consequential Loss – Contractor

1. Subject to clause 41.13, but otherwise despite anything to the contrary in this Deed, neither the Contractor nor any Contractor Associate has any Liability to the Principal or any Principal Associate (or in respect of the indemnity provided by the Contractor under clause 41.5 only, any other Indemnified IP Person) for any Indirect or Consequential Loss.

## Exclusions

1. Clauses 41.11 and 41.12 do not apply to exclude or limit any liability of the Contractor arising from or in connection with:

### the extent that the parties cannot limit or exclude any Liability at Law;

### the extent to which the Contractor or a Contractor Associate would be entitled and able to recover under any Insurances in respect of such a Liability, or would have been so entitled and able but for an Insurance Failure Event;

### Liability to the extent the Contractor recovers in accordance with an indemnity under any Project Documents;

### Liability in connection with:

#### any criminal act or fraud; or

#### Wilful Misconduct,

* 1. on the part of the Contractor or any Contractor Associate;

### Liability in connection with any loss of or damage to third party property or any injury to, illness or death of any person;

### Liability in connection with clause 41.1 and 41.5;

### in respect of clause 41.12 only Liability expressly imposed on the Contractor or any Contractor Associate under any of the Project Documents to pay the Principal any of the following amounts:

#### any interest under clause 29.8;

#### any amount expressly payable by the Contractor to the Principal or a Principal Associate under clause 41.1(a) in respect of property belonging to a Principal Associate or a third party;

#### any amounts expressly provided to be a debt due and payable under this Deed (other than as a result of clause 41.8); and

#### any amounts payable under clause 29.9;

### in respect of clause 41.12 only, any amounts payable and calculated in accordance with:

#### the Adjustment Event Schedule;

#### clause 44, in respect of termination; or

#### clause 27.18;

### Liability in connection with abandonment of the whole or a substantial part of the Contractor's Activities by the Contractor or any Contractor Associate; and

### Liability of the Principal to [#], ***[Drafting note: This item may be used if there are any specific third party liabilities (that are in addition to those set out above, including economic loss, that the Principal may have as a consequence of the Contractor breaches of this Deed. See Guidance Notes for further detail as to when this may be used.]***

1. and these amounts or liabilities are not included in assessing the Contractor’s liability for the purposes of clause 41.11.

## Limitation on Principal Liability to the Contractor for Relief Events

### (**Failure to mitigate**): Notwithstanding any other provision of this Deed, the Principal's Liability to the Contractor in connection with any Relief Event will be reduced to the extent that:

#### the Relief Event or the consequences of the Relief Event are caused or contributed to by a Contractor Act or Omission; or

#### the Contractor, or any Contractor Associate, fails to take all reasonable steps which a prudent, competent and experienced contractor in the circumstances of the Contractor or the relevant Contractor Associate exercising Best D&C Practices would have taken to mitigate, minimise or avoid the effects, consequences or duration of the Relief Event.

### (**Insurance**): The Contractor will not be entitled to Claim compensation from the Principal for a Relief Event to the extent that the loss for which compensation is claimed is required to be covered by the Insurances as part of an Insured Risk, unless the Contractor has demonstrated that the compensation is not covered by the proceeds of such Insurance due to a Principal Insurance Breach.

## Indirect or Consequential Loss - Principal

### (**No Liability of the Principal**): Subject only to clause 41.15(b), but otherwise despite anything to the contrary in this Deed, neither the Principal nor any Principal Associate has any Liability to the Contractor or any Contractor Associate for any Indirect or Consequential Loss suffered or incurred by the Contractor or any Contractor Associate as a result of any breach of a Project Document by the Principal or any Principal Associate.

### (**Exceptions to no Principal Liability**): The exclusion of Liability of the Principal and any Principal Associate under clause 41.15(a) does not apply to:

#### the extent that the parties cannot limit or exclude any Liability at Law:

#### Liability arising from:

##### any criminal act or fraud; or

##### Wilful Misconduct in connection with any Project Document,

* + 1. on the part of the Principal or Principal Associate;

#### Liability arising from any loss of or damage to third party property or injury to, illness or death of any person;

#### Liability arising from any Uninsurable Risk for which the Project Documents require the Principal to indemnify the Contractor pursuant to this Deed;

#### Liability which the Principal, each Principal Associate and each Direct Interface Party would be entitled and able to recover under any Insurances, or would have been entitled but for an Insurance Failure Event or a Principal Insurance Breach; and

#### any amounts payable and calculated in accordance with:

##### clause 29.8; or

##### clause 44.2 in respect of termination.

## Benefits held on trust

### (**Benefit of indemnities**): The Principal holds on trust for each Principal Associate and each other Indemnified IP Person, the benefit of:

#### each indemnity, release, limitation of Liability and exclusion of Liability given by the Contractor under this Deed in favour of the relevant Principal Associate and any other Indemnified IP Person; and

#### each right in this Deed to the extent that such right is expressly stated to be for the benefit of the Principal, a Principal Associate or any other Indemnified IP Person.

### (**Contractor acknowledgement**): The Contractor acknowledges the existence of such trusts and consents to the Principal exercising rights in relation to, or otherwise enforcing such indemnities, releases, limitations and rights on behalf of Principal Associates and each other Indemnified IP Person.

### (**Amendment**): The parties agree that the Principal does not require the consent of any Principal Associate or any other Indemnified IP Person to amend or waive any provision of any Project Document.

# Insurance

## Insurances

### The Contractor must procure and maintain, or cause to be procured and maintained:

#### (**Insurances**): the Insurances; and

#### (**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 Contractor's Activities.

### The Principal must procure and maintain, or cause to be procured and maintained, the Insurances (Principal). ***[Drafting note: To be considered whether this paragraph should be included on a project specific basis and it will be dependent on the state of the insurance market.]***

## General insurance requirements

### The Contractor must:

#### (**Reputable Insurers**): effect all Insurances with insurance companies which have the Required Rating (**Reputable Insurer**);

#### (**premiums**): punctually pay all premiums and other amounts payable in connection with the Insurances, and give the Principal copies of receipts for payment of premiums if and when requested by the Principal;

#### (**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 Principal's approval;

#### (**not prejudice**): not do or permit, or omit to do, anything which prejudices any Insurance;

#### (**rectify**): promptly rectify any situation which may, if not rectified, prejudice any Insurance;

#### (**fully disclose**): fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Insurances;

#### (**comply**): comply at all times, with the legal obligations of proponents for, parties to and beneficiaries of contracts of insurance and with the terms of each Insurance; and

#### (**do everything to enable Principal recovery**): do everything reasonably required by the Principal to whom the benefit of such Insurance may extend, to enable the Principal to claim, pursue and recover money due under that Insurance;

### The Principal must procure and maintain the Insurances (Principal) from the VMIA

## Terms of Insurances

1. The Contractor must ensure that each of the Insurances:

### (**insured persons**): 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;

### (**terms**): contains terms that:

#### are acceptable to the Principal, such acceptance not to be unreasonably withheld; and

#### to the extent applicable, are to the effect that the relevant insurer:

##### does not require the Principal, any Principal Associate or any Indemnified IP Person to exhaust the indemnities given by the Contractor or any Contractor Associate to them under any Project Document, before the insurer will consider, accept or pay proceeds in respect of any claim under the Insurance;

##### in the case of those Insurances where there is more than one Insured party (but excluding workers’ compensation insurance, motor vehicle 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;

##### in the case of the contract works (material damage) insurance and industrial special risk insurance, 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;

##### in the case of liability Insurances, under which more than one person is Insured (but excluding workers’ compensation insurance, motor vehicle insurance, third party property damage and compulsory third party motor vehicle insurance) agrees to treat each Insured as a separate Insured as though a separate Deed of insurance had been entered into with each of the Insureds, without increasing the overall limit of indemnity under the relevant Insurance;

##### except in relation to workers’ compensation insurance, professional indemnity insurance, motor vehicle insurance, compulsory third party motor vehicle insurance and those insurances which are subject to an aggregate policy limit, agrees that no reduction in limits or coverage affecting the Project or the Works 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 Principal and the Contractor;

##### in the same of any professional indemnity insurance to be effected by the Contractor, include a specific acknowledgment that indemnity is provided under the policy notwithstanding that the Contractor may be reimbursed for any loss in accordance with the provisions of this Deed; and

##### will not impute to any Insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other Insured;

### (**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;

### (**project specific**): if stipulated in the Insurance Schedule, is effected on a project specific basis; and

### (**consistency**): is consistent with the terms set out in the Insurance Schedule or, to the extent of any departure, has the Principal's written approval.

## Procurement of Insurances (Principal)

### (**Required information**): No later than the Contract Date, the Contractor must provide to the Principal all information the Principal reasonably requires for the purpose of procuring the Insurances (Principal).

### (**Policy terms**): As soon as practicable after receiving the information provided under clause 42.4(a) but in any event not later than the date which is 10 Business Days prior to Condition Precedent Satisfaction Date, the Principal must provide the Contractor with proposed policy terms for the relevant Insurances (Principal) and details of the premiums payable for those Insurances (Principal).

### (**Acceptability of terms**): Within 10 Business Days after receiving the information provided under clause 42.4(b), the Contractor must advise the Principal whether the proposed policy terms for the Insurances (Principal) are acceptable to the Contractor. If the Contractor:

#### 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 Principal must procure the relevant Insurances (Principal) on the terms proposed, and pay the premiums for such Insurances (Principal); or

#### advises that the proposed policy terms are not acceptable within that 10 Business Day period, it must provide reasons for this to the Principal, following which:

##### the parties must, within 10 Business Days, meet to attempt to resolve the matter; and

##### if the matter is not resolved at the meeting referred to in clause 42.4(c)(ii)A, either party may refer the matter to expert determination in accordance with clause 42.4(d).

### (**During resolution**): If either party refers the matter for resolution in accordance with clause 42.4(c)(ii)B, then while the Issue is being resolved, the Principal must place the policy for the relevant Insurances (Principal) in accordance with the terms referred to in clause 42.4(b).

### (**Prior to expiry**): No later than 3 months prior to the expiry of the period of each policy of the Insurances (Principal), the parties must repeat the procedures under clauses 42.4(a), 42.4(b), 42.4(c) and 42.4(d), subject to clause 42.4(f).

### (**Increased premiums**): If the amount of a premium payable for an Insurance (Principal) procured under clause 42.4(a), 42.4(b), 42.4(c) or 42.4(d) is significantly greater than the premium which was paid for that Insurance (Principal) in the previous period of insurance, and in the Principal's opinion, acting reasonably, the increase in the premium is wholly or partially attributable to an act or omission of the Contractor, or a substantial amendment to the policy terms as compared with previous policies procured or maintained by the Principal or determined under clause 42.4(d):

#### the Principal must advise the Contractor of its opinion, following which within 10 Business Days the parties must meet to attempt to resolve the matter; and

#### without limiting the Contractor's rights under clause 48, if the matter is not resolved by the process outlined in clause 42.4(f)(i):

##### the Principal will make a reasonable assessment of the amount of the premium increase which is attributable to an act or omission of the Contractor or a substantial amendment to the policy terms as compared with previous policies procured by the Principal or determined under clause 42.4(d), which amount will be a debt due and payable by the Contractor to the Principal; and

##### the Principal must advise the Contractor of its assessment as soon as practicable.

### [(**Contractor to keep informed**): The terms and conditions of the policy may change from time to time. The terms and conditions are publicly available on VMIA's website and it is the responsibility of the Contractor to keep itself informed of any changes to these terms and conditions. If for any reason a change is made to the terms and conditions of the policy, the change will not constitute a breach of this Deed. If the change is material, the Contractor will be entitled to an Adjustment Event (Cost) for any Reimbursable Costs incurred by the Contractor to maintain an equivalent level of insurance coverage (that was in place before the change), provided the Contractor provides no less than 10 Business Days’ notice of its intention to incur such costs.] ***[Drafting note: Optional provision in relation to Insurances (Principal) to be considered on a project-specific basis.]***

## Limitation of Principal Liability

### (**No Claim**): Notwithstanding the procurement of any Insurances (Principal) by the Principal, the Contractor will not be entitled to make any Claim against the Principal or any of the Principal Associates arising out of or in connection with any Insurances (Principal) other than:

#### a claim upon VMIA or the applicable Reputable Insurer in its capacity as an insurer under a relevant Deed of insurance; or

#### in respect of a failure by the Principal to meet its obligations under clauses 42.1(b), 42.3(b), 42.3(c) or 42.4 to 42.5.

### (**No Claim on the Principal**): The Contractor 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 (Principal), will not of itself constitute a failure of the Principal to meet its obligations under clauses 42.3(b), 42.3(c) or 42.4 to 42.5 or any other act or omission of the Principal or any Principal Associate upon which the Contractor may make a Claim.

## Insurances primary

### (**Enforceability of rights under indemnities**): The Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurances or the Insurances (Principal) before enforcing any of its respective rights or remedies under the indemnities given or referred to in this Deed or generally.

### (**Contractor's obligations not affected**): The Contractor is not relieved from and remains fully responsible for its obligations under this Deed regardless of whether the Insurances or the Insurances (Principal) respond or fail to respond to any claim and regardless of the reason why any Insurance responds or fails to respond.

## Notification and making of claims

1. The Contractor must:

### (**notification**): promptly notify the Principal of any occurrence, in connection with the Project, that may give rise to a claim under any Insurance unless an Insured's right of indemnity under the relevant Insurance would be prejudiced by giving such notice;

### (**subsequent developments**): keep the Principal informed of subsequent developments concerning the occurrence notified under clause 42.7(a);

### (**pursue claims**): subject to clause 42.7(d), diligently pursue any claim which it has under any Insurance which has arisen in connection with the Project and ensure that any Contractor Associate which has any such claim does likewise; and

### (**Principal consent**): not compromise, settle, prosecute or enforce any claim of the type referred to under clause 42.7(a) under any Insurances without the Principal's written consent (which must not be unreasonably withheld or delayed).

## Evidence of Insurances

### (**Evidence**): As often as reasonably requested by the Principal, the Contractor must give the Principal evidence satisfactory to the Principal that the Insurances have been procured and continue to be maintained in accordance with this Deed, including:

#### (**policies**): copies of each Insurance policy, or if the Contractor is unable to provide a copy of an Insurance policy, the Contractor must make such Insurance policy available to the VMIA, the Principal's insurance broker and the Principal's lawyers to review confidentially on behalf of the Principal, in accordance with the Review Procedures;

#### (**certificate**): signed certificates of currency evidencing at a minimum the sum insured, deductible(s), class of policy and any unusual terms;

#### (**all requirements**): confirmation that all the requirements of the Insurances specified in the Insurance Schedule are met by the Insurances; and

#### (**particular** **deductibles**): such other details of the terms of coverage, erosion and reinstatement of limits, as the Principal may reasonably require,

* 1. to enable the Principal to satisfy itself that the Contractor is complying with all of the insurance requirements of the Project under this Deed.

### (**Principal to provide evidence**): The Principal must provide to the Contractor upon inception and each renewal of the Insurances (Principal), satisfactory evidence that the Insurance (Principal) is in force including:

#### copies of each signed insurance policy and certificates of currency:

##### issued by the VMIA; and

##### confirming that the Insurance (Principal) in question is current and contains all of the minimum prescribed terms specified in the Insurance Schedule in respect of that insurance;

#### deductibles, terms of coverage, erosion and reinstatement limits as the other party may reasonably require, to enable the Contractor to satisfy itself that all of the insurance requirements for the Project in accordance with this Deed are complied with; and

#### where requested, access to the terms of the Insurances (Principal) procured by a party, for the other party, its brokers and legal advisors.

### (**Failure to provide evidence**): If the Principal fails to provide satisfactory evidence of insurance in accordance with clause 42.8(b), within 10 Business Days after the later of the date upon which the relevant Insurance (Principal) is required by this clause 42 to be procured and receipt of notice of such default from the Contractor, the Contractor may procure the Insurance (Principal) and the costs of it doing so, including the premium, brokerage and all taxes, levies or other statutory charges, will be treated as Reimbursable Costs.

## Principal may effect Insurances

### (**Principal may effect Insurances**): The Principal may procure or maintain the relevant Insurances and pay the relevant premiums in connection with such Insurances:

#### if the Contractor fails to provide evidence satisfactory to the Principal (acting reasonably) 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 42.8;

#### in the event of any default by the Contractor or a Contractor Associate in procuring or maintaining Insurances in accordance with this clause 42;or

#### if any Insurance that the Contractor is obliged to effect and maintain under this Deed is terminated and the Contractor has failed to effect and maintain replacement Insurance for that Insurance under this Deed on or before the date of that termination.

### (**Costs to be recoverable from the Contractor**): Without limiting any other remedies of the Principal under this Deed or at Law, any costs reasonably incurred by the Principal in taking such action as may be necessary in accordance with this clause 42.9 will be a debt due and payable by the Contractor to the Principal.

## Proportionate liability

### (**Reduce or exclude insurance cover**): Subject to clause 42.10(b), the Contractor 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 the Contractor in connection with it.

### (**Non-specific Project Insurance**): To the extent that the relevant Insurance is not specific to the Project, the Contractor is only required to use its reasonable endeavours to procure Insurance on the terms referred to in clause 42.10(a).

## Liability for deductibles and excesses

### (**Liability**): Subject to clause 44.11(b), the excess or deductible applicable to any insurance claim made under any insurance policy required to be effected and maintained under this Deed must be paid or borne by the Contractor.

### (**Reimbursable Costs**): The excesses or deductibles incurred by the Contractor under clause 42.11(a) will be Reimbursable Costs, except to the extent the relevant event or claim was caused or contributed to by the Contractor's Activities.

## Pass through of insurance payouts

### (**Contractor pass through payment**): Other than in respect of the Contract Works Insurance and Transit Insurance, to the extent that the Contractor receives payment under an Insurance or Insurances (Principal) in relation to an amount that has already been reimbursed under this Deed, then:

#### the Contractor must as soon as practicable and in any event within 10 Business Days of receipt of that payment, pass on full payment to the Principal and the AOC will be reduced by the amount of that payment; and

#### if a Gainshare Amount has been paid to the Contractor or a Painshare Amount has been paid by the Contractor, then clause 29.4 applies in respect of any underpayment or overpayment determined to have been made after recalculation of the Gainshare Amount or Painshare Amount (if any and as the case may be) on the basis of the adjusted AOC.

### (**Principal pass through payment**): Other than in respect of the Contract Works Insurance and Transit Insurance, to the extent that the Principal or an Authority receives payment under an Insurance or Insurances (Principal) that reimburses any amounts that were or are treated as Reimbursable Costs for the purposes of calculating the AOC under this Deed, then:

#### the AOC will be reduced by those amounts; and

#### if a Gainshare Amount has been paid to the Contractor or a Painshare Amount has been paid by the Contractor, then clause 29.4 applies in respect of any underpayment or overpayment determined to have been made after recalculation of the Gainshare Amount or Painshare Amount (if any and as the case may be) on the basis of the adjusted AOC.

### 

PART J — DEFAULT AND TERMINATION

# Major Default

## Events deemed capable of Cure

1. The parties acknowledge and agree that the following paragraphs of the definition of Major Default will, for the purposes of this clause 43, be deemed to be capable of Cure notwithstanding that they may not, as a matter of fact, be capable of remedy or cure:

### (**late Practical Completion**): paragraph (a) (late Practical Completion);

### (**Local Jobs First Requirements**): paragraph (m), in respect of a breach of the Local Jobs First Requirements or the LIDP;

### (**Social Procurement Framework**): paragraph (p), in respect of a breach of the Social Procurement Commitments, the Social Procurement Commitment Schedule or a failure by the Contractor to meet the Social Procurement Target; and

### (**Fair Jobs Code**): paragraph (p), in respect of a breach of section 3 (Fair Jobs Code) of Schedule 14 (*Relevant State Policies*).

## Notice of Default

### (**Default Notice**): If the Principal considers that a Default has occurred, the Principal Representative may give the Contractor a notice in writing:

#### stating that a Default has occurred;

#### identifying and providing details of the Default; and

#### requiring the Contractor to Cure the Default where it is capable of Cure, or comply with any reasonable requirements of the Principal where the Default is not capable of Cure, within 20 Business Days (or such longer period as is stated in the notice) of the Contractor receiving that notice,

* 1. (a **Default Notice**).

### (Default will become Major Default): If the Contractor:

#### fails to Cure the Default; or

#### if the Default is not capable of Cure, fails to comply with the reasonable requirements of the Principal,

* 1. in accordance with the Default Notice, the Default will become a Major Default.

## Notice of Major Default

### (**Contractor's obligations**): The Contractor must:

#### promptly notify the Principal upon the occurrence of a Major Default; and

#### immediately take steps to mitigate, minimise or avoid the effects, consequences and duration of the Major Default.

### (**Major** **Default Notice**): If the Contractor notifies the Principal of a Major Default under clause 43.3(a) or if the Principal considers that a Major Default has occurred, the Principal may give the Contractor a notice:

#### stating that a Major Default has occurred;

#### identifying and providing details of the Major Default; and

#### if the Major Default:

##### is capable of Cure, stating a date by which the Contractor must Cure the Major Default (which, subject to clause 43.4(h), must allow for a reasonable period of time to Cure the Major Default in the circumstances);

##### is deemed capable of Cure under clause 43.1, stating any reasonable requirements of the Principal to overcome the consequences of the Major Default (which will include the applicable requirements under clause 43.4(b)) and a date by which the Contractor must comply with those requirements (which, subject to clause 43.4(h), must allow for a reasonable period of time to comply with the Principal's requirements in the circumstances);

##### is not capable of Cure, stating any reasonable requirements of the Principal to overcome the consequences of, or compensate the Principal for, the Major Default and a date by which the Contractor must comply with those requirements (which, subject to clause 43.4(h), must allow for a reasonable period of time to comply with the Principal's requirements in the circumstances); or

##### is not capable of Cure and the Principal has formed the view (acting reasonably) that there are no reasonable requirements that can be met by the Contractor to overcome the consequences of, or compensate the Principal for, that Major Default, stating that to be the case along with its reasons for forming that view,

* 1. (a **Major Default Notice**).

### (**Unreasonable requirements**): If the Contractor, acting in good faith, disputes the Major Default Notice, it must promptly notify the Principal including the reasons why.

### (**Principal to act in good faith**): The Principal must, in good faith, consider the Contractor's notice under clause 43.3(c) and must:

#### make any changes to the Major Default Notice that it considers reasonable as a consequence of the Contractor's notice (if any); and

#### notify the Contractor of any such changes.

### (**Major Default not capable of Cure**): If:

#### the Principal issues a notice in accordance with clause 43.3(b)(iii)D, that there are no reasonable requirements that can be met by the Contractor to overcome the consequences of, or compensate the Principal for, a Major Default not capable of Cure, and this is disputed by the Contractor in accordance with clause 43.3(c); and

#### having considered the Contractor's notice issued under clause 43.3(c), and subject to clause 43.3(f), the Principal maintains the view (acting in good faith) that there are no reasonable requirements that can be met by the Contractor to overcome the consequences of, or compensate the Principal for, that Major Default,

* 1. the Principal must notify the Contractor of this determination and the Major Default will be a Default Termination Event.

### (**Notify Contractor and the Principal Representative**): Prior to issuing a notice under clause 43.3(e), the Principal must:

#### notify the Contractor and the Principal Representative that it proposes to form a view under clause 43.3(e), and in the case of:

##### the Contractor, advise the Contractor that it may submit to the Principal; and

##### the Principal Representative, require the Principal Representative to submit to the Principal,

* + 1. any comments or other information within 10 Business Days after the date of the notice under this clause 43.3(f)(i) (or such later date as determined by the Principal (acting reasonably)), which the Contractor or the Principal Representative (as the case may be) considers may be relevant to the Principal forming or not forming a view in accordance with clause 43.3(e); and

#### consider any comments or other information submitted by the Contractor and the Principal Representative under clause 43.3(f)(i).

### (**Contractor not satisfied**): If the Contractor is not satisfied with:

#### the changes (if any) made by the Principal under clause 43.3(d); or

#### the Principal's determination under clause 43.3(e),

* 1. the Contractor may refer the matter to expert determination in accordance with clause 45.2.

## Contractor to provide Cure Program and comply with Major Default Notice

### (**Cure Program**): Subject to clause 43.4(c), if the Principal gives a Major Default Notice to the Contractor, then notwithstanding its rights under clauses 43.3(c) to 43.3(g), within 10 Business Days after receipt of the Major Default Notice, the Contractor must:

#### if the Major Default is capable of Cure, unless the relevant Major Default is a failure to pay amounts, give the Principal a program to Cure the Major Default; and

#### in the case of a Major Default that is deemed capable of Cure under clause 43.1, give the Principal a program to comply with any reasonable requirements of the Principal (which may include a plan to replace the Subcontractor causing the Major Default); and

#### if the Major Default is not capable of Cure, and the Principal has not issued a notice under clause 43.3(e), give the Principal a program to comply with any reasonable requirements of the Principal (which may include a plan to replace the Subcontractor causing the Major Default),

* 1. (in each case, a **Cure Program**) that complies with the terms of the Major Default Notice and clause 43.4(b) for review by the Principal in accordance with the Review Procedures.

### (**Content of Cure Program**): Any Cure Program provided to the Principal under clause 43.4(a) must include:

#### 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

#### any temporary measures that will be undertaken while the Major Default is being Cured to ameliorate the impact of the Major Default.

### (**Existing Remediation Plan**): Where the Major Default is a failure by the Contractor to achieve Practical Completion by the Date for Practical Completion and the Contractor has provided a Remediation Plan in accordance with clause 27.3(e)(ii) or an Amended Remediation Plan in accordance with clause 27.3(j), which has a date by which Practical Completion will be achieved which is after the Date for Practical Completion, the Contractor 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 to satisfy the requirements of clause 43.4(b).

### (**Comply**): Notwithstanding the fact that it may have exercised its rights under clauses 43.3(c) to 43.3(g), the Contractor must comply with the Major Default Notice and any Cure Program provided under clause 43.4(a) or clause 43.4(c) as reviewed by the Principal Representative in accordance with the Review Procedures.

### (**Extension of Major Default Notice**): Subject to clause 43.4(g) and clause 43.4(h), if the Contractor has been diligently pursuing:

#### if the Major Default is capable of Cure, the Cure of that Major Default; or

#### if the Major Default is not capable of Cure, compliance with any reasonable requirements of the Principal,

* 1. the Contractor may request that the Principal extend the Cure Program and the time stated in the Major Default Notice will be extended by such period as the Principal determines is required (acting reasonably) to enable the Contractor to either Cure the Major Default or comply with any reasonable requirements of the Principal.

### (**Request for further information**): The Principal may request, and the Contractor must provide, any further information reasonably required by the Principal in respect of the Contractor's Cure of the Major Default or compliance with the reasonable requirements of the Principal to enable the Principal to determine the required extension under clause 43.4(e) (if any).

### (**Limitation**): Unless otherwise agreed by the Principal, the Contractor is only entitled to one extension under clause 43.4(e) in connection with the same Major Default.

### (**Maximum Cure period**): Subject to clause 43.5(a), the maximum period of time which the Contractor may be given to Cure a Major Default (or comply with the reasonable requirements of the Principal where the Major Default is not capable of Cure), including any extension granted under clause 43.4(e), will be [#] months in the aggregate from the date of the applicable Major Default Notice. ***[Drafting note: To be considered whether a maximum cure period for Major Defaults other than failure to achieve Practical Completion by the Date for Practical Completion (para (a) in the definition of Major Default).]***

## Extension of Cure Program for Adjustment Event (Time)

### (**Impact of Adjustment Event (Time)**): To the extent that the Contractor is prevented from carrying out its obligations in accordance with a Cure Program as a direct result of an Adjustment Event (Time), then, subject to clause 43.5(b), the Principal must extend the periods identified in clause 43.4(h) and the time set out in the Major Default Notice:

#### to reflect the period the Contractor is prevented from carrying out its obligations in accordance with the Cure Program as a consequence of that Adjustment Event (Time); or

#### without limiting clause 39, in respect of loss or damage caused by that Adjustment Event (Time) 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 the Contractor complied with its obligations under this Deed,

* 1. provided that:

#### the Contractor is entitled to be granted an extension of time under clause 27.8 or clause 27.9 (as applicable) for the relevant Adjustment Event (Time); and

#### the Contractor demonstrates to the Principal's satisfaction (acting reasonably) that the Contractor has diligently pursued and, to the extent reasonably possible, continues to diligently pursue the Cure Program in accordance with clause 43.4(d).

### (**Limitation on extension**): The Contractor will not be entitled to an extension to the periods identified in clause 43.4(h) and the time set out in the Major Default Notice for an Adjustment Event (Time) beyond the period of any extension of time or relief from performance that the Contractor is granted for that Adjustment Event (Time) under clause 27.8 or clause 27.9 (as applicable).

## Default Termination Event

1. If any Default Termination Event occurs, the Principal may, without limiting any rights or remedies it has under any Project Document or at Law (other than rights of termination), elect to:

### (**terminate**): terminate this Deed under clause 44.3 at any time after the occurrence of a Default Termination Event; or

### (**take out**): take out of the hands of the Contractor the whole or part of the work remaining to be completed on and from the date of the notice.

## Procedure when the Principal takes over work

### If the Principal takes work out of the hands of the Contractor under clause 43.6(b):

#### the Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the Contractor;

#### the Principal may complete that work itself or by engaging another person and the Principal may without payment of compensation take possession of:

##### the Site and such of the Constructional Plant and other things on or in the vicinity of the Site; and

##### the Contractor's Material and other documents, information, materials and the like produced or held by the Contractor,

* + 1. which are reasonably required by the Principal to facilitate completion of the work. The Principal must keep records of the cost of completing the work; and

#### the Principal Representative will determine a reasonable adjustment to the KRAs to the extent necessary and appropriate to reflect the work taken out of the hands of the Contractor.

### If the Principal takes possession of Constructional Plant, Contractor's Material or other things, the Principal must maintain them (provided that this must not extend to maintenance for fair wear and tear) and the Principal must return to the Contractor the Constructional Plant and any things taken under this clause 43.7 which are surplus and the Contractor's Material.

### When work taken out of the hands of the Contractor under clause 43.6(b) is completed:

#### the Principal Representative must ascertain the cost incurred by the Principal in completing the work and must issue a certificate to the Principal and the Contractor certifying the amount of that cost, and setting out the calculations employed to arrive at that cost; and

#### the cost incurred by the Principal will be a debt due from the Contractor to the Principal.

## Default of the Principal

1. If the Principal commits a Substantial Breach of this Deed, the Contractor may give the Principal a default notice in accordance with clause 43.9.

## Requirements of a default notice by the Contractor

1. A notice given under clause 43.8 must:

### state that it is a notice under clause 43.8 of this Deed;

### specify the particulars of the alleged Substantial Breach; and

### specify the time and date by which the Principal must remedy the breach (which must not be less than 20 Business Days after the notice is given to the Principal).

## Rights of the Contractor

### If by the time specified in a notice given under clause 43.9, the Principal fails to remedy the breach, the Contractor may by notice in writing to the Principal suspend the whole or any part of the Contractor's Activities.

### The Contractor must lift the suspension if the Principal remedies the breach but if within 20 Business Days of the date of suspension under this clause 43.10, the Principal fails to remedy the breach or, fails to make other arrangements to the satisfaction of the Contractor (acting reasonably), the Contractor may by notice in writing to the Principal terminate this Deed.

### The Contractor will be entitled to an Adjustment Event (Cost) in respect of any Reimbursable Costs incurred by the Contractor by reason of the suspension except to the extent the Contractor fails to take reasonable steps to mitigate those Reimbursable Costs.

# Termination

## Sole basis

### (**Sole basis**): Clauses 3 and 43 and this clause 44 set out the sole bases at Law or otherwise upon which the Principal is entitled to terminate, rescind or accept a repudiation of this Deed.

### (**No right to terminate**): The Contractor acknowledges and agrees that the Contractor has no right to, and will not, terminate, surrender, rescind or accept repudiation of any Project Document notwithstanding any other provision of this Deed or any other Project Document or any rights the Contractor would have at Law or otherwise (including for repudiation) but for this clause 44.1(b).

## Termination for convenience

### (**Termination for convenience notice**): The Principal may:

#### at any time, for its convenience, and for any reason, terminate this Deed by giving the Contractor not less than 60 Business Days' notice; and

#### thereafter, complete any uncompleted part of the Project, either itself or by engaging others to do so.

### (**Date of termination**): Termination of this Deed for convenience will take effect upon the date specified in the notice given under clause 44.2(a).

### (**Without prejudice**): The termination of this Deed by the Principal pursuant to this clause 44.2, will be without prejudice to the Principal's right to recover damages in respect of any prior breach of this Deed by the Contractor.

### (**Payment on termination for convenience**): If this Deed is terminated for convenience under clause 44.2(a), the Contractor will be entitled to payment of the following amounts (**Termination for Convenience Payment**)as honestly and fairly determined by the Principal Representative:

#### the:

##### Reimbursable Costs and Corporate Overhead and Profit;

##### Gainshare Amount or Painshare Amount (if any and as the case may be); and

##### Performance Reward Amount (if any),

* + 1. payable in accordance with clause 29.1 for the Contractor's Activities performed prior to the date of termination (to the extent not included in an amount previously paid by the Principal to the Contractor). In considering any such amounts that may be payable, the Principal Representative must estimate the amount which would have been payable if this Deed had not been terminated (on a pro rata basis);

#### the cost of plant or materials reasonably ordered by the Contractor for the Works for which the Contractor is legally bound to pay provided that:

##### the value of the plant or materials is not included in the amount payable under 44.2(d)(i); and

##### title in the plant and materials will vest in the Principal upon payment;

#### costs reasonably incurred by the Contractor in the expectation of completing the whole of the Contractor's Activities and not included in any payment by the Principal; and

#### the reasonable cost of removing from the Site all labour, Constructional Plant and other things used in connection with the Contractor's Activities,

* 1. but in no case will the Contractor be entitled to any payment in relation to loss of profit other the payment of any Corporate Overhead and Profit under clause 44.2(d)(i)A.

### (**Contractor obligations**): The Contractor must:

#### take all reasonable steps to mitigate the costs referred to in clauses 44.2(d)(ii) to 44.2(d)(iv);

#### immediately hand over to the Principal all copies of documents provided to the Contractor by the Principal; and

#### cause to be delivered to the Principal any plant and materials referred to in clause 44.2(d)(ii) or any unfixed plant and materials for which the Principal has paid pursuant to clause 30.4.

### (**Limitation**): The amount to which the Contractor is entitled under clause 44.2(d) will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of this Deed and the Contractor may not make any Claim against the Principal arising out of, or in any way in connection with, the termination of this Deed other than for the amount payable under clause 44.2(d).

### (**Release of Security**): After the Contractor has satisfied its obligations under clause 44.2(e), the Principal must release any Security then held by the Principal.

### (**Survival**): Clauses 44.2(d), 44.2(e), 44.2(f) and 44.2(g) and this clause 44.2(h) survive termination of this Deed.

## Termination for Default Termination Event

### (**Termination for Default Termination Event**): If a Default Termination Event occurs, the Principal may terminate this Deed by giving notice to the Contractor.

### (**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 44.3(a).

### (**Payment on termination for Default Termination Event**): If this Deed is terminated pursuant to clause 44.3(a) or 43.10(b), the rights and liabilities of the parties will be the same as they would have been at common law had the defaulting party repudiated this Deed and the other party elected to treat this Deed as at an end and recover damages (**Default Termination Payment**). Without limiting the foregoing the Contractor will not be entitled to a quantum meruit.

### (**Post termination obligations**): If this Deed is terminated for any reason:

#### the Principal may, without payment of compensation, take possession of the Design Documentation and all other documents relevant to the Works; and

#### the Contractor must:

##### take such action as is necessary to make the Site safe prior to de-mobilisation from Site;

##### providing sufficient information to the Principal and such other persons notified by the Principal to determine the condition of the Works and the Site, at the time;

##### procuring the novation or, if such novation cannot be procured, the assignment of:

###### any Subcontracts; and

###### any leases, subleases and licences (other than those to which the Principal is a counterparty),

* + - 1. as the Principal may nominate, which are material to the performance of the Works after termination;

##### granting or procuring the grant to the Principal or a nominee of the Principal a licence or sub-licence to such Intellectual Property Rights as will enable the Principal to perform the Works to the standards specified in this Deed after the termination; and

##### doing all other acts and things reasonably required to enable the Principal to be in a position to perform the Works after the termination to the standards specified in this Deed, with minimum disruption.

### (**Survival**): This Clause 44.3 survives termination of this Deed.

## Payment on termination

### (**Termination Payment**): Subject to clause 44.4(c):

#### if the termination payment is a positive amount, the Principal must pay to the Contractor; and

#### if the termination payment is a negative amount, the Contractor must pay to the Principal the absolute value of,

* 1. in accordance with clause 44.4(b) and as a debt due and payable, the relevant Termination Payment, being:

#### for termination of this Deed for convenience under clause 44.2, the Termination for Convenience Payment calculated under clause 44.2(d);

#### for termination of this Deed for Default Termination Event under clause 44.3, the Default Termination Payment under clause 44.3(c).

### (**Timing**): Subject to clause 44.4(c), the relevant party must make the Termination Payment on the date (if any) specified in clauses 44.2 or 44.3 (as applicable), or if no such date is specified, no later than 20 Business Days after the date on which the amount of the relevant Termination Payment is agreed by the Principal and the Contractor or, failing agreement, is determined by an independent expert in accordance with clause 48.

### (**Contractor obligations**): The Principal's obligation to make a Termination Payment to the Contractor under clause 44.4(a) is subject to the Contractor having delivered up the vacated Site and the Works to the Principal.

### (**Principal's rights**): If the Principal is not satisfied that the Contractor has satisfied its obligations under clause 44.4(c), and otherwise met all other obligations that the Contractor is required to meet to the Principal under this Deed, the Contractor will be Liable to the Principal for the amount that is reasonably necessary to cover the Principal's expected costs of performing (or procuring others to perform) those obligations as a debt due and payable by the Contractor to the Principal.

### (**Interest**): In respect of Termination Payments calculated under clause 44, interest accrues in respect of any Termination Payment calculated under clauses 44.2(d) and 44.3(c) from and including the date of termination to (but excluding) the date on which the Termination Payment is paid in full. Interest is payable on the date on which the Termination Payment is paid.

## Waiver

1. If this Deed is terminated then, subject to clause 44.4:

### (**waiver of rights to Claim**): the Contractor waives any right it might otherwise have to make any Claim against the Principal or any Principal Associate by reason, or as a result, of the termination or the circumstances relating to the termination, or otherwise in connection with the Project; and

### (**no further Liability**): the Principal and each Principal Associate will have no further Liability to the Contractor or any Contractor Associate:

#### by reason, or as a result, of the termination or the circumstances relating to the termination; or

#### otherwise in connection with the Project, other than any Liability that is agreed or determined in accordance with this Deed with respect to any Claim that:

##### has been made by the Contractor prior to termination in accordance with the terms of this Deed;

##### is not in connection with the termination or the circumstances relating to the termination; and

##### has not been included in the calculation of Termination Payments.



PART K — ISSUE RESOLUTION

# Issue resolution procedure

## Early identification and collaborative resolution of disputes

The parties agree:

### (**objectives**): to use their best endeavours to adhere to behaviours promoted to:

#### facilitate the avoidance of Issues; and

#### where an Issue does arise between the parties, achieve the expeditious, efficient and cost effective resolution of that Issue;

### (**achievement of objectives**):that the achievement of these objectives is best achieved by:

#### notifying each other of Issues as soon as they arise, so as to promote the resolution of such Issues within the shortest possible timeframe;

#### ensuring that all claims and defences are made in good faith, both regarding liability and quantum; and

#### undertaking an honest and early joint assessment of the true merits of the claims and defences so as to avoid claims lingering unresolved and to avoid a claims environment; and

### (**principle**): that their engagement at each stage of the dispute resolution procedure required by clause 45.2, is to be based on the principle of full and timely disclosure of each party's position on an open and transparent basis.

## Procedure

1. Unless a Project Document provides otherwise or the parties otherwise agree, the parties acknowledge and agree that any dispute between the Principal and the Contractor arising in connection with:

### (**the Project**): the Project (including questions concerning a Project Document's existence, meaning or validity); or

### (**decisions of Principal Representative**):any decision of the Principal Representative which is not final and binding on the parties,

1. (each an **Issue**), must only be resolved in accordance with the following procedure:

### (**Referral to IRT**): first, the Issue must be referred to the IRT in accordance with clause 46, if:

#### the Issue is referred to this clause 45.2 under any of clauses [#insert applicable Claim clause references where Claim is to be referred to the IRT immediately];

#### [#insert any other Issues that the parties require be referred to the IRT];

#### the parties otherwise agree that the Issue will be referred to the IRT in accordance with clause 46;

### (**negotiation**): second, the Issue must be the subject of negotiation as required by clause 47(a);

### (**expert determination**): third, if the Issue remains unresolved (in whole or in part) after the expiration of the relevant period for resolution referred to in clause 47 and either party wishes to pursue the Issue:

#### if the Issue is expressly referred to in a Project Document to be an Issue which may be referred to expert determination in accordance with clause 45.2, the Issue must be referred to expert determination in accordance with clause 45.2; or

#### if clause 45.2(e)(i) does not apply:

##### the parties may either agree that the Issue will be referred to expert determination in accordance with clause 45.2; or

##### if the parties do not agree in accordance with clause 45.2(e)(ii)A to refer the Issue to expert determination, either party may refer the Issue to arbitration in accordance with clause 49.1; and

### (**arbitration**): fourth, if the Issue has been referred to expert determination in accordance with clause 45.2 or clause 45.2(e)(ii)A, either party may subsequently refer the Issue to arbitration in the circumstances stated in clause 49.

# Issue Resolution Team

## Referral to the IRT

### (**Referral to IRT**): If an Issue arises and clause 45.2(c) applies, then a party must, if it wants to pursue the Issue, give notice to the other party requesting that the Issue be referred for resolution to the IRT.

### (**Contents of Notice**): A notice under clause 46.1(a) must:

#### state that it is a notice under clause 46.1(a); and

#### include or be accompanied by particulars of the matters which are the subject of the Issue.

## Composition of the IRT

### (**IRT** **Composition**): The IRT in respect of each Issue referred to it under clause 45.2(c) must comprise:

#### the Principal Representative and the Contractor Representative;

#### a nominated senior representative of each party with authority to resolve the particular Issue (including on the terms notified by the other party); and

#### a nominated representative of each party that is best and properly placed to speak to the facts and circumstances of the particular Issue,

(together the **IRT Representatives**). [***Drafting note: Depending on the size of the project, the parties may consider including an independent member on the IRT***.]

### (**Notice**): Each party must notify the other of its nominated representatives under clauses 46.2(a)(ii) and 46.2(a)(iii) within 2 Business Days of the date of the referral under clause 45.2(c).

## Main objectives of the IRT

1. The main objectives of the IRT Representatives in dealing with Issues are to:

### (**participation**): participate fully and effectively in good faith in the process;

### (**best for project basis**): identify and resolve or mitigate the underlying cause of the Issue on a best for project and value for money basis;

### (**fair resolution**): promote the fair resolution of Issues according to the substantial merits of the matter;

### (**efficiency**): act as speedily and with as little formality and technicality as practicable, and minimise the cost to the parties;

### (**expertise**): make appropriate use of the expertise and experience of each IRT Representative;

### (**achievement of Project Objectives**): make and consider proposals for how to resolve the Issue so as to maximise achievement of the Project Objectives;

### (**true matters**): agree matters known to be true;

### (**questions of liability**): agree questions of liability when the substance of the issue is quantum;

### (**technical arguments**): avoid reliance on technical arguments unless a party's interests would be prejudiced by the failure to comply with the particular technical requirement; and

### (**good faith**): seek to ensure that only those aspects of a claim or defence that are made in good faith, have a genuine legal, technical or factual basis, and are for an amount of compensation that is consistent with the amount that could reasonably be expected to be recovered, are pursued.

## Functions and responsibilities

### (**Resolution or Bespoke Resolution Procedure**): Within 20 Business Days of a referral under clause 46.1, the relevant IRT Representatives must attempt, acting consistently with the applicable Relationship Principles, the main objectives in clause 46.3 and on a genuinely collaborative and good faith basis, to:

#### resolve the Issue; or

#### if they cannot resolve the Issue, set up any procedure the IRT considers most suitable to resolve the Issue (**Bespoke Resolution Procedure**).

### (**Agreement**): Any agreement resolving the Issue (in whole or in part) or any Bespoke Resolution Procedure reached between the IRT Representatives will be recorded in writing, signed by or on behalf of each party and will be final and binding on the parties.

### (**Bespoke Resolution Procedure**): A Bespoke Resolution Procedure:

#### may include:

##### an agreed timetable for a party to provide further specified factual details, support or evidence for any relief claimed, including any agreed changes to the claim notification procedures under this Deed that would otherwise apply to the Issue;

##### the identification of specific issues for preliminary determination (such as whether condition precedent or time bar requirements have been satisfied);

##### an agreed process for the interim assessment of any relief claimed;

##### seeking a binding or non-binding advisory opinion from agreed counsel;

##### seeking joint technical advice from an independent third party such as a programming expert or a quantity surveyor;

##### a standstill on notice requirements;

##### referring the Issue to expert determination in accordance with clause 45.2 as may be adjusted by the IRT Representatives to suit the Issue; and

##### referring the Issue directly to arbitration under clause 49 as may be adjusted by the IRT Representatives to suit the Issue; and

#### must specify when the Bespoke Resolution Procedure is taken to be concluded.

# Senior negotiations

### (**Notification**): If an Issue arises (and where clause 45.2(c) applies, the Issue remains unresolved (in whole or in part) on the IRT End Date) then a party must, if it wants to pursue the Issue, and in the case of the Contractor provided that it has satisfied the requirements referred to in clause 45.2(c) where applicable, give notice to the other party requesting that the Issue be referred for resolution by between the Chief Executive Officers or Managing Directors (or equivalent) of the Contractor and the Principal (**Representatives**).

### (**Contents of Notice**): A notice under clause 47(a) must:

#### state that it is a notice under clause 47; and

#### include or be accompanied by particulars of the matters which are the subject of the Issue.

### (**Attempt to resolve Issue**): If an Issue is referred to negotiation under clause 47(a), then:

#### the Representatives must meet and attempt in good faith to resolve the Issue (in whole or in part) within [10] Business Days after the date on which the notice under clause 47(a) is received or such later date as the parties may agree; and

#### any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and will be final and binding on the parties.

### (**Meeting**): The Representatives may agree to call a meeting of the Project Control Group or the Senior Representatives Group to assist in the resolution of the Issue by the Representatives in accordance with clause 47(c)(i), which meeting must, unless otherwise agreed, take place within the [10] Business Days referred to in clause 47(c)(i).

# Expert determination procedure

## Referral and selection of expert

### (**Referral to expert determination**): If:

#### clause 45.2(c) applies and the IRT agree a Bespoke Resolution Procedure involving expert determination under this clause 48 (subject to any agreed adjustments to suit the Issue), then the Issue is referred to expert determination under this clause (subject to any agreed adjustments to suit the Issue) on the date specified in the agreement under clause 46.4(b) or if no such date is specified on the date of the agreement itself; or

#### an Issue:

##### remains unresolved (in whole or in part) within 10 Business Days after the date on which the notice under clause 47(a) is received or such later date as the parties may agree; and

##### either clause 45.2 applies or the parties agree to refer the Issue to expert determination under clause 45.2(e)(ii)A,

#### then if a party wants to pursue the Issue, that party must refer the Issue to expert determination within 20 Business Days after the date on which the notice under clause 47(a) is received or such later date as the parties may agree.

### (**Expert appointment**): Where the IRT Representatives agree that a Bespoke Resolution Procedure is to involve expert determination, the expert will be:

#### the expert will be as agreed between the parties; or

#### as appointed by the President of the Victorian Chapter of the Resolution Institute (or the person acting in that position at the time) if the parties agree to that method of appointment.

### (**Agreement**): Within 5 Business Days after the date on which an Issue is referred to expert determination under clause 48.1(a), the Principal and Contractor must endeavour to agree on the expert to be appointed to determine the Issue.

### (**Exchange of lists of 3 preferred experts**): If the Principal and Contractor are unable to agree on an expert to determine the Issue within the 5 Business Day period referred to in clause 48.1(b), the Principal and Contractor must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 48.1(f) on or before the date which is 10 Business Days after the date on which the Issue is referred to expert determination under clause 46.4(a)(ii).

### (**Appointment of person who appears on both lists**): If:

#### a person appears on both lists under clause 48.1(c), that person will be deemed to be the expert to determine an Issue; or

#### more than one person appears on both lists, the person given the highest order of priority by the party that made the Claim under clause 45.2 will be deemed to be the expert to determine the Issue.

### (**Appointment if no person appears on both lists**): If no person appears on both lists, the party that made the Claim under clause 45.2(c) must procure:

#### 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 Issue to nominate the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 48.1(c); or

#### if:

##### there is no governing body for the technical or professional discipline that is the subject of the relevant Issue;

##### such governing body advises that it will not nominate an expert; or

##### there are multiple technical or professional disciplines that are the subject of the Issue,

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 48.1(c),

* 1. within 7 Business Days after the exchange of the lists under clause 48.1(c).

### (**Appropriate skills**): It is the intention of the parties that the expert appointed to determine an Issue will be an independent person with appropriate skills having regard to the nature of the matters in Issue.

### (**No entitlement to challenge appointment**): Neither party will be entitled to challenge the appointment of an expert under this clause 48.1 on the basis that the expert does not satisfy the requirements of clause 48.1(f).

### (**No conflict of interest**): An expert agreed or determined in this clause 48.1 appointed by the parties cannot have any conflict of interest or any relationship with either party or their Associates that a reasonable person may regard as giving rise to the possibility of bias.

### (**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).

### (**Agreement**): Within 7 Business Days after the expert has notified the Principal and Contractor that they are available to be appointed as the expert in respect of the Issue, the Principal and Contractor 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.

### (**Expert not available**) If an expert agreed between the parties or otherwise deemed or determined to be appointed in respect of the Issue under clause 48.1(b), 48.1(d) or clause 48.1(e) is not available to be appointed as the expert for that Issue, the parties must appoint a different expert by repeating the process in clause 46.4(a)(ii) save that, if the parties have already exchanged a list of 3 persons in accordance with clause 48.1(c) and there is another expert who appears on both lists, the person given the next highest order of priority by the party that gave the notice under clause 45.2(c) will be deemed to be the expert.

## Rules of expert determination

1. 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.

## Expert finding

### (**Notification**): The determination of the expert must be in writing and will be final and binding on the Principal and Contractor unless:

#### the expert determination includes:

##### payment of compensation and the amount claimed, or subsequently determined by the expert to be payable, is equal to or greater than $2,000,000; or

##### an extension of the Date for Completion or rejection of an extension to the Date for Completion, where the period of the extension that was claimed is more than 5 Business Days; and

#### 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.

### (**Amendment to determination**): Upon submission by any party, the expert may amend its determination to correct:

#### a clerical mistake;

#### an error from an accidental slip or omission;

#### a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or

#### a defect in form.

### (**Binding on an interim basis**): Notwithstanding any challenge made under clause 48.3 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 in accordance with this Deed.

## Proportionate liability

1. 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 48.4, have applied to any Issue referred to expert determination under this clause 48.

## Liability of expert

### (**Liability of expert**): The parties agree:

#### that the expert will have no liability in connection with the expert determination; and

#### to indemnify the expert against any liability in connection with the expert determination,

* 1. except in the case of fraud on the part of the expert, in which case a Claim may be made against the expert by any person who is party to the Issue.

### (**Engagement**): The Principal and the Contractor must jointly engage the expert to provide services in connection with the expert determination process and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

## Costs

1. The Principal and the Contractor must:

### (**costs of Principal and Contractor**): bear their own costs in connection with the expert determination proceedings; and

### (**costs of expert**): pay an equal portion of the costs of the expert.

# Arbitration

## Reference to arbitration

1. If:

### (**referral direct from IRT**) clause 45.2(c) applies and the IRT agree a Bespoke Resolution Procedure involving arbitration under this clause 49 (subject to any agreed adjustments to suit the Issue), then the Issue is referred to arbitration under this clause (subject to any agreed adjustments to suit the Issue) on the date specified in the agreement under clause 46.4(b) or if no such date is specified on the date of the agreement itself; or

### (no referral to expert determination): an Issue:

#### which has been referred to the Representatives for negotiation under clause 47 remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 47(c)(i); and

#### is not an Issue which the parties:

##### must refer to expert determination under clause 45.2; or

##### have agreed to refer to expert determination under clause 45.2,

* 1. either party may refer the Issue to arbitration by notice to that effect to the other party within 30 Business Days after the date on which the notice under clause47(a) is received or such later date as the parties may agree; or

### (**after referral to expert determination**): an Issue has been referred to expert determination under clause 48.1(a) and:

#### a determination is not made by the expert within 22 Business Days after the execution of the Expert Determination Agreement by the expert, either party may refer the Issue to arbitration by notice to that effect to the other party, within 30 Business Days after the execution of the Expert Determination Agreement by the expert;

#### no expert enters into the Expert Determination Agreement with the parties in accordance with clause 48.1(j) within 30 Business Days after the date on which the Issue is referred to expert determination under clause 48.1(a), either party may refer the Issue to arbitration by notice to that effect to the other party within 35 Business Days after the date on which the Issue was referred to expert determination; or

#### a notice of dissatisfaction in respect of the expert's determination is given under clause 48.3, either party may refer the Issue to arbitration by notice to that effect to the other party, within 35 Business Days after a party gives notice to the other party of its dissatisfaction with the expert's determination in accordance with clause 48.3 in which case the arbitration will be by way of hearing de novo

## Arbitration

### (**ACICA Rules**): Arbitration in accordance with this clause 49 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 49.

### (**Seat**): The seat of the arbitration will be Melbourne, Victoria.

### (**Language**): The language of the arbitration will be English.

## Appointment of arbitrator

1. 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 Issue is referred or deemed to be referred to arbitration under clause 49.1, the arbitrator will be appointed by the Australian Centre for International Commercial Arbitration.

## General principles for conduct of arbitration

### (**Conduct of arbitration**): The parties agree that:

#### they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Issue;

#### any arbitration conducted in accordance with this clause 49 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;

#### specific issues will be identified for preliminary determination, where efficient to do so; and

#### in conducting the arbitration, the arbitrator must take into account the parties' intentions as set out in clauses 49.4(a)(i) to 49.4(a)(iii).

### (**Evidence in writing**): All evidence in chief must be in writing unless otherwise ordered by the arbitrator.

### (**Evidence and discovery**): The rules for evidence and discovery will be the IBA Rules on Evidence, current as at the date of the referral of the Issue to arbitration.

### (**Oral hearing**): The oral hearing must be conducted as follows:

#### any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;

#### 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 49.4(a) when determining the duration of the oral hearing;

#### oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;

#### 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;

#### 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;

#### in exceptional circumstances the arbitrator may amend the date and extend the time for the oral hearing set in accordance with clause 49.4(d)(ii);

#### 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

#### 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.

### (**Experts**): Unless otherwise ordered, each party may only rely upon one expert witness in connection with any recognised area of specialisation.

## Proportionate liability

1. The arbitrator will have no power to apply or to have regard to the provisions of any proportionate liability Laws which might, in the absence of this clause 49.5, have applied to any Issue referred to arbitration under this clause 49.

## Extension of ambit of arbitration proceedings

### (**Extending issues**): If:

#### an Issue is referred to arbitration under this clause 49; and

#### there is some other Issue also between the parties to and under this Deed (whenever occurring),

* 1. 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 Issue that has been referred to arbitration, make an order directing that the arbitration be extended so as to include the other Issue.

### (**Arbitrator's order**): An arbitrator may make an order under clause 49.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

## Award final and binding

### (**Final and binding**): Subject to clause 49.7(b), any award will be final and binding on the parties.

### (**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 in accordance with this clause 49.

## Continue to perform

1. Notwithstanding the existence of an Issue, each party must continue to perform its obligations under the Project Documents.

## Governing law of arbitration agreement

1. The Law governing this arbitration agreement is the law of Victoria, Australia.

## Interlocutory relief

1. This clause 49 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.

## Consolidation

The parties agree that section 27C of the *Commercial Arbitration Act 2011* (Vic) will apply.

PART L — CORPORATE OBLIGATIONS

# Corporate representations, warranties and obligations

## Principal's representations and warranties

1. The Principal represents and warrants for the benefit of the Contractor that:

### (**power to execute**): it has the power to execute, deliver and perform its obligations under the Project Documents and all necessary action has been taken to authorise that execution, delivery and performance;

### (**validity**): each of its obligations under each Project Document is valid and legally binding on it in accordance with its terms; and

### (**legality**): the execution, delivery, and performing its obligations under each Project Document does not violate any Law to which the Principal is subject.

## Contractor's representations and warranties

1. The Contractor represents and warrants for the benefit of the Principal that:

### (**power to execute and perform**): it has the power to execute, deliver and perform its obligations under the Project Documents and all necessary action has been taken to authorise that execution, delivery and performance;

### (**legality**): the execution, delivery and performance of its obligations under each Project Document 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;

### (**validity**): each of its obligations under each Project Document is valid and legally binding on it in accordance with its terms;

### (**registration**): it is duly registered, properly constituted and remains in existence;

### (**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 perform its obligations under the Project Documents to which it is a party;

### (**no trust relationship**): unless otherwise expressly stated or permitted 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;

### (**no material change**): except as expressly disclosed to the Principal in such detail as the Principal requires (and by specific reference to this clause 50.2(g)), there has been no material change in the financial condition of the Contractor (since its incorporation) or the Key Significant Subcontractors (since the date of their last audited accounts) which would prejudice the ability of the Contractor to perform its obligations under the Project Documents; [***Drafting note: If there are any crucial Significant Subcontractors, please consider whether to include them in this clause.]***

### (**information true and correct**): all information that has been provided to the Principal is true and correct at the time it was provided to the Principal;

### (**material facts**): it is not aware of any material facts or circumstances that have not been disclosed to the Principal that may have a material adverse effect on the Contractor's ability to meet its obligations under the Project Documents;

### (**disclosure prior to this Deed)**: it is not aware of any material facts or circumstances that have not been disclosed to the Principal as at the date of this Deed and which had they been disclosed, may have made a prudent person in the Principal's position, considering whether or not to enter into the Project Documents, determine not to enter into the Project Documents.

## Repetition of representation and warranties

### (**Repeating representations and warranties**): Unless otherwise expressly stated in this Deed, each representation and warranty given by the Contractor under this Deed:

#### is made on the date of this Deed; and

#### subject to clause 50.3(b), is repeated each day during the period from the date of this Deed to the date of expiration of the last Defects Liability Period.

### (**Limited repetition**): The warranty given by the Contractor under:

#### clause 5.6(b) in respect of each Returned Asset is given only as at the Date of Returned Works Completion of the relevant Returned Asset; and

#### clause 50.2(h) is not repeated after the date of this Deed.

## Contractor name and branding

1. The Contractor must not display its or any Contractor Associates' livery, name/corporate images or brands on the Works, the Site or any material or assets visible to the public other than as set out in the PSDR.

# Assignment and change in control

## Assignment, amendments to Project Documents and other dealings by Contractor

### (**Restrictions on Contractor**): Unless otherwise expressly permitted by this Deed, the Contractor must not (and must procure any other Project Entity not to):

#### assign, sell, novate, transfer, 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 or rights under any of the Project Documents, the whole or any part of the Site or the whole or any part of the Works;

#### 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 Site or the whole or any part of the Works;

#### make or permit any amendment to, replacement of or waiver of any provision of any of the Project Documents;

#### terminate, surrender, rescind or accept repudiation of any of the Project Documents; or

#### enter into any agreement or arrangement which affects the operation or interpretation of any of the Project Documents,

* 1. (each an **Amendment** for the purpose of this clause 51).

### (**Notice of intended Amendment**): If the Contractor requires an Amendment, it must submit to the Principal a request seeking the Principal's consent. Such a request must set out:

#### the proposed Amendment and the reasons for it;

#### the response or anticipated response of any other party to the relevant Project Documents regarding the proposed Amendment;

#### the response or anticipated response of any relevant assignee or incoming party to the Project Documents to the proposed Amendment;

#### copies of any documents relevant to the Contractor’s request.

### (**Principal to advise**): The Principal must advise the Contractor within:

#### 15 Business Days after receiving the request under clause 51.1(b) if it requires further information from the Contractor regarding the proposed Amendment, in which case the Contractor must provide the additional information sought by the Principal within a further period of 10 Business Days after receiving the Principal's request for further information; and

#### 10 Business Days after the later of receiving the Contractor's request under clause 51.1(b) or the additional information requested by the Principal under clause 51.1(c)(i) that:

##### it consents to the proposed Amendment; or

##### 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.

### (**Failure to respond**): If the Principal fails to respond for any reason within the relevant period specified under clause 51.1(c)(ii) in relation to a proposed Amendment in respect of a Project Document:

#### the Contractor must send a reminder notice; and

#### if that notice is not responded to within 7 Business Days, if the relevant Project Document for which the Amendment is sought the Principal will be deemed to have determined that the proposed Amendment is unacceptable, in which case the proposed Amendment will not be made.

## Restrictions on Changes in Control

1. The Contractor must not at any time, permit or suffer any Change in Control and must ensure that any Parent Guarantor does not at any time, permit or suffer any Change in Control of that Parent Guarantor, without the Principal's prior consent, which must be requested by notice from the Contractor to the Principal and which must be provided unless clause 51.3 applies.

## Principal right to withhold consent

1. The Principal may only withhold its consent to a Change in Control if the Principal is of the opinion (acting reasonably) that:

### (**solvency and no conflict**): the person or persons who propose to directly or indirectly acquire an interest in the Contractor or the Parent Guarantor (as applicable):

#### are or are not Solvent and reputable;

#### has or have an interest or duty which conflicts or may conflict in a material way with the interests of the Principal; or

#### is an unsuitable Entity, having regard to the activities or business of that Entity, and its compatibility with the obligations of the Contractor under the Project Documents; or

### (**negative effects**): the proposed Change in Control:

#### is against the public interest;

#### would adversely affect the ability or capability of the Contractor or a Parent Guarantor to perform its obligations under this Deed, the Parent Company Guarantee or a Significant Subcontract;

#### could lead to a Probity Event;

#### would, in respect of :

##### a Change in Control of the Contractor or Parent Guarantor result in the Contractor or Parent Guarantor being Controlled;

* + 1. by a person that:

##### is or are not Solvent and reputable;

##### has an interest or duty which conflicts or may conflict in a material way with the interests of the Principal;

##### is an unsuitable Entity, having regard to the activities or business of that Entity, and its compatibility with the obligations of the Contractor or Parent Guarantor under the Project Documents; or

##### does not have a sufficient level of financial, commercial, managerial and technical capacity , expertise or experience and contractual and financing arrangements with third parties in place to deliver the Project;

#### would have a material adverse effect on the Project; or

#### would increase the liability of, or risks accepted by, the Principal under this Deed, a Parent Company Guarantee, a Significant Subcontract or in any other way in connection with the Project.

## On-market acquisitions

### (**On-market acquisitions**): If:

#### a Change in Control occurs due to the transfer of shares or other interests which are listed on a stock exchange; and

#### the consent of the Principal is required under this Deed but could not have been obtained prior to the Change in Control,

* 1. that consent must be sought immediately after the Change in Control.

### (**On-market acquisitions proposed Additional or Replacement Security**): Where a Change in Control referred to in clause 51.4 is a Change in Control within the meaning of paragraphs (b) or (c) of the definition of Change in Control, in seeking the consent of the Principal, the Contractor must provide details of any additional or replacement Parent Company Guarantee or Performance Bond which it proposes to procure so that the security available to the Contractor and the Principal in respect of the obligations of the Contractor or the Parent Guarantor in respect of which the Change in Control has occurred, under the Project Documents to which the Contractor or Parent Guarantor is a party, is not adversely affected by the Change in Control.

### (**Principal's consent to on-market acquisitions**): If the Contractor is required to seek the consent of the Principal to a Change in Control under clause 51.4(a) and the Contractor receives any notice under clause 51.5 that the Principal:

#### provides a conditional consent to the Change in Control in accordance with clause 51.5(b), the Contractor must procure the Additional or Replacement Security within the time required by the Principal; or

#### does not consent to the Change in Control, the Contractor 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 the Principal's notice under clause 51.3 that the Principal does not consent to the Change in Control.

## Consent to a Change in Control

1. The Principal must advise the Contractor, within 10 Business Days (or such longer period as the Principal reasonably requests given the nature of the proposed Change in Control) after receiving the Contractor's request for consent under clause 51.4(b), that:

### (**consent**): it consents to the Change in Control;

### (**conditional consent**): where clause 51.4(c) applies, without limiting clause 60.7(a), it consents to the Change in Control conditional upon the Contractor procuring, in respect of the obligations of the Contractor or Parent Guarantor to which the Change in Control has occurred, under the Project Documents to which the Contractor or Parent Guarantor (as applicable) is a party, an additional or replacement Parent Company Guarantee from an entity and on such terms, or Performance Bonds for an amount, acceptable to the Principal (**Additional or Replacement Security**);

### (**unacceptable**): in accordance with clause 51.3, the Principal does not consent to the Change in Control and the reasons why the Change in Control is unacceptable; or

### (**further information**): it requires further information from the Contractor regarding the Change in Control, in which case:

#### the Contractor must provide the additional information sought by the Principal within a further period of 10 Business Days after the Principal's request for the further information; and

#### the Principal must respond in terms of clause 51.5(a) or clause 51.5(b) within 10 Business Days after the receipt of such further information from the Contractor.

## Costs relating to a Change in Control

1. The Contractor must pay to the Principal the Principal's costs (including legal and financial advisers' fees) reasonably incurred in relation to considering or consenting to a proposed Change in Control.

## Assignment by the Principal

### (**Contractor consent required**): Subject to clause 51.7(b), the Principal does not sell, transfer or assign or otherwise dispose of all or any part of its interest in the Project Documents without the Contractor's prior consent.

### (**No consent required**): The Principal may sell, transfer or assign or otherwise dispose of all or any part of its interest in the Project Documents and the Contractor hereby consents to that sale, transfer, assignment or disposal, if:

#### the Principal has provided the Contractor with details of the proposed transferee and the terms and conditions of the proposed transfer;

#### 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

#### the proposed transferee has agreed to be bound by the relevant Project Documents.

# Accounts

## Accounting records

### (**Proper books of account**): The Contractor must keep proper books and accounts in connection with the Contractor's Activities and this Deed, including:

#### all records which show how the TOC was calculated and how any Adjustment Events were valued for the purposes of clauses 27 and 34 and the Adjustment Event Schedule;

#### all purchase orders, invoices, accounts, records and bank statements (to the extent they relate to the Contractor's Activities) showing all of the Reimbursable Costs reasonably and actually incurred in the performance of the Contractor's Activities;

#### any records required to be maintained for the purposes of the Risk or Reward Regime; and

#### all other records in connection with the Project as would be expected of a prudent, experienced and competent person carrying out design, manufacture, supply, construction, installation, commissioning and repair work similar to the Contractor's Activities in Australia.

### (**Annual audit**): The Contractor must have its accounts audited annually on both an unconsolidated basis and on a consolidated basis (to the extent that the Contractor is part of a consolidated entity, within the meaning of the Corporations Act***). [******Drafting note: Audited account requirements will be considered in light of the bidders and the timing for their statements to be prepared. The position set out above is the general requirement, if this is not possible, Agencies may seek to understand what is available.]***

### (**Accounting principles**): The Contractor must ensure that its accounts are prepared:

#### in accordance with the Corporations Act and generally accepted Australian accounting principles and practices; and

#### in a manner which fairly represent its operations and financial position or consolidated financial position (as the case may be).

### (**Availability of accounts**): The Contractor 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, are available to the Principal and any person authorised by the Principal at any time during Business Hours (subject to receiving 2 Business Days' notice from the Principal) for examination, audit, inspection, transcription and copying.

### (**Availability of accounts if Deed is terminated**): If this Deed is terminated, the Contractor must give access to all of its books and accounts and all other records in connection with the Project, to the Principal and any Principal Associate where it is necessary for the carrying out of the Contractor's Activities.

## Financial statements

1. As soon as practicable (and in any event not later than 120 days) after the close of each Financial Year, the Contractor must give to the Principal certified copies of the consolidated (if applicable) and unconsolidated audited financial statements for the previous Financial Year.

## Other information

1. The Contractor must give to the Principal the following information:

### (**copies**): copies of all documents or information given or received by the Contractor to or from the Australian Securities & Investments Commission or Australian Stock Exchange Limited, promptly after the information is first given or received;

### (**material changes**): details of any material change in the financial condition of the Contractor or a Significant Subcontractor (in each case, since the date of their last audited accounts) which would prejudice the ability of the Contractor to perform its obligations under the Project Documents as soon as reasonably practicable after becoming aware of those details; and

### (**other information**): without limiting clause 5.4, such other information relating to the Project as the Principal may reasonably require from time to time as soon as reasonably practicable after the Principal has requested such information.

## Information Management System

1. ***[Drafting note: To be included on a project specific basis as required.]***
2. The Contractor must implement and maintain the Information Management System for all Contractor Material and Project Information that:

### (**PSDR requirements**): is in accordance with the requirements set out in [#] of the PSDR;

### (**safe, secure and compatible**): is safe and secure and compatible with the Principal's document management systems as advised by the Principal;

### (**user friendly**): enables the Principal and any Principal Associate to quickly and easily retrieve, review and utilise the Contractor Material;

### (**tracks distribution**): tracks the distribution of all Contractor Material and Project Information to any Contractor Associate; and

### (**meets standards**): is in accordance with the standards in the *Public Records Act* *1973* (Vic).

# Confidential Information and privacy

## Confidential Information and disclosure by the Principal

### (**Public Disclosure Obligations**): Subject to clause 53.1(c), the Principal and any Authority may disclose any information in connection with the Project (including any Confidential Information):

#### in accordance with Laws;

#### to satisfy the disclosure requirements of the Victorian Auditor-General;

#### to satisfy the requirements of Parliamentary accountability;

#### if the disclosure is in the course of the official duties of the responsible Minister, the Treasurer of Victoria or the Attorney General; [***Drafting note: To be updated as required on a project specific basis to include relevant Victorian Government departments***.]

#### to any Principal Associate, any Authority or any person authorised or nominated by the Principal to the extent necessary for the purpose of the Project provided they agree to maintain the confidentiality of any Confidential Information;

#### in annual reports of the Principal;

#### in accordance with policies of the Principal or any Authority;

#### to any person who is bidding for or undertakes works similar to the Works after the termination and their actual and/or potential Associates, provided the relevant person agrees to maintain the confidentiality of the Confidential Information; or

#### to satisfy any other recognised public requirement,

* 1. (**Public Disclosure Obligations**) and the Contractor must use all reasonable endeavours to assist the Principal and any Authority in meeting its Public Disclosure Obligations.

### (**Other purposes**): Subject to clause 53.2, the Principal or any Authority may disclose any information in connection with the Project (including any Confidential Information ) in connection with:

#### any Direct 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 equipment, computer hardware, computer software and computer or telecommunications systems and any complementary works or services associated with them but excluding this Project; or

#### the requirements of any Project Document (including any tender process required to be conducted under the Adjustment Event Schedule).

* 1. ***[Drafting note: Clause 53.1(b) has been prepared, by way of example, for a road project, but will be updated by the Principal on a project specific basis to align with the Project.]***

### (**Commercially sensitive information**): Unless otherwise expressly entitled to do so in accordance with this Deed, the Principal must not publish or disclose any Commercially Sensitive Information without the Contractor's prior written consent (which consent will not be unreasonably withheld or delayed), unless that Commercially Sensitive Information:

#### is required or authorised to be disclosed under Law;

#### is reasonably necessary for the enforcement of the criminal law;

#### is disclosed to the Principal's solicitors, auditors, insurers or advisers;

#### is generally available to the public;

#### is in the possession of the Principal without restriction in relation to disclosure before the date of receipt from the Contractor;

#### is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees;

#### is required to be made available to a court in the course of proceedings to which the Principal or a Principal Associate is a party;

#### is disclosed to the ombudsman or for a purpose in relation to the protection of the public revenue; or

#### is required to be published or disclosed to enable the Principal to comply with the Public Disclosure Obligations under clauses 53.1(a)(i), 53.1(a)(ii), 53.1(a)(iii), 53.1(a)(iv) or 53.1(a)(vii).

### (**Exercise of licence**): Nothing in this Deed prevents the Principal 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.

## Restricted disclosure of information

### (**Confidential Information**): Subject to clause 53.2(b) and clause 53.4 and other than where the information is in the public domain, the Contractor must treat as secret and confidential and must not, and must procure that each Contractor Associate does not, without the Principal's written consent, make public or disclose to any person any:

#### Project Documents;

#### Project Information;

#### information provided by:

##### the Principal or any Principal Associate to the Contractor or any Contractor Associate; or

##### the Contractor or any Contractor Associate to the Principal or any Principal Associate;

* + 1. in connection with the Project, whether provided prior to or after the date of this Deed;

#### Contractor Material;

#### Personal Information; or

#### other information in connection with the Project which the Contractor 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,

* 1. (**Confidential Information**).

### (**Disclosure of Confidential Information**): Subject to clause 53.2(c) and without limiting the Contractor’s obligations under clause 53.3 in respect of Personal Information, the Contractor may disclose Confidential Information:

#### to a Contractor Associate, to the extent necessary for the purpose of undertaking the Project;

#### to a Direct Interface Party, to the extent required in order to comply with the Contractor's obligations with respect to Direct Interface Parties under the Project Documents; or

#### in accordance with clause 53.4,

* 1. without seeking the Principal's consent to such disclosure.

### (**Confidentiality deed**): Before disclosing any Confidential Information in accordance with:

#### clause 53.2(b)(i), if the relevant Contractor Associate is not already subject to an agreement with the Contractor in which it agrees to maintain the confidentiality of any disclosed Confidential Information; or

#### clause 53.2(b)(ii), if the relevant Direct Interface Party is not already subject to an agreement with the Contractor (or the Principal)) in which it agrees to maintain the confidentiality of any disclosed Confidential Information,

* 1. the Contractor must ensure that the person to whom the information is disclosed enters into a confidentiality deed with the Contractor on terms reasonably acceptable to the Principal.

### (**Public statements**): Subject to clause 53.4, the Contractor must:

#### not make any public disclosures, announcements or statements in relation to the Project or the Principal's or any Principal Associates' involvement in the Project, without the Principal's written consent;

#### comply with any terms and conditions that the Principal imposes on the Contractor in granting its consent under clause 53.2(d)(i);

#### use all reasonable endeavours to agree with the Principal the wording and timing of all public disclosures, announcements or statements to be made by it or any Contractor Associate relating to the Project or the Principal's or any Principal Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and

#### as soon as practicable, give to the Principal a copy of any public disclosure, announcement or statement agreed to or approved by the Principal under this clause 53.2(d)(i) or for which the Principal's consent or approval was not required under clause 53.4.

## Personal Information

1. The Contractor must:

### (**collection**): not collect any Personal Information except in accordance with the PSDR, all Laws and Standards;

### (**disclosure**): not disclose any Personal Information to any person other than as is necessary to undertake the Contractor's Activities or to comply with Laws, and then only in accordance with the PSDR, all Laws and Standards; and

### (**records**): keep, and make available to the Principal, on request, records detailing the recipient of any Personal Information the Contractor has disclosed, the date of disclosure and the Personal Information that has been disclosed.

## Permitted disclosure without consent

1. The Contractor will not be required to obtain the Principal's consent or approval to any disclosure of Confidential Information or the information referred to in clause 53.2(d) to the extent that any disclosure, announcement or statement and the information contained in it is:

### (**required by Law**): required by Law, provided that it:

#### notifies the Principal of the requirement to make that disclosure prior to such disclosure; and

#### 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;

### (**required for advice**): required to obtain legal or other advice from its advisers provided any such adviser is under a duty of confidentiality;

### (**required by court**): required to be made to a court in the course of proceedings to which the Contractor is a party;

### (**public domain**): in respect of information that is already in the public domain; or

### (**stock exchange**): required by a relevant stock exchange, subject to:

#### such disclosure, announcement or statement not referring to the Principal's or any Principal's Associates' involvement in the Project; and

#### the Contractor having used all reasonable endeavours to obtain the Principal's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

## Privacy

### (**Privacy**): Without limiting any obligations in respect of privacy set out in the [PSDR / Delivery Requirements],the Contractor agrees to, and will ensure that all Subcontracts contain 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 the Subcontract (as the case may be), in the same way as the Principal 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 Principal.

### (**Notice**): The Contractor must immediately notify the Principal if it becomes aware of any breach of clause 53.5(a) by it or any Subcontractor.

### (**Release and indemnity**): The Contractor must release, indemnify and keep indemnified on demand the Principal and any Principal Associate from and against any Claim or Liability which the Principal or any Principal Associate suffers or incurs resulting from any act done or practice engaged in by the Contractor or any Subcontractor in connection with the Project, which would, had that act or practice been done or engaged in by the Principal, have contravened one or more of the Information Privacy Principles or any applicable Privacy Code.

# Intellectual Property

## Intellectual Property Rights granted to the Principal

### The Contractor grants to the Principal a world-wide, perpetual, irrevocable, non- exclusive, transferable, royalty-free licence (including the right to sublicense) to use, reproduce, modify, adapt, develop, communicate to the public and otherwise exploit any Works, and to exercise all or any of the Intellectual Property Rights in any Works (as applicable), for the purposes of:

#### the Project in connection with which they are developed or otherwise made available to the Principal (and including, where this Deed is terminated or the whole or part of the relevant Contractor's Activities is taken out of the hands of the Contractor for any reason, to perform or complete any of the Contractor's Activities which has not been performed or completed, or not been performed or completed in accordance with this Deed);

#### the use or enjoyment of any Works (as applicable), including additions or alterations to the Works, including the integration of any of them with any other assets or infrastructure;

#### accessing, using, publishing or storing any Data vested in the Principal under clause 54.5;

#### the exercise of the Principal's rights in accordance with this Deed;

#### the Principal's business, operations or activities, including the procurement, 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) whether or not that thing interfaces or interoperates with, or is located (in whole or in part) under, on or above any Works; and

#### a tender process for the procurement of any thing or integration referred to in, any of the preceding sub-paragraphs of this clause 54.1.

### Each part of this clause 54.1is to be construed as a separate and independent ground on which the licence may be exercised, and without limiting each other or any other part of this clause.

## Intellectual Property indemnity

1. The rights and obligations of the parties with respect to Intellectual Property Rights indemnities is set out in clause 41.5.

## Background IP Rights and Third Party IP Rights

1. To the extent the Intellectual Property Rights in or relating to Works are Background IP Rights or Third Party IP Rights, the Contractor will grant, or will procure that the relevant third party grant or grant, to the Principal a licence (including the right for the Principal to sublicense) in respect of those Intellectual Property Rights on the terms of clause 54.1[.](#_bookmark44)

## Moral Rights

### The Contractor:

#### must ensure that it does not infringe any Moral Right of any author of any work in performing the Contractor's Activities;

#### must ensure that it obtains an irrevocable and unconditional written consent (on the terms reasonably required by the Principal), for the benefit of the Principal and the Contractor, from the author of any work forming part of the Works to the Principal and its sub-licensees doing or authorising the doing of an act or making or authorising the making of an omission (whether occurring before or after this consent is given), anywhere in the world which, but for the consent, infringes or may infringe that author's Moral Rights in the work (including the right to make any adaptation or distortion of the work, and to subject to the work to any treatment, with or without attribution to the author); and

#### must not (and must not encourage or permit anyone else to) apply any duress to any person or make a statement to any person knowing that the statement is false or misleading in a material particular, or knowing that a matter or thing has been omitted from the statement without which the statement is false or misleading in a material particular, in procuring consents under clause 54.4(a)(ii).

### This clause 54.4survives the termination or expiration of this Deed.

### Where used in this clause 54.4, the term "work" has the meaning given in section 189 of the *Copyright Act 1968* (Cth).

## Data

### All Data and Intellectual Property Rights in the Data vests in the Principal. The Contractor assigns all such Intellectual Property Rights to the Principal now and as they may arise in future. The Principal grants to the Contractor an irrevocable licence (with the right to sub-license to its subcontractors) to use and reproduce the Data for the purpose of performing its obligations under this Deed.

### The Contractor must do all things and execute such documents reasonably required to perfect such assignment, and assist the Principal in releasing Data to the public (including by making datasets available), upon request by the Principal.

### The Contractor must only use, copy or supply Data to the extent necessary to perform its obligations under this Deed.

# Commonwealth Requirements

1. ***[Drafting note: Clause only required if Commonwealth funding is applicable to the project.]***

## Compliance with Commonwealth Funding Conditions

1. ***[Drafting note: Clause only required if Commonwealth funding is applicable to the project. To maintain clause numbering, to be [Not Used] if no Commonwealth funding is contemplated on a project.]***

### (**Acknowledgement**): the Contractor acknowledges that the Commonwealth of Australia may contribute to the funding for the Project.

### (**Compliance**): the Contractor must comply with any Commonwealth Funding Conditions.

## WHS Accreditation Scheme

1. ***[Drafting note: Clause only required if Commonwealth funding is applicable to the project. To maintain clause numbering, to be [Not Used] if no Commonwealth funding is contemplated on a project.]***
2. In relation to the Commonwealth Funded Building Work that is the subject of this Deed, The Contractor:

### (**WHS accreditation**): warrants that the Contractor [and each Subcontractor] is accredited under the WHS Accreditation Scheme; and

### (**Contractor requirements**): must ensure that the Contractor, [and procure that each Subcontractor]:

#### maintains accreditation under the WHS Accreditation Scheme at all times whilst carrying out Building Work in respect of the Project; and

#### complies at all times whilst carrying Building Work with all conditions of its WHS Accreditation Scheme accreditation.

## Impact of Future Commonwealth Funding

### (**Future works**): The requirements in clause 55.2 apply in respect of any Building Work that is the subject of this Deed that becomes Commonwealth Funded Building Work after the date of this Deed or the date of any subsequent Subcontract (**Future Commonwealth Funded Building Work**).

### (Contractor obligations): the Contractor:

#### must, and must ensure that all Contractor Associates, take all reasonably necessary steps to ensure compliance with the requirements in clause 55.2 if building work becomes Future Commonwealth Funded Building Work; and

#### without limiting clause 55.3(b)(i), must not enter into a Subcontract for building work unless the Subcontract requires the Subcontractor to take all reasonable steps to apply and comply with the FSC Act in respect of any Future Commonwealth Funded Building Work.

# Relevant State Policies

1. Without limiting the remainder of this Deed, the Contractor must comply with Schedule 14 (*Relevant State Policies Schedule)*.

# Data and cyber security

***[Drafting note: This clause is to be included on a project-specific basis. Where this clause is not applicable, ensure that the definitions of "Cyber Security Incident" and "Relevant Entity" are also deleted.]***

## Cyber security

1. Without limiting the Contractor's obligations under this Deed:

### the Contractor must notify the Principal, as soon as possible and in any case, no later than four hours, after becoming aware that:

#### a Cyber Security Incident affecting the Works or the Contractor's Activities has occurred or is occurring; and

#### the Cyber Security Incident has had, or is having, a significant impact (whether directly or indirectly) on the Works, the Contractor's ability to perform its obligations under any Project Document, or the quality of the Contractor's Activities,

* 1. where "significant impact" means any material disruption to the availability of essential goods or services provided in connection with the Works or the Contractor's Activities, or (in relation to the Works) any other impact which is taken to be a “significant impact” on all or any part of the Works by reason of section 30BEA of the *Security of Critical Infrastructure Act 2018* (Cth).

### the Contractor must notify the Principal, as soon as possible and in any case, no later than 24 hours, after becoming aware that:

#### a Cyber Security Incident affecting the Works or the Contractor's Activities has occurred, is occurring, or is imminent; and

#### the Cyber Security Incident has had, is having, or is likely to have, an impact on:

##### the availability, integrity, or reliability of the Works;

##### the confidentiality of data or information about the Project or the Works or data or information stored within [any systems forming part of the Works or used to perform the Contractor's Activities];

##### the Contractor's ability to perform its obligations under this Deed; or

##### the quality of the Contractor's Activities; and

### the Contractor must, in relation to any Cyber Security Incident of the type referred to in clause 57.1(a):

#### provide the Principal with full details of that Cyber Security Incident;

#### to the extent permitted by Law, comply with all reasonable directions of the Principal in relation to the management of the Cyber Security Incident;

#### keep the Principal updated regarding the status and management of the Cyber Security Incident;

#### unless required to do so by Law, not notify any third party of the Cyber Security Incident without the Principal's prior written consent; and

#### where the Principal requires, notify the Cyber Security Incident to the Australian Signals Directorate or other persons in accordance with the Principal's reasonable directions.

## Security of Critical Infrastructure Laws

1. Without limiting clause 5.1, to the extent that the Security of Critical Infrastructure Laws apply to any of the Principal, the Contractor or any Contractor Associates in connection with the Contractor's Activities or the Works, the Contractor must:

### comply with, and ensure that any Contractor Associates comply with, the Contractor's and any Contractor Associates' respective obligations as a Relevant Entity or a Reporting Entity (as the case may be) under the Security of Critical Infrastructure Laws and generally;

### in respect of the Principal's obligations as a Relevant Entity or Reporting Entity (as the case may be) under the Security of Critical Infrastructure Laws:

#### do all things reasonably required by the Principal, and ensure that any Contractor Associates do all things reasonably required by the Principal, to assist the Principal in complying with the Principal's obligations; and

#### not do anything, and ensure that any Contractor Associates do not do anything, which would preclude or prevent the Principal from complying with its obligations;

### comply with, and ensure that any Contractor Associates comply with, any "critical infrastructure risk management program" or "incident response plan" (each as defined in the Security of Critical Infrastructure Act 2018 (Cth)) provided to the Contractor by the Principal, to the extent relating to the Contractor's Activities or the Works;

### comply with, and ensure that any Contractor Associates comply with, any lawful notice, direction or request issued to the Principal under the Security of Critical Infrastructure Laws in relation to the Contractor's Activities or the Works, where the Principal provides a copy of such notice to the Contractor; and

### where the Contractor receives a notice, direction or request under the Security of Critical Infrastructure Laws in relation to the Works or Contractor's Activities:

#### notify the Principal of that notice, direction or request as soon as practicable after the Contractor receives it; and

#### not respond to such notice, direction or request without the Principal's prior written consent (unless required by Law to do so).

# Taxes

## GST General

### (**Definitions**): Except where the context suggests otherwise, terms used in this clause 58.1 have the meanings ascribed to those terms by theGST Act (as amended from time to time).

### (**Separate supply**): Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 58.1.

### (**GST exclusive amounts**): Unless stated otherwise, all consideration to be provided under or in connection with this Deed other than under this clause 58.1 is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 58.1.

### (**Reimbursements**): If a party is required under this Deed to reimburse or pay another party an amount calculated by reference to a cost, expense, or amount paid or incurred by that other party, the reimbursement or payment will be limited to the total cost, expense or amount less the amount of any input tax credit entitlement arising in respect of any acquisition to which that cost, expense or amount relates.

### (**GST payable by Supplier**): If GST is payable in relation to a supply made under or in connection with the Contract, then the party (**Recipient**) providing consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the GST payable in relation to that supply at the same time as any other consideration is to be first provided for that supply subject to the issue of a tax invoice by the Supplier to the Recipient.

### (**Variation in GST payable**): If the GST payable in relation to a supply made under or in connection with this Deed varies from the additional amount paid by the Recipient under clause 58.1(e), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 58.1(f) is deemed to be a payment, credit or refund of the additional amount payable under clause 58.1(e). Where there is an Adjustment Event, the Supplier must issue an adjustment note to the Recipient as soon as the Supplier becomes aware of the Adjustment Event.

## General liability for Taxes

### (**Payment**): Without limiting clauses 5.1(b), 6.2 and 32, the Contractor must pay all Rates and Taxes which may be payable in respect of the Contractor's Activities, including any customs duty, tariffs and primage applicable to imported materials.

### (**Indemnity**): The Contractor indemnifies the Principal against, and must pay on demand the amount of, all losses, Liabilities and Taxes incurred as a result of the Contractor, any subcontractor or any person engaged by the Contractor or any subcontractor being deemed to be an employee of the Principal (including but not limited to payroll taxes, fringe benefit taxes, superannuation guarantee charge liabilities, and any related interest or penalties).

# Notices and bar to Claims

## Notices

1. All approvals, consents, directions, requirements, determinations, requests, claims, notices, agreements, demands or other communications in connection with this Deed:

### (**in writing**): must be in writing;

### (**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;

### (**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;

### (**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 59.1(b); and

### (**taken to be received**): are taken to be received by the addressee:

#### in the case of delivery by hand, on delivery at the address of the addressee as referred to in clause 59.1(b), unless that delivery is:

##### before the commencement of Business Hours, in which case that communication is taken to be received at 9.00 am on that Business Day; or

##### after Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

#### 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

#### in the case of email, on the first to occur of:

##### 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;

##### the time that the communication enters an information system which is under the control of the addressee; or

##### the time that the communication is first opened or read by the addressee,

* + 1. unless the result is that the communication would be taken to be given or made at a time which is:

##### before the commencement of 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 that Business Day; or

##### after 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.

* + 1. [***Drafting note: To be amended on a project specific basis if a specific communication/project management tool is intended to be used.***]

## Prescribed notices

### (**Notice of Claims**): Subject to clause 59.2(b), as a condition precedent to its entitlement to make any Claim against the Principal in respect of any direction or any other fact, matter or thing (including a breach of this Deed by the Principal) in connection with the Contractor's Activities or this Deed, including anything in respect of which it is given an express entitlement under this Deed, the Contractor must give the Principal the notice required by clause 59.2(c).

### (**Exceptions**): Clause 59.2(a) does not apply where this Deed specifies a process which must be followed by the Contractor in making a Claim against the Principal, including specifying a time within which that Claim must be made, including a Claim:

#### under clause 27.6 for an extension of time to a Date for Completion, adjustment to the TOC or KRAs;

#### clause 27.12 for acceleration; or

#### otherwise in respect of which the Contractor must submit a notice within a timeframe specified in this Deed,

* 1. in which case, the Contractor must comply with the relevant process and provisions as a condition precedent to the Contractor’s entitlement to make such Claim.

### (**Notices the Contractor must give**): The notices the Contractor must give to the Principal as referred to in clause 59.2(a) are:

#### a notice stating that the Contractor is considering submitting a Claim and identifying the event that has triggered the potential Claim, within 10 Business Days after the date the Contractor first becomes aware of the event that has triggered the potential Claim; and

#### a written Claim within 20 Business Days after the date on which the Contractor is required to give notice under clause 59.2(c)(i), which must include (to the extent practicable):

##### full particulars concerning the event that has triggered the Claim;

##### the legal basis for the Claim, whether based on a term of a Project Document or otherwise, and if based on a term of a Project Document, clearly identifying the specific term;

##### the facts relied upon in support of the Claim in sufficient detail to permit verification; and

##### details of the amount of relief claimed and how it has been calculated.

## Meeting

### (**Parties must meet**): Within 10 Business Days after receipt of the Contractor’s Claim under clause 59.2(c)(ii), the Principal and Contractor must meet to discuss the Claim and the process for providing the Principal with any further information in respect of the Claim, including any further updates of the Claim.

### (**Further information**): If the parties are unable to agree a process for providing further information to the Principal in respect of the Claim within 20 Business Days after the Principal's receipt of the Contractor’s Claim under clause 59.2(c)(ii), the Contractor must, if the event upon which that Claim is based or the consequences of the event are continuing, continue to give information required by clause 59.2(c)(ii) every 20 Business Days after the Claim under clause 59.2(c)(ii) was submitted, until after the event or consequences of the event have ceased.

## Notices of Claims

### The Contractor acknowledges and agrees that:

#### (**no liability on any Claim**): the Principal and each Principal Associate will not be liable upon any Claim that the Contractor is entitled to make against the Principal or a Principal Associate; and

#### (**absolute bar on making any Claim**): the Contractor will be absolutely barred from making any Claim against the Principal or any Principal Associate,

* 1. under any Project Document or otherwise arising in connection with the Project if:

#### (**failure to provide notice**): the Contractor fails to provide the notices required by the Project Documents in respect of a Claim; and

#### (**failure to provide information**): as a result of the Contractor's failure to provide the information required by the notices, an assessment of the Claim cannot be made in accordance with the Project Documents.

### If:

#### the Contractor fails to provide the notices required by the Project Documents in respect of a Claim; and

#### an assessment of the Claim can still be made in accordance with the Project Documents,

* 1. the relevant party assessing the Claim must act in accordance with the objectives in clause 46.3 and in doing so may take into account the Contractor's failure to provide the required information in respect of the Claim in accordance with the Project Documents in assessing the Claim, which may result in a reduction in the Contractor's entitlement.

# Miscellaneous

## Governing Law and jurisdiction

### (**Governing Law**): This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.

### (**Jurisdiction**): Without limiting clauses 45 to 49, 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.

## Joint and several liability

1. If the Contractor comprises 2 or more persons (whether a joint venture, consortium, partnership or any other unincorporated grouping of 2 or more persons):

### (**jointly and severally**):the obligations and liabilities of the Contractor under this Deed bind those persons jointly and severally;

### (**notify**)Lthose persons must notify the Principal of their leader who must have authority to bind the Contractor and each of those persons;

### (**composition or legal status**): the Contractor must not alter its composition or legal status without the prior written consent of the Principal;

### (**payment**):the rights of the Contractor to payment under this Deed jointly benefit each person constituting the Contractor (and not severally or jointly and severally);

### (**deemed payment**):any payment under this Deed by the Principal to any one or more persons constituting the Contractor will be deemed to be payment to all persons constituting the Contractor; and

### (**concurrently exercise of rights**): the Contractor may not exercise any right under this Deed unless that right is exercised concurrently by all persons constituting the Contractor.

## Entire agreement

1. The Project Documents to which the Principal and the Contractor are parties:

### (**entire understanding**): embody the entire terms agreed between the parties in connection with the Project; and

### (**prior agreements**): supersede any prior agreement of the parties in connection with the Project.

## Further acts and documents

1. Each party must promptly do all further acts and execute and deliver all further documents required by Law or reasonably requested by the other party (in form and content reasonably satisfactory to that party) to give effect to this Deed.

## Survival of certain provisions

### (**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:

#### the Principal's rights to set-off and recover amounts;

#### confidentiality, privacy or data protection;

#### Intellectual Property Rights;

#### any obligation to make any books and accounts and all other records or information available to the Principal;

#### any indemnity, release or financial security given under this Deed;

#### any limitation on Liability;

#### any obligation which this Deed requires a party to undertake after the rescission, expiration or termination of this Deed; and

#### any right or obligation arising on termination, rescission or expiry of this Deed.

### (**Interpretation**): No provision of this Deed which is expressed to survive the rescission, termination or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the rescission, termination or expiration of this Deed.

### (**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.

## Waiver

### (**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.

### (**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 or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.

### (**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.

## Consents and approvals

### (**Conditions**): A consent or approval required under this Deed from the Principal may be given or withheld, or may be given subject to any conditions, as the Principal thinks fit, unless otherwise expressly provided in this Deed.

### (**Compliance**): the Contractor must comply, and must procure that each Contractor Associate complies, with any condition of a consent or approval given by the Principal.

### (**Deemed events**): If the Contractor or a Contractor Associate fails to comply with any condition of a consent or approval given by the Principal, where the initial failure to obtain that consent or approval would have resulted in:

#### a Default Termination Event, the failure to comply will be deemed to be a Default Termination Event; or

#### a Major Default, the failure to comply will be deemed to be a Major Default.

## Amendments

### (**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.

### (**Other Project Documents**): Except as otherwise expressly provided in the relevant Project Document, no amendment to any other Project Document is valid or binding on a party unless made in writing and executed by all parties to the relevant Project Document.

## Expenses

1. 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.

## Severance

1. 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:

### (**provisions**): any other provision of this Deed; or

### (**other jurisdictions**): that provision under the Law of any other jurisdiction.

## Counterparts

### (**Execution in counterparts**): This Deed may be executed in any number of counterparts or copies, each of which may be executed by physical signature in wet ink or electronically (whether in whole or part). A party who has executed a counterpart of this Deed may exchange it with another party (the **Other Party**) by:

#### emailing a copy of the executed counterpart to the Other Party; or

#### utilising an electronic platform (including DocuSign) to circulate the executed counterpart,

* 1. and will be taken to have adequately identified themselves by so emailing the copy to the Other Party or utilising the electronic platform.

### (**Consent**): Each party consents to signatories and parties executing this Deed by electronic means and to identifying themselves in the manner specified in this clause.

### (**Counterparts constitute an original**): Each counterpart constitutes an original (whether kept in electronic or paper form), all of which together constitute one instrument as if the signatures (or other execution markings) on the counterparts or copies were on a single physical copy of this Deed in paper form. Without limiting the foregoing, if any of the signatures or other markings on behalf of one party are on different counterparts or copies of this Deed, this shall be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this Deed.

## Moratorium Legislation

1. The Contractor waives, and will procure that each Significant 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:

### (**no reduction**): lessen any obligation or Liability of the Contractor; or

### (**no prejudice**): prejudicially affect the rights, powers or remedies of the Principal,

1. under a Project Document to which the Contractor or the relevant Significant Subcontractor is a party.

## PPSA

1. The Contractor acknowledges and agrees that:

### (**Principal’s rights**): if and to the extent that the Principal at any time forms a belief on reasonable grounds that the Principal is, or will become, a secured party in connection with this Deed or any other Project Document or any transaction contemplated by this Deed or any other Project Document, the Principal may, at the Contractor’s expense, take all steps that the Principal considers necessary to:

#### perfect, protect, record, register, amend or remove the registration of, the Principal’s Security Interest in any relevant personal property that is the subject of that Security Interest (**Relevant Personal Property**); and

#### better secure the Principal’s position in respect of the Relevant Personal Property under the PPSA;

### (**Significant Subcontractor to assist**): it will do, and ensure that each Significant Subcontractor does, all things reasonably necessary to assist the Principal to take the steps described in clause 60.13(a);

### (**waiver of right to receive any verification statement**): it irrevocably and unconditionally waives, and will ensure that each Significant Subcontractor 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 Principal in the Relevant Personal Property;

### (**excluded PPSA sections**): if, and only if, the Principal 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, the Principal and the Principal agree, and the Contractor will ensure that each Significant Subcontractor 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;

### (**no disclosure**): subject to section 275(7) of the PPSA, it will not, and it will ensure that each Significant Subcontractor does not, disclose the contents of this Deed, the amount or performance obligation secured by the Principal’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;

### (**Contractor to notify the Principal**): other than in relation to Security Interests arising in the ordinary course of the Contractor's Activities and Security Interests described in section 12(d) of the PPSA of which the Contractor is the grantor (but only where the interest does not secure payment or performance of an obligation) it must immediately notify the Principal if a Significant Subcontractor becomes aware of any person other than the Principal taking steps to register, or registering, a financing statement in relation to Relevant Personal Property; and

### (**removal of registered security interest**): it must arrange, and ensure that each Significant Subcontractor arranges, for the removal or cessation of any registration of any Security Interest that affects the priority of the Principal’s interest in Relevant Personal Property.

1. For the purposes of this clause 60.13, "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.

Each signatory executing this Deed (electronically or otherwise) intends by that execution to be bound by this Deed, and where the signatory has signed as an officer or attorney of a party, for that party to be bound by this Deed.

[***Drafting note: Execution blocks to be inserted***.]