[##]

Project Deed

**[##]**   
(**State**)

**[##]**   
(**Project Co**)

***[Note: This standard form Project Deed is intended to be used for linear infrastructure availability PPP projects where the infrastructure is typically elongated crossing multiple sites. This standard form Project Deed includes:***

* ***this Project Deed;***
* ***Schedule 2 – Conditions Precedent Schedule;***
* ***Schedule 5 –Change Compensation Principles Schedule (Linear Infrastructure);***
* ***Schedule 6 – Termination Payments Schedule;***
* ***Schedule 8 – Expert Determination Agreement;***
* ***Schedule 9 – Schedule of Certificates and Notices;***
* ***Schedule 10 – Insurance Schedule;***
* ***Schedule 18 – Intellectual Property Schedule;***
* ***Schedule 21 – Relevant State Policies Schedule;***
* ***Schedule 23 – Augmentation Process Schedule;***
* ***Schedule 24 – Design Development Process Schedule;***
* ***Schedule 25 – OHS Schedule;***
* ***Schedule 26 – Executive Review Group Terms of Reference; and***
* ***Schedule 29 – CDPD Adjustment Protocol.]***

***[Notes:***

* ***Cross-referencing is to be finalised once the Project Deed is settled for each project.***
* ***This template contemplates that Project Co is a trustee of a trust. Where Project Co is not a trustee of a trust (for example where it is structured as a partnership or another entity), then to reflect the relevant structure of Project Co, amendments will need to be made to remove the trust provisions and to insert drafting to reflect the relevant Project Co structure.***
* ***Policies which are relevant in Victoria are included in the Schedules. As are some other State specific matters (such as the safety regime and the Principal Contractor regime).***
* ***This linear infrastructure version of the template includes the following key differences to the social infrastructure version:***
  + ***There is no 'Operator' providing 'Functions' at the Project Assets.***
  + ***The State will manage the procurement of the Independent Reviewer.***
  + ***There are no specific regimes for the procurement, installation, maintenance, replacement and Modification of 'Equipment' and 'Plant' (with equipment and plant requirements (if any) being addressed on a project specific basis in the PSDR).***
  + ***There is no 'Technical Acceptance' milestone prior to Commercial Acceptance as there is no 'Commissioning' regime.***
  + ***The Independent Reviewer will certify Commercial Acceptance.***
  + ***The Date of Commercial Acceptance is the date of the Certificate of Commercial Acceptance. Similarly, the Date of Final Acceptance is the date of the Certificate of Final Acceptance.***
  + ***Project Co is responsible for arranging and paying for Utilities to the Operational Phase Area during the Operational Phase.***
  + ***There is no 'Reviewable Services' regime.***
  + ***There is no 'Minor Works' regime.***

***If a regime or concept above is relevant for a particular linear infrastructure project, the Project Deed for the project will include the relevant drafting from the social infrastructure template (to the extent applicable).]***

The Secretary

Department of Treasury and Finance

1 Treasury Place

Melbourne Victoria 3002

Australia

Telephone: +61 3 9651 5111

Facsimile: +61 3 9651 5298

www.dtf.vic.gov.au

Authorised by the Victorian Government

1 Treasury Place, Melbourne, VIC 3002

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Project Deed

**Date**

**Parties** [##] (**State**)

[##] (**Project Co**)

**Background**

1. [Insert]
2. [Insert]

Operative provisions

PART A - INTERPRETATION

# Definitions

In this Deed:

1. **Abate** has the meaning given in the Payment Schedule.
2. **Abatement** has the meaning given in the Payment Schedule. ***[Note: Definition to be considered in light of Payment Schedule. Definition to capture abatements for Performance Failures.]***

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

1. **Acceptance** means:
   1. [not used];
   2. Commercial Acceptance; and
   3. Final Acceptance,

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

1. **Actual Debt** means the aggregate indebtedness of Group Members under the Finance Documents, excluding any indebtedness to Related Bodies Corporate that is in the nature of, or identified in the Financial Model as being, Equity Funding.
2. **Actual Equity Disclosure** means the calculations and related inputs used by Project Co to determine the Actual Equity IRR.
3. **Actual Equity Disclosure Date** means, in each Operating Year, the day that is 20 Business Days after the end of the Financial Year. ***[Note: Reference to the Financial Year will need to be adjusted if Project Co uses a different financial year.]***
4. **Actual Equity IRR** means the internal rate of return to providers of Equity Funding, calculated on a nominal and pre-investor tax basis using:
   1. all contributions of Equity Funding and their respective actual contribution dates, irrespective of whether those contributions were anticipated in the Financial Model;
   2. all Distributions and accrued Distributions up to the relevant Actual Equity Disclosure Date; and
   3. all Distributions forecast in the Financial Model to be provided after the relevant Actual Equity Disclosure Date.

**Additional or Replacement Security** has the meaning given in clause 52.7(b).

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

1. **Agreed Amount** has the meaning given in clause 61.1(c)(i).
2. **Amended Remediation Plan** has the meaning given in clause 26.4(i).
3. **Amendment** has the meaning given in clause 52.1(a).
4. **Annexure** means an annexure to this Deed.
5. **Approval** means:
   1. each State 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 Aboriginal Cultural Heritage.
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. **Asset Condition Survey** means each survey of the Maintained Assets undertaken in accordance with clause 15.4(a).
9. **Asset Information System** means the system of that name described in [##] of the PSDR.
10. **Asset Management Plan** means the Project Plan of that name.
11. **Asset Management Report** means the Operational Phase Report of that name.
12. **Associate** means, in relation to a person, any officer, agent, adviser, consultant, contractor or employee of that person.
13. **Attachment** means an attachment to (but not forming part of) this Deed. ***[Note: See Guidance Notes. Attachments may be part of the Project Scope on a project specific basis.]***
14. **Augmentation** has the meaning given in the Augmentation Process Schedule.
15. **Augmentation Documents** has the meaning given in the Augmentation Process Schedule.
16. **Augmentation Process Deed** has the meaning given in the Augmentation Process Schedule.
17. **Augmentation Process Schedule** means Schedule 23 (*Augmentation Process Schedule)*.
18. **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 Project Area as a consequence of the Works or a Modification.
19. **Availability Failure** has the meaning given in the Payment Schedule. ***[Note: To be amended on a project specific basis to reflect unavailability of the Maintained Assets. See Guidance Notes for further detail.]***
20. **Bank Bill Rate** in respect of a period means:
    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 State Representative, that rate becomes an inappropriate rate to benchmark the Overdue Rate for the purposes of this Deed or becomes incapable of application, the Bank Bill Rate means the rate reasonably determined by the State Representative to be the appropriate equivalent rate, having regard to prevailing market conditions.
21. **Base Case Floating Rate Debt** has the meaning given in the Payment Schedule.
22. **Base Case Floating Rate Interest Payment** has the meaning given in the Payment Schedule.
23. **Base Case Interest Rate** has the meaning given in the Payment Schedule.
24. **Base Cost** has the meaning given in the Change Compensation Principles.
25. **Benchmarked Insurances** has the meaning given in clause 44.15(b).
26. **Beneficiaries** has the meaning given in the Security Trust Deed.
27. **Bespoke Resolution Procedure** has the meaning given in clause 48A.4(a)(ii).
28. **Best Development 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 Development 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 Project Assets;
    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 Development Activities in Australia; and
    7. in a manner which is in accordance with the relevant requirements in the PSDR.
29. **Best Industry Practices** means Best Development Practices and Best Operational Practices (or either as the context requires).
30. **Best Operational Practices** means maintenance practices and other practices in respect of services similar to the Services, 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 services similar to the Services in respect of assets similar to the Maintained Assets 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 Maintained Assets;
    4. by prudent, experienced, competent and trained personnel utilising high quality, 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 services similar to the Services in respect of assets similar to the Maintained Assets in Australia,
    7. and with a design life equal to or greater than the items being repaired or replaced;
    8. with a commitment to continually providing innovation, meeting advancements in technology and improving the standards and quality in the delivery of the Services;
    9. ensuring that advancements in technology which Project Co must implement in respect of any component of the Project Assets in order to comply with the requirements in the State Project Documents are promptly implemented as part of the Services and in any case no later than the time when the relevant component of the Project Asset is due to be repaired or replaced; and ***[Note: Only include on projects where there is a high turnover of technical equipment.]***
    10. in a manner which is in accordance with the relevant requirements in the PSDR.
31. **Bid Development Phase Program** means Project Co's initial program for the Development Activities which is as set out in Attachment 3.
32. **Bid Project Plans** means Project Co's initial plans for the Project which are as set out in Attachment 4.
33. **Bill** has the same meaning as "bill of exchange" in the *Bills of Exchange Act 1909* (Cth) (but does not include a cheque or payment order) and a reference to the drawing or acceptance of, or other dealing with, a Bill is to be interpreted in accordance with that Act.
34. **Building Work** has the meaning given in section 6 of the FSC Act.
35. **Business As Usual Work** means Site Interface Works or Proximate Interface Works undertaken regularly by an Interface Party as part of its run of the mill, day to day works, services, activities or functions which ought to have been reasonably foreseeable as at the date of this Deed by a person in the position of Project Co exercising Best Industry Practices.
36. **Business Day** means a day in Melbourne that is not:
    1. a Saturday or Sunday; or
    2. a public holiday pursuant to the *Public* *Holidays Act 1993* (Vic).

***[Note: On a project specific basis, Project Teams may wish to consider whether to also exclude time between Christmas and New Year.]***

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

**CDPD Adjustment Protocol** means the protocol identified in Schedule 29 *(CDPD Adjustment Protocol)*.

1. **CDPD Amount** means the conditional debt paydown amount which is calculated as the lesser of: ***[Note: To be included on a project specific basis.]***
   1. [##]% of Project Debt forecast in the Financial Model to be; and
   2. [##]% of Project Debt actually,

outstanding immediately prior to the scheduled amortisation payment (if any) which falls due on the CDPD Payment Date or, if no scheduled amortisation payment falls due on the CDPD Payment Date, on the CDPD Payment Date.

1. **CDPD Amount Notice** has the meaning given in clause 33.2(a).
2. **CDPD Conditions** means the conditions set out in clause 33.1A(a).
3. **CDPD Defects Assessor** has the meaning given in clause 33.1A(d)(i).
4. **CDPD Notice Date** means the date of the notice issued by Project Co under clause 33.1A(c)(iii).
5. **CDPD Payment Date** means:
   1. where the CDPD Satisfaction Notice is delivered:
      1. at least 15 Business Days before the second last Business Day of the then current ["Interest Period"] (as that term is defined in the Syndicated Facilities Agreement), the date which is the second last Business Day of the then current Interest Period; or
      2. 15 or less Business Days before the second last Business Day of the then current Interest Period, the date which the second last Business Day of the next Interest Period; or
   2. such date earlier than as described in paragraph (a) of this definition as determined by the State in its absolute discretion.
6. **CDPD Period** means the period of time:
   1. beginning on the [insert] anniversary of the later of the Original Date for Commercial Acceptance and the Date of Commercial Acceptance; and
   2. ending on the [insert] anniversary of the later of the Original Date for Commercial Acceptance and the Date of Commercial Acceptance.
7. **CDPD Satisfaction Notice** means the notice delivered pursuant to 33.1A(c)(iv)A.
8. **Certificate of Commercial Acceptance** means a certificate issued under clause 24.3(j), which is substantially in the form required by the Schedule of Certificates and Notices.
9. **Certificate of Final Acceptance** means a certificate issued under clause 25.1(f), which is substantially in the form required by the Schedule of Certificates and Notices.
10. **Certificate of Returned Works Acceptance** means a certificate issued under clause 24.4(m), which is substantially in the form required by the Schedule of Certificates and Notices.
11. **Certified Payment Claim** means a payment claim that has been certified under and in accordance with the D&C Contract.
12. **Change Compensation Event** has the meaning given in the Change Compensation Principles.
13. **Change Compensation Principles** means Schedule 5 (*Change Compensation Principles)*.
14. **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,

or a change in the manager, trustee or Responsible Entity of any Entity that is a trust.

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.

**Change in Law** means a General Change in Law and a Project Specific Change in Law which is not a Pandemic Change in Law.

**Change in Management** means a change in:

* 1. any Entity which provides management functions to Project Co;
  2. the senior employees of any Entity which provides management functions to Project Co; or
  3. the senior management of Project Co,

as applicable.

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. **Change Notice** has the meaning given in the Change Compensation Principles.
3. **Change Response** has the meaning given in the Change Compensation Principles.
4. **Claim** means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made under any State Project Document or otherwise at Law in connection with the Project, including for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief or remedy.
5. **Collated Returned Works Outstanding Items List** has the meaning given in clause 24.4(e)(ii) as updated in accordance with clause 24.4(f).
6. **Commercial Acceptance** means the stage when:
   1. [not used];
   2. the Works are complete other than:
      1. any Remaining Works; or
      2. Returned Works Outstanding Items as set out in the Collated Returned Works Outstanding Items List; and
   3. Project Co has otherwise done everything which this Deed requires Project Co to do prior to or as a condition precedent to Commercial Acceptance (other than Remaining Works).
7. **Commercial Acceptance Plan** means the Project Plan of that name.
8. **Commercially Sensitive Information** means:
   1. the information listed in the Commercially Sensitive Information Schedule; and
   2. the Finance Documents, other than the Finance Direct Deed.
9. **Commercially Sensitive Information Schedule** means Schedule 11 (*Commercially Sensitive Information Schedule)*.
10. **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.
11. [**Commonwealth Funding Conditions** means:
    1. compliance with the FSC Act;
    2. accreditation of the D&C Contractor under the WHS Accreditation Scheme, or if a D&C Contractor is not accredited, such D&C Contractor has a valid exemption applying to that D&C Contractor and that D&C Contractor complies with the relevant conditions;
    3. provision by Project Co to the State of a statement of assurance in connection with the Project in accordance with the State's reasonable requirements; and
    4. any other requirements of the Commonwealth as notified to Project Co by the State in connection with the Commonwealth funding associated with the Project required under the [***insert funding agreement***].] ***[Note: To be deleted if Commonwealth Funding is not applicable.]***
12. **Communications and Community Relations Plan** means the Project Plan of that name for each of the Development Phase and the Operational Phase.
13. **Compensable Change in Mandatory Requirements** means:
    1. a:
       1. General Change in Law (Development Phase) occurs before the Operational Commencement Date;
       2. General Change in Law (Operational Phase) occurs after the Operational Commencement Date; or
       3. a Project Specific Change in Law occurs after the date of this Deed,

but does not include:

* + 1. a State Approval Event;
    2. any of the events referred to in paragraphs (a)(i), (a)(ii)or (a)(iii) 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 Project 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 Project Activities in accordance with Best Industry Practices would have reasonably foreseen or anticipated a change similar to or having a similar effect on the rights and obligations of Project Co 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 Project Co is required to comply under the State Project Documents; or
       6. results from or is in response to any Project Co Act or Omission;
    3. any of the events referred to in paragraphs (a)(i), (a)(ii) or (a)(iii) 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 2.20, 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 Project Asset or Project Co's delivery methodology for the Project except where any such design or delivery methodology is necessary to satisfy Project Co's obligations under the State Project Documents;
    6. the Project Assets or any part of the Project Assets:
       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 Project Assets 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 Project Assets 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
  1. a Change in Policy occurs after the date of this Deed that:
     1. in respect of a Change in Policy that is not a Change in EPA Standard, Project Co 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 State directs Project Co to comply with under clause 36.1(b); or
     2. in respect of a Change in Policy that is a Change in EPA Standard, Project Co:
        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 State directs Project Co to comply with under clause 36.1(b),

and the Change in EPA Standard has a material adverse effect on the manner in which Project Co undertakes the Project Activities,

* 1. but does not include:
     1. any of the events referred to in paragraphs (b)(i) or (b)(ii) above:
        1. of which the State expressly notified Project Co prior to the date of this Deed;
        2. which is contained or referred to in the PSDR, the Bid Project Plans or any Project Document, or in any Project Information to that extent it exists prior to the date of this Deed;
        3. which a party performing activities similar to the Project Activities in accordance with Best Industry Practices would have reasonably foreseen or anticipated a change similar to or having a similar effect on the rights and obligations of Project Co prior to the date of this Deed;
        4. which is substantially the same as a Standard in force prior to the date of this Deed;
        5. which is substantially the same as any other requirements with which Project Co is required to comply under the State Project Documents; or
        6. which results from or is in response to any Project Co Act or Omission;
     2. a Change in Law; or
     3. a Pandemic Change in Law.

1. **Compensable Extension Event** means the occurrence of any of the following events after the date of this Deed which occurs in respect of the Development Activities:
   1. a breach by the State of any State Project Document;
   2. an act or omission of:
      1. the State; or
      2. any State Associate,

when acting in connection with the Project, in each case other than any such act or omission which is:

* + 1. a Permitted Act; or
    2. contemplated by clause 7.1 where the Authority is acting in accordance with its statutory powers;
  1. to the extent that Project Co has complied with its obligations under clause 19.2, any Proximate Interface Works, but only to the extent that:
     1. those Proximate Interface Works are not part of the relevant Interface Party's Business As Usual Work; and
     2. either:
        1. the nature or extent of the Proximate Interface Works or the impact of those Proximate Interface Works on the Project Activities were not otherwise reasonably foreseeable as at the date of this Deed by a person in the position of Project Co at that time exercising Best Industry Practices; or
        2. the Proximate Interface Works are performed in a manner which is inconsistent with the performance standards and practices that would reasonably be expected of a prudent, experienced and competent person undertaking works, services, activities or functions similar to the relevant Proximate Interface Works;
  2. to the extent that Project Co has complied with its obligations under clause 19.2, any Site Interface Works, but only to the extent that:
     1. those Site Interface Works are not part of the relevant Interface Party's Business As Usual Work; and
     2. either:
        1. the nature or extent of those Site Interface Works or the impact of those Site Interface Works on the Project Activities were not otherwise reasonably foreseeable as at the date of this Deed by a person in the position of Project Co at that time exercising Best Industry Practices; or
        2. the Site Interface Works are performed in a manner which is inconsistent with the performance standards and practices that would reasonably be expected of a prudent, experienced and competent person undertaking works, services, activities or functions similar to the relevant Site Interface Works;
  3. cessation or suspension of any part of the Development Activities because of:
     1. a Commonwealth or State direction;
     2. an order of a court or tribunal of competent jurisdiction; or
     3. a requirement of Law,
  4. in connection with a Heritage Claim or Native Title Claim (as the case may be) in the Project Area;
  5. a material change to the way in which the Development Activities are carried out because of:
     1. a Commonwealth or State direction;
     2. an order of a court or tribunal of competent jurisdiction; or
     3. a requirement of Law,
  6. in connection with a Heritage Claim or Native Title Claim (as the case may be) in the Project Area unless any such change is the subject of a Modification Order under clause 35;
  7. Industrial Action which:
     1. only occurs at or in the direct vicinity of the Project Area; and
     2. is the direct result of an act or omission of the State when acting in connection with the Project or a State Associate, in each case other than any such act or omission which:
        1. is a Permitted Act;
        2. is undertaken as part of any Interface Works; or
        3. is contemplated by clause 7.1 where the Authority is acting in accordance with its statutory powers;
  8. a Compensable Extension Event under clause 38.1(b)(i);
  9. a Compensable Extension Event under clause 38.5(b)(i);
  10. the occurrence of a Pandemic Compensation Event;
  11. a Pandemic Change in Law; or
  12. any other event expressly stated to be a Compensable Extension Event in this Deed.

1. **Compensable Intervening Event** means the occurrence of any of the following events during the Operational Phase:
   1. a breach by the State of any State Project Document;
   2. a fraudulent, reckless, unlawful or malicious act or omission of:
      1. the State; or
      2. any State Associate,

when acting in connection with the Project;

* 1. cessation or suspension of any part of the Services because of:
     1. a Commonwealth or State direction;
     2. an order of a court or tribunal of competent jurisdiction; or
     3. a requirement of Law,

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

* 1. a material change to the way in which the Services are carried out because of:
     1. a Commonwealth or State direction;
     2. an order of a court or tribunal of competent jurisdiction; or
     3. a requirement of Law,
  2. in connection with a Heritage Claim or Native Title Claim (as the case may be) in the Project Area unless any such change is the subject of a Modification Order under clause 35;
  3. Industrial Action which:
     1. only occurs at or in the direct vicinity of the Project Area; and
     2. is the direct result of an act or omission of the State when acting in connection with the Project, or any State Associate, in each case other than any such act or omission which is:
        1. a Permitted Act;
        2. undertaken as part of any Interface Works; or
        3. contemplated by clause 7.1 where the Authority is acting in accordance with its statutory powers;
  4. to the extent that Project Co has complied with its obligations under clause 19.2, any Proximate Interface Works but only to the extent that:
     1. those Proximate Interface Works are not part of the relevant Interface Party's Business As Usual Work; and
     2. either:
        1. the nature or extent of the Proximate Interface Works or the impact of those Proximate Interface Works on the Project Activities were not otherwise reasonably foreseeable as at the date of this Deed by a person in the position of Project Co at that time exercising Best Industry Practices; or
        2. the Proximate Interface Works are performed in a manner which is inconsistent with the performance standards and practices that would reasonably be expected of a prudent, experienced and competent person undertaking works, services, activities or functions similar to the relevant Proximate Interface Works;
  5. to the extent that Project Co has complied with its obligations under clause 19.2, any Site Interface Works, but only to the extent that:
     1. those Site Interface Works are not part of the relevant Interface Party's Business As Usual Work; and
     2. either:
        1. the nature or extent of those Site Interface Works or the impact of those Site Interface Works on the Project Activities were not otherwise reasonably foreseeable as at the date of this Deed by a person in the position of Project Co at that time exercising Best Industry Practices; or
        2. the Site Interface Works are performed in a manner which is inconsistent with the performance standards and practices that would reasonably be expected of a prudent, experienced and competent person undertaking works, services, activities or functions similar to the relevant Site Interface Works;
  6. the occurrence of a Pandemic Compensation Event;
  7. a Pandemic Change in Law; or
  8. any other event expressly stated to be a Compensable Intervening Event under this Deed.

1. **Compensation Date** has the meaning given in the Termination Payments Schedule.
2. **Concurrent Delay** has the meaning given in clause 26.14(a).
3. **Condition Precedent** means each condition precedent identified as such in the Conditions Precedent Schedule.

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

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

1. **Conditions Precedent Schedule** means Schedule 2.
2. **Confidential Information** has the meaning given in clause 55.2(a).
3. **Consortium** means:
   1. the Project Entities;
   2. the D&C Contractor up to the expiry of the last defects liability period under the D&C Contract; ***[Note: Timing to be considered in light of whether the Development Phase includes any DLP.]***
   3. the Services Contractor;
   4. any Parent Guarantor of the D&C Contractor for so long as the D&C Contractor is a member of the Consortium; and
   5. any Parent Guarantor of the Services Contractor,

and **Consortium Member** means any of them. ***[Note: Subject to successful proponent contractual structure. The "Consortium" may include other contractors directly engaged by Project Co.]***

1. **Construction Base Costs** has the meaning given in the Change Compensation Principles.
2. **Construction Documentation** has the meaning given to that term in the Delivery Requirements.
3. **Construction Facility** has the meaning given in the [Syndicated Facilities Agreement]. [***Note: Subject to review of the Finance Documents.***]
4. **Construction Facility Commitment** means the aggregate of the Commitments (as defined in the [Syndicated Facilities Agreement]) in relation to the Construction Facility. [***Note: Subject to review of the Finance Documents.***]
5. **Construction Management Plan** means the Project Plan of that name.
6. **Construction Margin** has the meaning given in the Change Compensation Principles.
7. **Construction Proceeds Account** has the meaning given in the [Syndicated Facilities Agreement / Security Trust Deed]. ***[Note: subject to review of the Finance Documents.] [Note: Delete this definition where the Development Phase Capital Contribution is not applicable.]***
8. **Consultant Costs** has the meaning given in the Change Compensation Principles.

**Contaminated Land Note** has the meaning given in clause 11.1(b)(vii).

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

1. **Contamination Compensation Event** has the meaning given in clause 11.7(a).
2. **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,

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 Project Area or, any other land in the direct vicinity of the Project Area used or occupied by Project Co or any Project Co Associate for the Project and includes any improvement notice, prohibition notice, notice to investigate, environmental action notice, non-disturbance notice or site management order given or purported to be given under the *Environment Protection Act 2017* (Vic).

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

1. **Contract Particulars** means Schedule 1.
2. **Contract Works Insurance** has the meaning given in the Insurance Schedule.
3. **Control** means:
   1. control of, or having the capacity to control the composition of the board or partnership committee (or if the Entity is a trust, the appointment or choice of trustee of that trust), 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 if the Entity is a trust, a meeting of unitholders) 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 Securities as defined in this Deed) in more than 20% of the Securities,

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). ***[Note: Subject to consideration of Proposals.]***

1. **Controlling Unit Holder** means, in respect of any trust or managed investment scheme, any entity which:
   1. controls (within the meaning of section 50AA of the Corporations Act) the trust or managed investment scheme (either directly or through one or more intermediary entities or trusts);
   2. is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of unit holders of the trust or managed investment scheme (either directly or through one or more intermediary entities or trusts or managed investment schemes); or
   3. holds more than one half of the units in the trust or managed investment scheme.
2. **Correctly Applied** means deposited in the Construction Proceeds Account or applied to pay Project Costs as specified in the Financial Model. ***[Note: Delete this definition where the Development Phase Capital Contribution is not applicable.]***
3. **Corporations Act** means the *Corporations Act 2001* (Cth).
4. **Cost** for the purposes of clause 61, has the meaning given in clause 61.1(h).
5. **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.
6. **CPI Indexed** has the meaning given to it in the Indexes Schedule.
7. **Creditable Acquisition**, for the purposes of clause61, has the meaning given in the GST Act.

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

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

1. **Cyber Security Incident** has the meaning given in the *Security of Critical Infrastructure Act 2018* (Cth).

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

1. **D&C Contractor** means:
   1. as at the date of this Deed, the party listed as such in the Contract Particulars; and
   2. any person who in addition or substitution is engaged by Project Co to carry out all, or substantially all, of the Development Activities.
2. **D&C Contractor and Services Contractor Interface Deed** has the meaning given in the D&C Contract. ***[Note: Subject to successful Respondent's Proposal.]***
3. **D&C Contractor Consent Deed** means the document entitled "[##] – D&C Contractor Consent Deed" between Project Co, the D&C Contractor, the Parent Guarantor of the D&C Contractor, the Security Trustee and others.

**D&C Contractor Construction Bond** has the meaning given in clause 20.4(a).

**D&C Contractor Construction Bond Amount** means an amount equal to 5% of the D&C Price.

**D&C Contractor DLP Bond Amount** means an amount equal to 2.5% of the D&C Price.

1. **D&C Contractor Direct Deed** means the document entitled "[**#*#***] - D&C Contractor Direct Deed" between the State, Project Co, the D&C Contractor and the Parent Guarantor of the D&C Contractor.

**D&C Price** means the amount set out in the Contract Particulars. ***[Note: This is the fixed price for the D&C Contract at Financial Close as set out in the Model Output Schedule.]***

**Date for Acceptance** means:

* 1. [not used];
  2. the Date for Commercial Acceptance; and
  3. the Date for Final Acceptance,

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

1. **Date for Commercial Acceptance** means the date specified as such in the Contract Particulars as adjusted (if at all) under this Deed.
2. **Date for Final Acceptance** means the date specified as such in the Contract Particulars as adjusted (if at all) under this Deed.
3. **Date of Commercial Acceptance** means the date of the Certificate of Commercial Acceptance issued under clause 24.3(j) as the date on which Project Co achieved Commercial Acceptance. ***[Note: For roads projects, the Date of Commercial Acceptance must be the date of the certificate but, where not a road project, the Date of Commercial Acceptance may be able to be prior to the date of the Certificate of Commercial Acceptance. Consider on a Project specific basis having regard to relevant regulatory framework.]***

**Date of Final Acceptance** means the date of the Certificate of Final Acceptance issued under clause 25.1(f) as the date on which Project Co achieved Final Acceptance. ***[Note: The Date of Final Acceptance may be the date of the Certificate of Final Acceptance or may be prior to the date of the Certificate of Final Acceptance. Consider on a Project specific basis having regard to relevant regulatory framework.]***

1. **Date of Returned Works Acceptance** has the meaning given in clause 24.4(m)(iv).

**Day 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. chemical, nuclear or biological contamination, but excluding:
     1. a Pandemic; or
     2. any Contamination which Project Co must remediate pursuant to clause 11.6(d) or any Contamination in respect of which Project Co is entitled to compensation or relief under this Deed;
  3. ionising radiation or contamination by radioactivity; or
  4. terrorist act occurring on the Project Area (except to the extent coverage is provided for a declared terrorist incident by operation of the *Terrorism Insurance Act 2003* (Cth)).

**Deed** has the meaning given in clause 2.2.

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

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

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

* 1. (**abandonment**): Project Co wholly or substantially abandons all or any material (in scope or effect) part of the Project Activities;
  2. (**Group Member Insolvency Event**): an Insolvency Event occurs in relation to a Group Member;
  3. (**Key Subcontractor or Parent Guarantor Insolvency Event**): an Insolvency Event occurs in relation to:
     1. the D&C Contractor or the Parent Guarantor of the D&C Contractor, prior to the expiry of the last defects liability period under the D&C Contract; or
     2. subject to paragraph (c)(i), any other Consortium Member (other than a Group Member),

and that D&C Contractor, Parent Guarantor of the D&C Contractor or other Consortium Member (as applicable) is not replaced within 6 Months of the Insolvency Event by a person that is approved by the State;

***[Note: To be considered in light of Consortium structure.]***

* 1. (**assignment, transfer or disposal**): Project Co 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 Project Area or the Project Assets other than in accordance with the requirements of this Deed;
  2. (**Share Capital Dealing**): where:
     1. a Share Capital Dealing (which is not a Permitted Share Capital Dealing or a Share Capital Dealing referred to in clause 52.6(b)), occurs in respect of a Project Entity other than in accordance with clause 52.4; or
     2. the State gives notice under clause 52.7 that the State provides a conditional consent to or does not consent to a Share Capital Dealing in respect of a Project Entity referred to in clause 52.6(b), and Project Co fails to comply with clause 52.6(d)(i) within the time required by the State (acting reasonably) or clause 52.6(d)(ii) within 60 Business Days of receipt of that notice from the State (as applicable);
  3. (**unremedied Major Default**): a Major Default is capable, or deemed to be capable, of Cure and Project Co fails to Cure the Major Default within the time set out in the Major Default Notice (as amended under clause 45.3(d), determined in accordance with clause 45.3(g) or extended under clause 45.4(e) (as applicable));
  4. (**Major Default not capable of Cure**): a Major Default is not capable of Cure and Project Co fails to diligently comply with any reasonable requirements of the State to overcome the consequences of the Major Default within the time stated in the Major Default Notice (as amended under clause 45.3(d), determined in accordance with clause 45.3(g) or extended under clause 45.4(e) (as applicable));
  5. (**Default Termination Performance Failures**): means there are Performance Failures for which the State has Abated Project Co and, under the Payment Schedule:
     1. [***##***]; and

***[Note:*** ***Default Termination Performance Failures and associated Default Termination thresholds to be defined on a project specific basis.]***

* 1. (**finance event of default**): an event of default (of whatever nature and howsoever defined) occurs under a Finance Document and the Financiers take any steps to accelerate repayment or enforce their security [or other] rights under the Finance Documents in respect of such default; or
  2. (**deemed Default Termination Event**): any other event which is deemed to be a Default Termination Event under this Deed.

1. **Defect** means:
   1. any defect, fault or omission (including shrinkage, expansion, fading or settlement) in a Project Asset or a Returned Asset 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; and
   2. any other aspect of the Project Assets or the Returned Assets which is not in accordance with the requirements of this Deed,
2. and includes Minor Defects and damage to a Project Asset 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 Project Assets or the Returned Assets.
3. **Defect Corrective Action Plan** has the meaning given in clause 27.3(a).
4. **Delivery Requirements** has the meaning given in the PSDR. ***[Note: This is the State's requirements for the design and construction of the Works such as the functional brief and technical requirements. This will be determined on a Project specific basis.]***
5. **Design Development Coordinator** means the person appointed by Project Co as the Design Development Coordinator under clause 7.4(a) or clause 7.4(b) (as applicable).
6. **Design Development Process** has the meaning given in clause 20.2(b).
7. **Design Development Process Schedule** means Schedule 24.
8. **Design Documentation** means all deliverables in respect of the design of the Project Assets (including all draft and final design standards, design reports, durability reports, drawings, specifications, manuals, designs, models, samples, patterns and calculations) in computer readable written or any other form, which Project Co or any Project Co Associate creates, develops or produces or which are required to, or must necessarily, be created, developed or produced in carrying out the Development Activities.
9. **Designated Investor** means an investor described as such in the Contract Particulars.
10. **Development Activities** means the design, manufacture, supply, construction, installation and commissioning and completion of the Maintained Assets, Returned Assets and the Temporary Works and all other works, things and tasks which Project Co is, or may be, required to carry out to:
    1. achieve Commercial Acceptance;
    2. achieve Final Acceptance;
    3. complete the Returned Works Outstanding Items; and
    4. otherwise comply with its obligations under or in connection with the State Project Documents during the Development Phase.
11. **Development Phase** means the period beginning on Financial Close and ending on the Date of Commercial Acceptance.

**Development Phase Area** means the land described as the Development Phase Area in [**##**] of the PSDR. ***[Note: Needs to include the Returned Works until the relevant Returned Works Acceptance.]***

1. **Development Phase Capital Contribution** means the financial contribution of the State to Project Co in the forecast amounts set out in the Development Phase Capital Contribution Schedule and payable in accordance with clause 33.1(d).
2. **Development Phase Capital Contribution Actual Amount** means for each Month, the greater of:
   1. the Development Phase Capital Contribution Forecast Amount for that Month minus any Development Phase Capital Contribution Adjustment for that Month; and
   2. $0.
3. **Development Phase Capital Contribution Adjustment** means for each Month, an amount equal to the Forecast Payment Claim for that Month minus the Certified Payment Claim for that Month with the result multiplied by the Development Phase Capital Contribution Funding Percentage for that Month. For the avoidance of doubt, the Development Phase Capital Contribution Adjustment may be a positive or negative amount.
4. **Development Phase Capital Contribution Forecast Amount** means for each Month, the amount set out in the Development Phase Capital Contribution Schedule for that Month.
5. **Development Phase Capital Contribution Funding Percentage** means for each Month, the percentage set out in the Development Phase Capital Contribution Schedule for that Month.

**Development Phase Capital Contribution Notice** has the meaning given in clause 33.2A(a).

**Development Phase Capital Contribution Payment Date** means, for each payment under clause 33.2A(c), the date which is the later of:

* 1. 7 Business Days after receipt by the State of a valid Development Phase Capital Contribution Notice; and
  2. the payment date specified in the Development Phase Capital Contribution Notice.

**Development Phase Capital Contribution Schedule** means Schedule 27 (*Development Phase Capital Contribution Schedule*).

**Development Phase CCE Model Variation Event** means any permanent adjustment to the Service Payments which results from a Change Compensation Event that occurs during the Development Phase.

1. **Development Phase Finance Amount** has the meaning given in the Change Compensation Principles.
2. **Development Phase Insurances** means the Insurances referred to in Part A of the Insurance Schedule.
3. **Development Phase Licence** has the meaning given in clause 20.1. ***[Note: Form of Licence to be included in the Site Access and Tenure Schedule.]***
4. **Development Phase Program** means the Bid Development Phase Program as updated in accordance with the requirements of this Deed.
5. **Development Phase Reports** means each of the reports to be prepared, provided and updated by Project Co in connection with the Development Phase or the Works in accordance with [*##*] of the PSDR.
6. **Development Phase Site** means:
   1. the Development Phase Area; and
   2. all other areas upon which the Development Activities are being carried out or materials in connection with the Development Activities are being prepared or stored during the Development Phase.
7. **Direct Affected Area** means an area in, on, over or under the direct vicinity, but outside, of the Project Area which is used or occupied by Project Co or a Project Co Associate in carrying out the Project Activities in accordance with this Deed.
8. **Direct Deed** means each of:
   1. the D&C Contractor Direct Deed;
   2. the Services Contractor Direct Deed; and
   3. any other Subcontractor Direct Deed required by the State in accordance with the requirements of this Deed.
9. **Direct Interface Deed** means any agreement or deed that Project Co is required by the State to enter or does enter into with a Direct Interface Party in respect of Interface Works under which Project Co has recourse against the Direct Interface Party in respect of acts or omissions of the Direct Interface Party in carrying out the Interface Works. ***[Note: The intention is to capture those agreements where Project Co has direct recourse against the Interface Party. If Interface Deeds are entered into where there is no direct recourse to the Interface Party, amendments will need to be made on a project specific basis.***
10. ***In addition, on a project specific basis, Project Teams could include a mechanism which requires Project Co to enter into Direct Interface Deeds post contract close.]***
11. **Direct Interface Party** means [*Insert*]. ***[Note: To be considered on a project specific basis.]***
12. **Direct Interface Works** means works, services, activities or functions:
    1. in connection with the Project Assets;
    2. otherwise in connection with the Project Activities; or
    3. on, in, under, over or in the direct vicinity of the Project Area,
13. which are undertaken by a Direct Interface Party during the Term simultaneously with Project Co's performance of the Project Activities and are the subject of a Direct Interface Deed.
14. **Dispute** has the meaning given in clause 48.2.
15. **Dispute Resolution Team** (or **DRT**) means the dispute resolution team established under clause 48A.2(a).
16. **Distribution** means, without double counting, any:
    1. dividend, return of capital, or other distribution or payment (in cash or in kind) in connection with the share capital, units or partnership interest of a Group Member or shareholder loans (or other loans in the nature of Equity Funding) to, or for the benefit of, a Group Member;
    2. release by a Group Member of any actual or contingent liability of a Project Entity or any Equity Investor (or any Related Body Corporate or Related Trust Entity of an Equity Investor); or
    3. payment, loan or transfer of any assets or provision of any other benefit by a Group Member to any Equity Investor (or any Related Body Corporate or Related Trust Entity of any Equity Investor) which is not on arm's length commercial terms.
17. **Downstream Independent Reviewer Functions** has the meaning given in the Independent Reviewer Deed of Appointment.
18. **DPCC Project Costs** has the meaning given in clause 33.2A(d)(i).

**DRT End Date** means:

* 1. if a Bespoke Resolution Procedure is not agreed under clause 48A.4(a)(ii), the date that is [20] Business Days after the referral to the DRT under clause 48A.1; or
  2. if a Bespoke Resolution Procedure is agreed under clause 48A.4(a)(ii), the date of the conclusion of that procedure.

**DRT Representatives** has the meaning given to it in clause 48A.2.

1. **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.
2. **Emergency** means any event which:
   1. involves serious personal injury, death or significant damage to or destruction of the Project Assets or other property in connection with the Project;
   2. poses a serious risk to:
      1. the public interest;
      2. the health or safety of any person;
      3. the Environment;
      4. the Project Area;
      5. the structural integrity of any part of the Project Assets; or
      6. Operations,
   3. or poses a serious risk of damaging or destroying the Project Assets or any other property;
   4. requires an urgent response to prevent any occurrence which could:
      1. cause personal injury or significant damage to or destruction of the Project Assets or other property;
      2. compromise the health or safety of any person or property; or
      3. have a significant impact on Operations; or
   5. prevents the Project Assets or any part of them being open to the public for the safe, efficient and continuous passage of vehicles, other than where this is planned in accordance with any agreed procedures referred to in this Deed.
3. **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).
4. **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.
5. **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.
6. **Environmental Management Plan** means the Project Plan of that name for each of the Development Phase and the Operational Phase.
7. **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 Project Activities, including those identified in this Deed, any other Project Document or otherwise required by Best Industry Practices.
8. **EPA** means the Environment Protection Authority Victoria constituted under Legislation.
9. **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).
10. **EPA Statutory Instrument** means:
    1. a written notice, order or direction issued to Project Co; or
    2. an Approval obtained or required,
11. 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).
12. **Equity Documents** means each of the documents listed in the Equity Documents Schedule.
13. **Equity Documents Schedule** means Schedule 13 (*Equity Documents Schedule)*.
14. **Equity Funding** means, at any time, equity capital to be or which has been contributed to any Group Member by way of subscription for shares or units or by way of shareholder or unitholder loans, in each case as set out in the Financial Model. ***[Note: To be tailored to Project Co's corporate structure, including inclusion of any equity contributed as subordinated debt. The State will require that the Financial Model clearly identifies the Equity Funding as referred to in this Deed and the definition may be amended to more clearly link to the relevant concept in the Financial Model.]***
15. **Equity Investor** means:
    1. a person identified as such in the Ownership Schedule;
    2. each person who has provided or has agreed to provide:
       1. Equity Funding at the times and in the amounts set out in the Financial Model (whether by way of subscription for units or shares or provision of unitholder or shareholder loans); or
       2. any other equity, financial arrangement, security or option issued by or provided to a Group Member which does not constitute a Refinancing; and
    3. any person who replaces or is added to the persons referred to in paragraphs (a) or (b) including in accordance with clause 52.
16. **Equity IRR** means the internal rate of return to providers of Equity Funding as set out in the Financial Close Financial Model or in the Financial Model (as the case may be). The internal rate of return is calculated on a nominal and pre-investor tax basis, using the dates for contributions of Equity Funding specified in the Financial Close Financial Model or in the Financial Model (as the case may be).
17. **Equity Subscription Agreement** has the meaning given to it in the Equity Documents Schedule.
18. **Executive Review Group** means the executive level issue resolution group established in accordance with the Executive Review Group Terms of Reference.
19. **Executive Review Group Terms of Reference** means the terms of reference for the Executive Review Group set out in Schedule 26 (*Executive Review Group Terms of Reference*), as updated by agreement between the parties from time to time.
20. **Existing Insurance Component** has the meaning given in clause 44.15(d).
21. **Expert Determination Agreement** means Schedule 8 (*Expert Determination Agreement)*.
22. **Expiry Date** has the meaning given in clause 4.2.
23. **Explanation** has the meaning given in either clause 20.6(c)(i) or clause 26.4(d)(i) (as applicable).
24. **Extension Event** means the occurrence of any of the following events after the date of this Deed which occurs in respect of the Development Activities:
    1. a Compensable Extension Event;
    2. any breach of a Direct Interface Deed by a Direct Interface Party;
    3. a Force Majeure Event; or
    4. any other event expressly stated to be an Extension Event under this Deed.
25. **Facility Agent** means the "Facility Agent" as defined in the Syndicated Facilities Agreement who is a party to the Finance Direct Deed in that capacity. ***[Note: Terminology to be aligned with the successful Respondent's Proposal.]***
26. **FFP Warranty** means each and all of the warranties given in clause 5.5.
27. **Final Acceptance** means the stage when:
    1. all Remaining Works have been completed;
    2. all Returned Works Outstanding Items included in the Collated Returned Works Outstanding Items List have been rectified or completed; and
    3. Project Co has otherwise done everything which this Deed requires Project Co to do prior to or as a condition precedent to Final Acceptance.
28. ***[Note: To be addressed on a project specific basis.]***

**Final Expiry Date** means the date which is the [25th] anniversary of the earlier of the Date for Commercial Acceptance and the Date of Commercial Acceptance.

**Final Refurbishment Works** means Final Refurbishment Works (Development Phase) and Final Refurbishment Works (Operational Phase), as the case may be.

**Final Refurbishment Works (Development Phase)** has the meaning given in clause 47.6(c)(i)A.

**Final Refurbishment Works (Operational Phase)** has the meaning given in clause 47.6(c)(i)B.

1. **Finance Direct Deed** means the document entitled "[*##*] - Finance Direct Deed" between the State, Project Co, the Facility Agent and the Security Trustee on behalf of the Financiers.
2. **Finance Documents** means:
   1. each of the documents listed in the Finance Documents Schedule;
   2. any document entered into in relation to a Refinancing of the Actual Debt approved by the State under clause 37; and
   3. any other document which the parties agree is a Finance Document for the purposes of this Deed.
3. ***[Note: Finance Documents Schedule does not include Equity Documents.]***
4. **Finance Documents Schedule** means Schedule 12 (*Finance Documents Schedule*).
5. **Finance Party** has the meaning given in the Finance Direct Deed.
6. **Financial Close** means the date set out in the State'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)).
7. **Financial Close Adjustment Protocol** means Schedule 17 (*Financial Close Adjustment Protocol)*.
8. **Financial Close Financial Model** means the Contract Close Financial Model as updated and audited in accordance with the Financial Close Adjustment Protocol under clause 3.5(a).
9. **Financial Model** means the Financial Close Financial Model updated from time to time in accordance with clause 53.
10. **Financial Year** means each 12 Month period commencing on 1 July and ending on 30 June.
11. **Financiers** means the providers of any financing facilities, financial arrangements or accommodation to a Group Member under the Finance Documents (other than Finance Documents solely between Group Members) from time to time and may, where the context permits, include any agent or trustee of such Financiers.
12. **Financiers' Certifier** has the meaning given in the [Syndicated Facilities Agreement]. ***[Note: Subject to review of the Finance Documents.]***
13. **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.
14. **Fixtures** has the meaning given in clause 18.1.
15. **Floating Rate Component** means each amount calculated in accordance with section [*##*] of the Payment Schedule.
16. **Floating Rate Component Invoice** means an invoice for payment of the Floating Rate Component in the form agreed by the parties (each acting reasonably) after Financial Close.
17. **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:
          1. during the Development Phase, producing sustained surface winds in excess of [118 km/h] and gusts in excess of [165 km/h], as recorded by the Bureau of Meteorology, Melbourne; or
          2. during the Operational Phase, producing sustained surface winds in excess of [118 km/h] and gusts in excess of [225 km/h], as recorded by the Bureau of Meteorology, Melbourne;
       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);
       5. a Day 1 Uninsurable Risk; or
       6. [not used],
    2. which:
       1. other than in respect of paragraph (a)(vi) of this definition, occurs at or in the direct vicinity of the Project Area; ***[Note: Extension to key off-site areas (including internationally or interstate) particularly in the Development Phase to be considered on a project specific basis.]***
       2. was not caused by Project Co, any Project Co Associate, the State, any State Associate or any Interface Party; and
       3. prevents:
          1. Project Co from carrying out all or a material part of the Project Activities; or
          2. the State from carrying out all or a material part of its obligations,
       4. in accordance with the State Project Documents;
    3. a Force Majeure Event under clause 38.1(b)(ii); or
    4. a Force Majeure Event under clause 38.5(c).
18. **Force Majeure Termination Event** means a Force Majeure Event or its effects which prevent:
    1. Project Co from carrying out all or a material part of the Project Activities; or
    2. the State from carrying out all or a material part of its obligations,
19. in accordance with the State Project Documents for a continuous period exceeding 180 consecutive days, or any other event expressly deemed to be a Force Majeure Termination Event in this Deed, unless the State has directed Project Co to repair or rebuild the Project Assets in accordance with clause 42.2(b).

**Forecast Payment Claim** means for each Month, the amount set out in the Development Phase Capital Contribution Schedule for that Month.

1. **FSC Act** means the *Federal Safety Commissioner Act 2022* (Cth) and its associated rules and regulations, as amended from time to time.

**Future Commonwealth Funded Building Work** has the meaning given in clause 57.3(a).

**Future Insurance Component** has the meaning given in clause 44.15(c).

**General Change in Law** means a General Change in Law (Development Phase) and a General Change in Law (Operational Phase).

**General Change in Law** **(Development Phase)** means any one of the following that occurs on or after the date which is [6 Months] after the date of this Deed: ***[Note: Time period to be determined by the Project Team 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 judicial determination of new Legislation;
  3. a change in the way Legislation is applied or interpreted as a result of a decision of a court of competent jurisdiction,

that is not a Project Specific Change in Law and compliance with which requires a change to the Works, the Services or the Working Parameters and either: ***[Note: Thresholds to be determined by the Project Team on a project specific basis.]***

* 1. the Base Costs in respect of each General Change in Law (Development Phase) exceed $[insert]; or
  2. Project Co is delayed in achieving Acceptance by more than [insert] Business Days in respect of each General Change in Law (Development Phase).

**General Change in Law** (**Operational Phase**) means any one of the following that occurs after the date of this Deed:

* 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 State Approval);
  5. a new requirement to obtain an Approval (other than a State Approval); or
  6. an amendment to, repeal of or change in an Approval (other than a State Approval),

that is not a Project Specific Change in Law.

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

**Group** means the Project Entities, each Holding Entity, the Trust and [***insert***] ***[Note: Any other entities and finance companies within Project Co corporate structure]*** and any wholly owned subsidiary of any of them, and **Group Member** means any of them. ***[Note: To be tailored to reflect proposed corporate structure based on the successful Respondent's Proposal.]***

1. **GST** has the meaning given in the GST Act.
2. **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
3. **GST Law** has the meaning given in the GST Act.
4. **Handover** means the stage where Project Co has satisfied all requirements of this Deed that Project Co is required to satisfy prior to the handover of the Project Assets at the Expiry Date.
5. **Handover Bond** has the meaning given in clause 47.9(a)(ii).
6. **Handover Condition** has the meaning given in clause 47.3.
7. **Handover Escrow Account** has the meaning given in clause 47.9(a)(i).
8. **Handover Management Sub-Plan** means the sub-plan to the Asset Management Plan of that name referred to in [*##*] of the PSDR.
9. **Handover Reviewer** has the meaning given in clause 47.5(a).
10. **Hazardous Substance** has the meaning given in clause 11.1(a)(i).
11. **Hedge Amounts** means the amounts which any Group Member is obliged to pay or is entitled to receive from any Finance Party pursuant to the Hedge Agreements but only to the extent applicable to the amount of the Actual Debt assumed by the State pursuant to clause 46.7.
12. **Hedge Agreements** means each [Swap Agreement] referred to in the [Syndicated Facilities Agreement]. ***[Note: Names of the relevant Finance Documents to be finalised after the Finance Documents are completed.]***
13. **Heritage Claim** means a claim made in connection with a requirement under any Law for the protection, preservation or removal of any Artefact.
14. **Hired Moveable Asset** means any Moveable Asset referred to in paragraph (c) of the definition of Moveable Assets which is hired, leased or licensed by Project Co (or a Key Subcontractor) in accordance with clause 18.2(f)(i), and:
    1. to which Project Co 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.
15. **Holding Entity** means in the case of Project Co, each company or trust which, directly or indirectly, holds issued shares or units in Project Co, and is not itself wholly owned by any other person. ***[Note: To be tailored to reflect proposed corporate structure based on Proposals.]***
16. **Indemnified IP Person** has the meaning given in clause 43.5(a)(i).
17. **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.]***
18. **Independent Reviewer** means the person appointed as the Independent Reviewer under the Independent Reviewer Deed of Appointment, as replaced (if at all) under clause 8.4(a).
19. **Independent Reviewer Deed of Appointment** means the document entitled "[*Insert Project Details*] Independent Reviewer Deed of Appointment" between the State, Project Co and the Independent Reviewer.
20. **Index** means each Index set out in the Indexes Schedule.
21. **Indexed** means the relevant amount is to be indexed in accordance with the Indexes Schedule.
22. **Indexes Schedule** means Schedule 16 (*Indexes Schedule)*.
23. **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 State Project Documents or a Key Subcontract.
24. **Industrial Action** means any action of the following kinds:
    1. a failure or refusal by any Project Co Associate or State Associate to attend for work;
    2. a failure or refusal to perform any work at all by any Project Co Associate or State Associate who attends for work; or
    3. any blockade or embargo by any Project Co Associate or State Associate,
25. 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 Project Co or any Project Co Associate, including on the basis the action is of a type reasonably contemplated by the employee's employment conditions; or
    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 Project Co or any Project Co Associate (as the case may be) to perform other available work, whether at the same or another workplace, that was safe and appropriate for such person to perform.
26. **Industrial Special Risks Insurance** means the Insurance policy for material damage and resultant business interruption occurring during the Operational Phase, referred to in [*##*] of the Insurance Schedule. ***[Note: To be updated to reflect the Insurance Schedule.]***
27. **Information Management System** or **IMS** has the meaning given in [##] of the PSDR. ***[Note: This definition is used where the State requires Project Co to establish an electronic system for managing Project Co Material which is accessible by the State. To be included on a project specific basis as required.]***
28. **Information Privacy Principles** means the principles so identified and set out in the *Privacy and Data Protection Act 2014* (Vic).
29. **Initial Pandemic Management Plan** means the initial pandemic management plan in the Bid Project Plans.
30. **Input Tax Credit** has the meaning given by the GST Law.
31. **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 State 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 State 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 State 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 State 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

*[****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;"]***

* 1. 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
  2. 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.

1. **Insurable Risk** means, in respect of a risk that was previously a Day 1 Uninsurable Risk or Uninsurable Risk:
   1. insurance becomes available in the recognised international insurance market from Reputable Insurers in respect of a risk; and
   2. the risk is generally being insured against in Australia or the recognised international insurance market by private sector providers of infrastructure similar to the Project Assets or activities similar to the Project Activities.
2. **Insurance Component** means the insurance component of the Service Payment (being the insurance premiums, statutory charges and fees) payable in respect of the relevant Benchmarked Insurances.
3. **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 State Insurance Breach.
4. **Insurance Proceeds Account** means the account established and maintained in accordance with clause 44.10.
5. **Insurance Review Date** means each of:
   1. the Operational Commencement Date; and ***[Note: This should be set on a project specific basis (having regard to insurance advice and the insurance market at the time).]***
   2. the date which is every three years from the Operational Commencement Date until the twenty first anniversary of the Operational Commencement Date. ***[Note: Timing based on a 25 year Operational Phase.]***
6. **Insurance Schedule** means Schedule 10 (*Insurance Schedule*).
7. **Insurance(s)** means all of the insurances required to be effected and maintained by Project Co or any Project Co Associate under this Deed (or the relevant one of these as the case may be).
8. **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.
9. **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.
10. **Intellectual Property Rights** has the meaning given in the Intellectual Property Schedule.
11. **Intellectual Property Schedule** means Schedule 18 *(Intellectual Property Schedule)*.
12. **Interest** **Period** has the meaning given in the Payment Schedule.
13. **Interface Party** means each person that undertakes Interface Works.
14. **Interface Works** means Direct Interface Works, Site Interface Works and Proximate Interface Works.
15. **Intervening Event** means the occurrence of any of the following events during the Operational Phase:
    1. a Compensable Intervening Event;
    2. a Force Majeure Event;
    3. an Intervening Event under clause 38.1(b)(i);
    4. an Intervening Event under clause 38.5(b)(ii);
    5. any breach of a Direct Interface Deed by a Direct Interface Party;
    6. a negligent act or omission of:
       1. the State; or
       2. any State Associate,

when acting in connection with the Project; or

* 1. any other event expressly stated to be an Intervening Event under this Deed.

1. **Key People** means the Project Co Representative, any Other Representative and any other people specified as Key People in the Contract Particulars, as may be replaced in accordance with clause 7.5(c).
2. **Key Plant and Equipment** means the following key plant and equipment (including all associated equipment, spare parts and accessories):
   1. [insert].
3. ***[Note: The Key Plant and Equipment is to be bid back by the Proponent and should include equipment that cannot be readily procured or provided by an alternate supplier and where a delay in manufacturing or delivery (if ordered in a timely manner) is likely to result in a delay to the critical path of the Project. This regime is relevant to the pandemic regime.]***
4. **Key Plant and Equipment Manufacturing Country** means [insert] and [insert] to the extent that Project Co or its Subcontractors are manufacturing the Key Plant and Equipment in those countries. [***Note: Key Plant and Equipment Manufacturing Countries is to be bid back by the Proponent. This definition is used in the pandemic regime.]***
5. **Key Subcontract** means each of:
   1. the D&C Contract;
   2. the Services Contract;
   3. any other Subcontract between Project Co and a Subcontractor to perform any of the Project Activities (excluding the Sub-Independent Reviewer Deed of Appointment); and
   4. any Subcontract in respect of the Project Activities referred to as such in the Contract Particulars,
6. as replaced under clauses 9.2 and 9.3.
7. **Key Subcontractor** means each of the counterparties to the Key Subcontracts, other than Project Co. ***[Note: Subject to the successful Respondent's Proposal. This definition is intended to capture direct subcontractors of Project Co.]***
8. **Kick-off Workshop** has the meaning given in clause 5A.3(a).
9. **KRA** meansthe key result areas set out in clause 5A.4(b)(i).
10. **Law** means:
    1. those principles of common law and equity established by decisions of courts;
    2. all Legislation of the Commonwealth, the State or an Authority; and
    3. Approvals (including any conditions or requirements under them).
11. **Legislation** means:
    1. Commonwealth, Victorian or local government in Victoria 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,

but excludes Approvals.

1. **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,
2. and whether under or in any way in connection with any of the Project Documents or arising at Law.
3. **LIDP** has the meaning given in Schedule 21 *(Relevant State Policies Schedule)*.

**Local Jobs First Requirements** has the meaning given in Schedule 21 *(Relevant State Policies Schedule)*.

1. **Maintained Assets** means all assets which are used in, on, over or under the Operational Phase Area and in respect of which Project Co is required to perform the Services during the Operational Phase as modified, repaired or rectified during the Operational Phase. ***[Note: To be defined on a project specific basis. On a project specific basis, Project Teams may wish to include the entire Operational Phase Area. This may be appropriate where there are significant open spaces, which are intended to fall within Project Co’s maintenance obligations.]***
2. **Major Default** means the occurrence of any of the following events:
   1. [not used];
   2. (**late Commercial Acceptance**): Project Co fails to achieve Commercial Acceptance by the Date for Commercial Acceptance;
   3. (**late Final Acceptance**): Project Co fails to achieve Final Acceptance by the Date for Final Acceptance;
   4. (**Finance Documents**): any event that does or would restrict or cancel, or entitle a Financier to restrict or cancel, Project Co's ability to obtain or to have available finance or financial accommodation in accordance with the Finance Documents except to the extent that immediately after such restriction or cancellation, the finance or financial accommodation available to the Project Entities is greater than that required to enable the Project Entities to fully undertake the Project;
   5. (**fraud**): Project Co or a Project Co Associate engages in fraud, collusion or dishonest conduct in performing its obligations under the Project Documents;
   6. (**failure to provide Explanation or Remediation Plan**): Project Co fails to provide:
      1. an Explanation in accordance with clause 26.4(d)(i); or
      2. a Remediation Plan in accordance with clause 26.4(d)(ii) that complies with clause 26.4(f) (as applicable),

within 10 Business Days after receipt of the Independent Reviewer's notice under clause 26.4(b);

* 1. (**failure to provide a Remediation Plan**): Project Co fails to provide a Remediation Plan in accordance with clause 26.4(e)(ii) within 10 Business Days after receipt of the Independent Reviewer's notice under clause 26.4(e)(ii);
  2. (**failure to provide an Amended Remediation Plan**): Project Co fails to provide an Amended Remediation Plan in accordance with clause 26.4(i) within 10 Business Days after receipt of the Independent Reviewer’s notice;
  3. (**Independent Reviewer notice**): the Independent Reviewer notifies the State and Project Co under:
     1. clause 26.4(k)(i)A, that the Amended Remediation Plan does not satisfactorily address the requirements of clause 26.4(f);
     2. clause 26.4(k)(i)B, that Project Co is not diligently pursuing or updating the Remediation Plan or Amended Remediation Plan (as applicable);
     3. clause 26.4(k)(ii), that Project Co will not be able to achieve Commercial Acceptance by the date that is 24 Months after the Date for Commercial Acceptance; or
     4. clause 26.4(k)(iii), that Project Co 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 26.4;
  4. (**representations and warranties**): a representation or warranty given by Project Co under a State Project Document is found to be materially incorrect or materially misleading or a financial audit report discloses fraudulent, false, misleading or negligent reporting by Project Co in respect of any financial statements or invoices or other books or records of Project Co;
  5. (**subcontracting and Key People**): a breach by Project Co of any of its obligations under clauses 7.5, 9.2(a), 9.2(c), 9.3 or 9.4(b);
  6. (**Share Capital Dealing**):
     1. in respect of an Entity other than a Project Entity; or
     2. in the case of a Change in Management,

either:

* + 1. a Share Capital Dealing (which is not a Permitted Share Capital Dealing or a Share Capital Dealing referred to in clause 52.6(b)) occurs without the consent of the State in accordance with clause 52.4; or
    2. where the State gives a notice under clause 52.7 that the State provides a conditional consent to or does not consent to a Share Capital Dealing referred to in clause 52.6(b), Project Co fails to comply with clause 52.6(d)(i) within the time required by the State (acting reasonably) or clause 52.6(d)(ii) within 60 Business Days of receipt of that notice from the State (as applicable);
  1. (**Probity Event**): failure of Project Co to take any action agreed by the parties in accordance with clause 39.2(b)(i) (if any) or if no agreement is reached as determined by the State in accordance with clause 39.2(c);
  2. (**Insurances**): a breach by Project Co of any its obligations under clauses 44.1, 44.2, 44.3(a), 44.4, 44.6 or 44.14;
  3. (**Refinancing**): a failure by Project Co to inform or obtain the State's written consent (as the case may be) to a Refinancing or to distribute the State Share of Refinancing Gain in accordance with clause 37;
  4. (**Default not Cured**): a Default becomes a Major Default under clause 45.2(b);
  5. (**breach of Project Document**): a Project Entity breaches any of its obligations under any Project Document (other than a State Project Document or Finance Document or 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 Project Entity's ability to deliver the Project; and
     2. is not in the process of being remedied by that Project Entity in accordance with the regime set out in the relevant Project Document;
  6. (**Major Default Performance Failures**): there are Performance Failures for which the State is entitled to Abate Project Co under the Payment Schedule:
     1. [##];
  7. (whether or not Project Co has actually been Abated for those Performance Failures); or
  8. ***[Note: Major Default Performance Failures to be defined on a project specific basis. Also refer to Notes in respect of "Performance Failure", "Service Failure" and "Availability Failure".]***
  9. (**deemed Major Default**): any other event which is deemed to be a Major Default under this Deed.

1. **Major Default Notice** has the meaning given in clause 45.3(b).
2. **Major Loss or Damage** has the meaning given in clause 42.2(b)(i).
3. **Management Services** means the management services to be undertaken by the Management Services Contractor for Project Co in respect of the Project, as more particularly described in the Management Services Contract.
4. **Management Services Contract** means the agreement between Project Co and the Management Services Contractor to carry out the Management Services.
5. **Management Services Contractor** means:
   1. as at the date of this Deed, the party listed as such in the Contract Particulars; and
   2. any person who in addition or substitution is engaged by Project Co to carry out the Management Services.
6. ***[Note: The definitions regarding Management Services and corresponding references are to be included on a project specific basis.]***
7. **Margin** has the meaning given in the Change Compensation Principles.
8. **Marine Transit Insurance** has the meaning given in the Insurance Schedule.
9. **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.
10. **Minor Damage** is damage of a minor nature that does not impact the Project Activities or Operations and the estimated Base Cost of the repair or replacement of which does not exceed $[##] (CPI Indexed). ***[Note: To be completed on a project specific basis.]***
11. **Minor Defect** means a Defect that:
    1. will not prevent the relevant Project Assets from complying with the relevant FFP Warranty;
    2. will not prevent Project Co from delivering the Services in accordance with this Deed;
    3. will not adversely impact the Operations;
    4. the Independent Reviewer determines that Project Co has reasonable grounds for not promptly rectifying;
    5. can be rectified without adversely impacting the Operations or the performance of the Services or damaging any of the Project Assets; and
    6. will not adversely impact the performance of the Maintained Assets or the Returned Assets (as the case may be).
12. **Minor Modification** means a Modification the estimated Base Costs of which, if the Modification is in respect of:
    1. the Works, the Delivery Requirements or the Development Activities, does not exceed $[##] (CPI Indexed) and will not delay Acceptance; and
    2. the Maintained Assets, Service Requirements or the Services, does not exceed $[##] (CPI Indexed) and will not increase the recurrent costs of the Services, ***[Note: To be completed on a project specific basis.]***
13. and will not adversely impact the Operations or require any amendment to the FFP Warranty or any other warranty provided by Project Co under a State Project Document in respect of the Project Assets or the Services.
14. **Minor Modification Proposal** means a proposal for a Minor Modification entitled "Minor Modification Proposal" and prepared in accordance with the relevant requirements of the Change Compensation Principles.
15. **Model Output Schedule** means the work sheets in the Financial Model identified as the Model Output Schedule, a printout of which is signed or initialled by the State Representative and Project Co (amongst others), in respect of the Financial Close Financial Model, at Financial Close, and then on or before the date on which the Financial Model is updated in accordance with clause 53.

**Model Variation Event** has the meaning given in clause 53.3.

1. **Modification** means:
   1. during the Development Phase any change (including any addition, decrease, omission, deletion, demolition or removal) to the Works or the Delivery Requirements; ***[Note: Agencies to consider on a project specific basis whether this paragraph (a) should expressly include a change to the "Development Activities" (and whether paragraph (b) should be amended accordingly).]***
   2. a change to the way in which the Development Activities are carried out from that set out in the relevant Project Plan;
   3. in the period after Commercial Acceptance, a change (including any addition, decrease, omission, deletion, demolition or removal) to any Maintained Assets;
   4. after the date of this Deed, a change to the Service Requirements or the Services;
   5. a State Approval Event the subject of a Modification Proposal issued in accordance with clause 6.1(d);
   6. a Contamination Compensation Event the subject of a Modification Proposal issued in accordance with clause 11.7(a);
   7. a Compensable Change in Mandatory Requirements the subject of a Modification Proposal issued in accordance with clause 35.2(a);
   8. an event occurs which is expressly stated to be a Modification under clause 42.4(a)(i), clause 42.4(b) or clause 42.5(b); or
   9. [not used],
2. but excluding:
   1. a Change in Law or a Change in Policy unless it is a Compensable Change in Mandatory Requirements the subject of a Modification Proposal issued in accordance with clause 35.2(a);
   2. where any change referred to in paragraphs (a) to (d) is required to ensure that the Project Assets, the Development Activities or the Services (as the case may be) are otherwise in accordance with the requirements of this Deed;
   3. Augmentations; and
   4. [not used].
3. **Modification Order** means a Change Response entitled "Modification Order" issued under clause 35 and in accordance with the Change Compensation Principles.
4. **Modification Proposal** means a Change Notice entitled "Modification Proposal" submitted by Project Co under clause 35.2(a).
5. **Modification Proposal Quote** has the meaning given in clause 35.3(b).
6. **Modification Request** has the meaning given in clause 35.1(a).
7. **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 Expiry Date.
8. **Monthly Development Phase Progress Report** means the Development Phase Report of that name.
9. **Monthly Operational Phase Performance Report** means the Operational Phase Report of that name.
10. **Moral Rights** has the meaning given in the Intellectual Property Schedule.
11. **Moveable Assets** means:
    1. Maintained Assets;
    2. [not used]; and
    3. all other chattels:
       1. used by Project Co for the purpose of carrying out the Services and which are or will be permanently stored within the Operational Phase Area; or
       2. which are included in the Asset Information System,
12. but excludes Fixtures.
13. ***[Note: To be defined on a project specific basis.]***
14. **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).
15. **Obsolescence** or **Obsolete** means, in respect of a Maintained Asset:
    1. the Maintained Asset is no longer:
       1. manufactured by its original manufacturer; or
       2. supported by the original manufacturer;
    2. any spare or component part is no longer generally available;
    3. any consumable materials required to support the operation, maintenance, repair or overhaul of that Maintained Asset during the Term are no longer generally available; or
    4. if it is software, it is no longer supported by its supplier.
16. **Obsolescence Plan** has the meaning given in clause 28.5(a)(ii).

**OHS Legislation** has the meaning given in Schedule 25 (*OHS Schedule)*.

**Operating Year** means:

* 1. for the first Operating Year, the period commencing on the Operational Commencement Date and ending on the next 30 June;
  2. subject to paragraph (c), each subsequent 12 Month period during the Operational Phase commencing on 1 July and ending on 30 June; and
  3. for the final Operating Year, the period from the end of the last full Operating Year (as defined in paragraph (b)) to the Expiry Date.

1. **Operational Commencement Date** means the day after the Date of Commercial Acceptance.
2. **Operational Management Plan** means the Project Plan of that name.
3. **Operational Phase** means the period beginning on the Operational Commencement Date and ending on the Expiry Date.
4. **Operational Phase Area** means the land described as the Operational Phase Area in [##] of the PSDR.
5. **Operational Phase Area Plan** means the plan of that name annexed to the Operational Phase Licence which sets out the Operational Phase Area.
6. **Operational Phase Force Majeure Event Costs** has the meaning given in the Change Compensation Principles.
7. **Operational Phase Insurances** means the Insurances referred to in Part B of the Insurance Schedule.
8. **Operational Phase Licence** has the meaning given in clause 28.1(a).
9. **Operational Phase Plans** means each of the plans identified in [*##*] of the PSDR.
10. **Operational Phase Reports** means each of the reports to be prepared, provided and updated by Project Co in connection with the Services in accordance with [*##*] of the PSDR.
11. **Operational Phase Site** means:
    1. the Operational Phase Area; and
    2. all other areas upon which the Services are being carried out or materials in connection with the Services are being prepared or stored during the Operational Phase.
12. ***[Note: To be defined on a project specific basis.]***
13. **Operations** means [##]. ***[Note: This is the core purpose of the asset. To be defined and used on a project specific basis and taking into account whether or not operations are performed by Project Co as part of the Services.]***
14. **Original Date for Commercial Acceptance** means the Date for Commercial Acceptance set out in the Contract Particulars.
15. **Other Party** has the meaning given in clause 63.10(a).
16. **Other Representative has the meaning given in clause 7.4(a).**
17. **Outstanding Matters Report** has the meaning given in clause 47.6(c) as updated in accordance with clause 47.6(d).
18. **Overdue Rate** means the sum of the Bank Bill Rate plus 2.5% per annum.
19. **Ownership Schedule** means Schedule 14.
20. **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.
21. **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.
22. **Pandemic Compensation Event** means any of the following occurring after the date of this Deed:
    1. a Pandemic Subcontractor's Plant Closure; or
    2. in the Development Phase only:
       1. 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,

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 Project Activities; or

* + 1. a Pandemic Development Phase Area Closure,

but in each case:

* 1. excluding a Pandemic Compensation Event that arises from a Pandemic Change in Law (which shall be treated as a Pandemic Change in Law); and
  2. excluding a Pandemic Compensation Event that is the subject of a Modification Order under clause 35.

1. **Pandemic Development Phase Area Closure** means a full day closure of the Development Phase Area 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 Project Activities.
2. **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 Project Co 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).
3. **Pandemic Impact Date** has the meaning given in clause 36A.4(a).
4. **Pandemic Management Plan** means the Project Plan referred to as the Pandemic Management Plan in section [#] of the PSDR as updated from time to time in accordance with this Deed.
5. **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,

in each case, which:

* 1. occurs during the Development Phase;
  2. delays Project Co in achieving Acceptance by more than one day per event;
  3. 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 Project Activities.

1. **Parent Guarantee** means each guarantee:
   1. given by a Parent Guarantor of the D&C Contractor to Project Co in connection with the obligations of the D&C Contractor to Project Co under the D&C Contract; and
   2. given by a Parent Guarantor of the Services Contractor to Project Co in connection with the obligations of the Services Contractor to Project Co under the Services Contract.
2. ***[Note: Subject to the successful Respondent's Proposal. The parties providing the Parent Guarantees will be subject to the State's approval and consideration of the overall security package.]***
3. **Parent Guarantor** means each person giving a Parent Guarantee, which as at the date of this Deed means the persons listed as such in the Contract Particulars.
4. **Payment Claim** means a payment claim submitted by Project Co in accordance with clause 34.4(a) in the form required by the State.
5. **Payment Schedule** means Schedule 3 (*Payment Schedule)*.
6. **Payment Statement** has the meaning given in clause 34.4(b).
7. **Performance Audit Notice** has the meaning given in clause 15.5(b).
8. **Performance Auditor** has the meaning given in clause 15.5(c)(i).
9. **Performance Bond** means a bank guarantee or line of credit which:***[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 State) and has the Required Rating;
   3. specifies a location in Melbourne (or such other place as the State may approve) where demand can be given and payment made, without further confirmation from the issuer, on any Business Day;
   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 otherwise on terms and in a form acceptable to the State.
10. **Performance Data** has the meaning given in the Payment Schedule.
11. **Performance Failure** means an Availability Failure or a Service Failure (as the case may be). ***[Note: This concept may be defined on a project specific basis and is intended to include all events that are the subject of the Abatement regime.]***
12. **Permitted Act** means an act or omission:
    1. permitted, authorised or required under a State Project Document; or
    2. required to comply with any Law or Standard.
13. **Permitted Security Interest** has the meaning given in the State Security.
14. **Permitted Share Capital Dealing** means a Share Capital Dealing specified in the Permitted Share Capital Dealing Schedule. ***[Note: A Permitted Share Capital Dealing must not include anything which breaches clause 52.9.]***
15. **Permitted Share Capital Dealing Schedule** means Schedule 15 (*Permitted Share Capital Dealing Schedule)*.
16. **Personal Information** means any personal information, within the meaning given in the *Privacy Act 1988* (Cth).
17. **Planned Lifecycle Activities** means [*insert*]. ***[Note: To be completed on a project specific basis.]***
18. **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.
19. **PPSA** means the *Personal Property Securities Act 2009* (Cth).
20. **Privacy Code** has the meaning given in clause 55.5(a).
21. **Probity Event** means the occurrence of any of the following events:
    1. an event that relates to a Group Member, a Consortium Member 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 that Group Member, Consortium Member or 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 a Group Member, Consortium Member or Relevant Person (and for the purposes of clause 39.2 only, any Subcontractor) to achieve or maintain reasonable standards of ethical behaviour or other standards of conduct that would otherwise be expected of a party involved in a State government project, in the role in which that person is involved; or
    3. a conflict of interest involving a Group Member, Consortium Member, Relevant Person or Subcontractor (as applicable) which has or will have a material adverse effect on the ability of that Group Member, Consortium Member, Relevant Person or Subcontractor (as applicable) to carry out and observe its obligations in connection with the Project.
22. **Probity Investigation** has the meaning given in clause 39.1(a).
23. **Project** means the:
    1. carrying out of the Project Activities;
    2. financing of the Development Activities; and
    3. performance of all other obligations under or in connection with the Project Documents by any party to them.
24. **Project Activities** means the Development Activities and the Services.
25. **Project Area** means:
    1. in relation to the Development Phase, the Development Phase Area; and
    2. in relation to the Operational Phase, the Operational Phase Area.
26. **Project Assets** means:
    1. during the Development Phase, the Works;
    2. during the Operational Phase:
       1. the Maintained Assets;
       2. until the Date of Final Acceptance, the Remaining Works; and
       3. until the end of the relevant Returned Asset DLP, any Defects in a Returned Asset required to be rectified during the Returned Asset DLP (but excludes the Returned Assets themselves); and
    3. [not used].
27. ***[Note: Definition of Project Assets to be considered on a project specific basis.]***
28. **Project Co** means [***insert***]. ***[Note: Definition of Project Co to be completed on a project specific basis.]***
29. **Project Co Act or Omission** means:
    1. a breach of a Project Document by Project Co or any Project Co Associate; or
    2. any other act or omission of Project Co or any Project Co Associate, other than to the extent any such act or omission is a Permitted Act.
30. **Project Co Area** means the land described as the Project Co Area in [##] of the PSDR, which is located within the Operational Phase Area. ***[Note: The Project Co Area will consist of any Project Co offices and store rooms etc which are exclusively for materials and equipment of Project Co and its Associates. There will be very few (if any) of these areas.]***
31. **Project Co Associate** means each of the following persons:
    1. any Associate of Project Co;
    2. the Project Co Representative;
    3. the Design Development Coordinator and any Other Representative referred to in clause 7.4(a);
    4. each Group Member;
    5. each Consortium Member;
    6. each Equity Investor; and
    7. each Subcontractor,
32. and their respective Associates, each only where acting in connection with the Project, but does not include:
    1. the State or any State Associate; or
    2. the Independent Reviewer, the CDPD Defects Assessor or the Handover Reviewer (acting in those capacities), or any of their respective Associates, acting in connection with the Project.
33. **Project Co Margin** has the meaning given in the Change Compensation Principles.
34. **Project Co Material** means:
    1. the Design Documentation;
    2. the Construction Documentation;
    3. the As-Built Records;
    4. the Project Plans;
    5. the Development Phase Reports;
    6. the Development Phase Program;
    7. the Operational Phase Reports;
    8. any Material prepared or created by or on behalf of Project Co or any Project Co Associate in connection with any Approval;
    9. the Performance Data, the data and information from which the Performance Data is derived and Material related to the operation of the Payment Schedule;
    10. any Proponent Augmentation Material (as defined in the Augmentation Process Schedule); and
    11. all other Material which Project Co or any Project Co 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 State, any State Associate, the Independent Reviewer or Handover Reviewer in connection with the Project,
35. but does not include software tools which are:
    1. used internally by Project Co or any Project Co Associate to create, but which are not incorporated into, the materials described in paragraphs (a) to (k); or
    2. generally commercially available.
36. **Project Co Modification Proposal** has the meaning given in clause 35.12.
37. **Project Co Representative** means the person identified as such in the Contract Particulars.
38. **Project Co's Proposal** means the full proposal submitted by Project Co in response to the request for proposal issued by the State on ***[to be inserted]***, as amended (if at all) prior to the date of this Deed. ***[Note: Details of request for proposal to be inserted on a project specific basis.]***
39. **Project Control Group** means the group referred to in clause 7.7(a).
40. **Project Costs** means the actual costs properly and reasonably incurred by or on behalf of Project Co directly attributable to the implementation of the Project in accordance with this Deed.
41. **Project Debt** means at any time the lesser of:
    1. the Actual Debt; and
    2. the amount forecast in the Financial Model to be owing to the Financiers,
42. at that time.
43. **Project Documents** means:
    1. this Deed;
    2. the Development Phase Licence;
    3. the Operational Phase Licence;
    4. the Finance Direct Deed;
    5. the State Security;
    6. the D&C Contract;
    7. the Services Contract;
    8. the D&C Contractor Direct Deed;
    9. the Services Contractor Direct Deed;
    10. the D&C Contractor and Services Contractor Interface Deed;
    11. the Parent Guarantees;
    12. the Significant Subcontracts;
    13. the Equity Documents;
    14. the Finance Documents;
    15. any Key Subcontracts (other than the D&C Contract and the Services Contract);
    16. the D&C Contractor Construction Bond;
    17. each Direct Interface Deed;
    18. each Direct Deed;
    19. the Independent Reviewer Deed of Appointment;
    20. the Sub-Independent Reviewer Deed of Appointment;
    21. the Management Services Contract; ***[Note: To be defined if relevant to the Project.]***
    22. any Augmentation Documents; and
    23. any other document the parties agree is a Project Document.
44. ***[Note: Additional documents may be included subject to the successful Respondent's Proposal.]***
45. **Project Efficiency Review** has the meaning given in clause 28.3(a).
46. **Project Entity** means each of Project Co and [##] and **Project Entities** means all of them. ***[Note: To be defined based on proposed Project Co structure. Project Entity is not intended to pick up any Holding Entity of Project Co entities.]***
47. **Project Improvement Report** has the meaning given in clause 28.3(b).
48. **Project Information** means:
    1. the information set out in Attachment 1; ***[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 State or any State Associate to Project Co or any Project Co Associate in connection with the Project (whether prior to or after the date of this Deed); or
       2. referred to, or incorporated by reference, in any material referred to in paragraph (c)(i),
    4. but excludes:
       1. this Deed or the Materials that form part of this Deed; or
       2. the Materials which the State is expressly required by this Deed to provide to Project Co or any Project Co Associate.
49. **Project Objectives** means the objectives set out in clause 5A.1(a).
50. **Project Plan** means each of the plans to be prepared, provided and updated by Project Co in accordance with [*##*] of the PSDR. ***[Note: This document has been prepared on the basis that O&M Manuals will be part of the Project Plans (as contemplated by the PSDR). If this is not the case, amendments may be required throughout the Deed to contemplate O&M Manuals.]***
51. **Project Review Date** has the meaning given in clause 28.3(a).
52. **Project Scope** has the meaning given in the PSDR. ***[Note: This consists of parts of Project Co's Proposal such as the concept design. This will be determined on a Project specific basis.]***
53. **Project Specific Change in Law** means:
    1. a change in, or repeal of existing Legislation of the Commonwealth, the State or an Authority;
    2. the enactment or judicial determination of new Legislation; or
    3. a change in the way Legislation is applied or interpreted as a result of a decision of a court of competent jurisdiction,

which expressly and exclusively applies to:

* 1. the Project Activities, the Project Assets or the Project Area;
  2. Project Co, but only in its capacity as the person contracting with the State to implement the Project; or
  3. Project Co and other persons that are undertaking projects under the Partnerships Victoria framework, only as it applies to them in that capacity.

1. **Project Successor** has the meaning given in clause 47.1.
2. **Prolongation Costs** has the meaning given in the Change Compensation Principles.

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

* 1. the State or any of its Associates acting in connection with the Project;
  2. [not used];
  3. the State Representative;
  4. any other person to whom the State delegates a right, power, function or duty in accordance with a State Project Document or that person's Associates, in each case, acting in accordance with the delegation; or
  5. [#], ***[Note: Further parties (if any) to be included on a project specific basis.]***

1. and which are carried out:
   1. simultaneously with Project Co's performance of the Project Activities; and
   2. in the direct vicinity, but outside, of the Project Area,
2. but excludes any Direct Interface Works, any Site Interface Works and any works, services, activities or functions undertaken by a Utility provider or any of its Associates in respect of Utility Infrastructure.
3. **PSDR** means the Project Scope and Delivery Requirements which are Annexure 1.
4. **Public Disclosure Obligations** has the meaning given in clause 55.1(a).
5. **Quality Assurance System** has the meaning given in clause 16.2.
6. **Quarter** means each 3 Month period commencing on a Quarterly Date, save that:
   1. the first Quarter of the Development Phase will be the period from Financial Close to the day before the first Quarterly Date during the Development Phase;
   2. the last Quarter of the Development Phase will be the period from the last Quarterly Date during the Development Phase to the Date of Commercial Acceptance;
   3. the first Quarter of the Operational Phase will be the period from the Operational Commencement Date to the day before the first Quarterly Date during the Operational Phase; and
   4. the last Quarter of the Operational Phase will be the period from the last Quarterly Date during the Operational Phase to the Expiry Date,
7. unless this Deed is terminated earlier, in which case the last Quarter will be the period from the last Quarterly Date immediately preceding the termination to the Expiry Date.
8. **Quarterly Date** means every 1 January, 1 April, 1 July and 1 October.
9. **Rates** means all municipal rates, water rates, sewerage rates, drainage rates and other rates payable to any Authority in connection with the Project Area, but does not include any portion of such rates as relates to the connection of the Project Area to Utilities or rates or charges for the use of Utilities.
10. **Recipient** has the meaning given in clause 61.1(c)(ii).
11. **Reference Documents** has the meaning given in the PSDR.
12. **Refinancing** means:
    1. any amendment, novation, supplement or replacement of any Finance Document;
    2. the exercise of any right, or the grant of any waiver or consent, under any Finance Document;
    3. the disposition of any rights or interests in, or the creation of any rights of participation in connection with the Finance Documents or the creation or granting of any other form of benefit or interest in either the Finance Documents or the contracts, revenues or assets of the Group whether by way of security or otherwise;
    4. any new financing arrangements entered into by a Group Member which has the effect of restructuring the then current financing arrangements; or
    5. any other step or arrangement that has an effect which is similar to any of the actions referred to in paragraphs (a) to (d),
13. which will or is likely to:
    1. give rise to a Refinancing Gain;
    2. change the type, amount, pricing, tenor, terms for payment or repayment, hedging or financial covenants of any financial accommodation connected with the Project; or
    3. adversely affect any of the State's rights, obligations or liabilities in accordance with the State Project Documents,
14. and any change in the timing or manner of payment of the CDPD Amount, but does not include:
    1. entering into derivative transactions contemplated by the Finance Documents to be entered into on or before Financial Close;
    2. the syndication of debt under the Finance Documents that is contemplated at Financial Close, in accordance with the Finance Documents and the Finance Direct Deed;
    3. the change in control or sell down of any bonds in an arm's length transaction at market value; or
    4. a prepayment of debt as a consequence of receipt of the CDPD Amount.
15. **Refinancing Event** means an event set out in paragraphs (a) to (e) of the definition of "Refinancing" and any change in the timing or manner of payment of the CDPD Amount, but expressly excludes an event set out in paragraphs (i) to (l) of the definition of Refinancing.

**Refinancing Gain** has the meaning given in clause 37.4(a).

1. **Related Body Corporate** has the meaning given in the Corporations Act.
2. **Related Trust Entity** means with respect to an entity which is a trustee, manager or Responsible Entity of a trust or a managed investment scheme:
   1. any Related Body Corporate of the trustee, manager or Responsible Entity;
   2. any other trustee, manager or Responsible Entity of the trust or managed investment scheme (or Related Body Corporate) of such entity; or
   3. any Controlling Unit Holder of the trust or managed investment scheme (or Related Body Corporate) of such an entity.
3. **Relationship Principles** has the meaning given in clause5A.2(a).
4. **Relevant Entity** has the meaning given in the Security of Critical Infrastructure Laws from time to time.
5. **Relevant Legislation** means [*insert*]. ***[Note****:* ***Insert as applicable, e.g. the Road Safety Act 1986* (Vic)]**

**Relevant Person** means each of the following persons:

* 1. a director or secretary or partner representative of a Group Member; or
  2. any officer, employee, consultant, contractor, Subcontractor or agent of a Consortium Member who:
     1. has the ability to exercise influence or control over the decisions or actions of the Consortium Member in relation to the Consortium Member or in matters relating to the Project;
     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 or Users.

1. **Relevant Personal Property** has the meaning given in clause 63.12(a)(i).
2. **Relevant State Policies** means the codes of conduct, guidelines, policies and standards set out in Schedule 21 *(Relevant State Policies Schedule)*.
3. **Relief Event** means any event for which Project Co is entitled to bring a Claim against the State in connection with the Project.
4. **Remaining Works** means any Defect or any work, act, matter, state of affairs or thing listed in the Remaining Works Schedule.
5. **Remaining Works Schedule** means Schedule 19 (*Remaining Works Schedule*) as updated in accordance with clause 24.3(e) (as applicable).
6. **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.
7. **Remediation Plan** has the meaning given in either clause 20.6(c)(ii) or clause 26.4(d)(ii) (as applicable).
8. **Repair and Reinstate Plan** has the meaning given in clause 42.3(a)(i).
9. **Reporting Entity** has the meaning given in the Security of Critical Infrastructure Laws from time to time.
10. **Representatives** has the meaning given in clause 48B(a)**.**
11. **Reputable Insurer** has the meaning given in clause 44.3(a).
12. **Required Employee** has the meaning given in clause 47.12(a)(i).
13. **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. ***[Note: Project Teams to include on a project specific basis including an equivalent credit rating (for example, by AM Best or Fitch).]***
14. **Resolution Institute** means Resolution Institute Ltd ACN 008 651 232.
15. **Responsible Entity** has the meaning given in the Corporations Act.

**Returned Asset** means each asset that is to be handed over to a Returned Asset Owner in accordance with clause 24.4(n), 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, but does not include the Maintained Assets.

1. **Returned Asset DLP** means, in respect of each Returned Asset, the relevant period referred to in clause 27.7(a), as extended under clause 27.7(e).
2. **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.

**Returned Works** means, until the relevant Date of Returned Works Acceptance, each part of the Works that is to be handed over to a Returned Asset Owner to form a Returned Asset.

1. **Returned Works Acceptance** means when Project Co has:
   1. met the Returned Works Acceptance Requirements; and
   2. the Date of Returned Works Acceptance has occurred,

for a Returned Asset.

1. **Returned Works Acceptance Requirements** means when Project Co has:
   1. completed the Returned Works for a Returned Asset and otherwise met all other requirements for Returned Works Acceptance in accordance with the State Project Documents, subject only to any Returned Works Outstanding Items; and
   2. satisfied all requirements of any relevant Direct Interface Deed that Project Co is required to satisfy for a Returned Asset before returning that Returned Asset to the relevant Returned Asset Owner.
2. **Returned Works Outstanding Items** has the meaning given in clause 24.4(c).
3. **Returned Works Outstanding Items List** has the meaning given in clause 24.4(e) updated in accordance with clause 24.4(m)(v).
4. **Revenue** for the purposes of clause 61, has the meaning given in clause 61.1(g).
5. **Review Procedures** means Schedule 4 (*Review Procedures)*.
6. **Reviewing Party** has the meaning given in the Change Compensation Principles.
7. **Road Management Act** means the *Road Management Act 2004* (Vic)*.*
8. **Savings** has the meaning given in the Change Compensation Principles.
9. **Schedule of Certificates and Notices** means Schedule 9 *(Schedule of Certificates and Notices)*.
10. **Securities** means shares, units, interests in a partnership, and any other interests which would constitute "securities" as defined under the Corporations Act.
11. **Security Interest** has the meaning given to it in the Finance Direct Deed.
12. **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.
13. **Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 2002* (Vic).
14. **Security Trust Deed** means the document entitled “[##] – [*Insert Project details*]” dated on or about the date of this Deed between Project Co, the Financiers and the Security Trustee. ***[Note: To be inserted based on the successful Respondent's Proposal.]***
15. **Security Trustee** means at the date of this Deed, the party named as such in the Contract Particulars as replaced in accordance with the Security Trust Deed and who is from time to time party to the Finance Direct Deed in that capacity.
16. **Senior Representatives Group** has the meaning given in clause 7.6(a).
17. **Service Failure** has the meaning given in the Services Specification. ***[Note: This concept is intended to capture the events for which Project Co can be abated for failing to deliver the Services in accordance with the Services Specification and can be amended on a project specific basis.]***
18. **Service Payment** has the meaning given in clause 34.1(a).
19. **Service Requirements** means requirements for the Services set out in:
    1. the Services Specification; and
    2. the remainder of this Deed.
20. **Services** means all work, things, services and tasks that Project Co is or may be required to perform during the Operational Phase to comply with its obligations under or in connection with the State Project Documents including any Modifications but excluding the Development Activities. ***[Note: To be defined on a project specific basis.]***
21. **Services Base Costs** has the meaning given in the Change Compensation Principles.

**Services Contract** means the agreement between Project Co and the Services Contractor to perform all, or substantially all, of the Services. ***[Note: Subject to the successful Respondent's Proposal.]***

1. **Services Contractor** means, at the date of this Deed, the person listed as such in the Contract Particulars and any person who in addition or substitution is engaged by Project Co to carry out all, or substantially all, of the Services.
2. **Services Contractor Consent Deed** means the document entitled "[##] - Services Contractor Consent Deed" between Project Co, the Services Contractor, the Parent Guarantor of the Services Contractor, the Security Trustee and others.
3. **Services Contractor Direct Deed** means the document entitled "[##] - Services Contractor Direct Deed" between the State, Project Co, the Services Contractor and the Parent Guarantor of the Services Contractor.
4. **Services Margin** has the meaning given in the Change Compensation Principles.
5. **Services Specification** means the specifications for the delivery of the Services as set out in [the PSDR]. ***[Note: Location to be determined on a project specific basis.]***
6. **Share Capital Dealing** has the meaning given in clause 52.4.
7. **Significant Subcontract** means any of the following:
   1. a Subcontract for all or part of the Development 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 Development Activities previously entered into by the same Subcontractor (or their Related Bodies Corporate), will result in the total value of those Subcontracts exceeding $[##]; ***[Note: Thresholds to be determined on a project specific basis to reflect the nature of the Project]***
   2. a Subcontract for all or part of the Services:
      1. the value of the works or services under which exceeds $[##] (CPI Indexed from the date of the relevant Subcontract); or
      2. which, when aggregated with the value of the works or services under each other Subcontract for the Services previously entered into by the same Subcontractor (or their Related Bodies Corporate), will result in the total value of those Subcontracts exceeding $[##] (CPI Indexed); ***[Note: Thresholds to be determined on a project specific basis to reflect the nature of the Project.]***
   3. the contracts listed as such in the Contract Particulars; and
   4. any other contract that the parties agree from time to time is a Significant Subcontract,
8. other than a Key Subcontract.
9. ***[Note: Definition subject to Project Co's subcontracting structure.]***
10. **Significant Subcontractor** means each of the counterparties to the Significant Subcontracts other than Project Co or a Key Subcontractor.
11. **Site** means:
    1. in relation to the Development Phase, the Development Phase Site; and
    2. in relation to the Operational Phase, the Operational Phase Site.
12. **Site Access and Interface Protocols** means:
    1. in relation to the Development Phase, the Site Access and Interface Protocols as set out in the Construction Management Plan; and
    2. in relation to the Operational Phase, the Site Access and Interface Protocols as set out in the Operational Management Plan.
13. **Site Access and Tenure Schedule** means Schedule 22.
14. **Site Conditions** means any physical conditions:
    1. in, on, under or over the Project Area; or
    2. in the Direct Affected Area,

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 Project Area; or
     2. in the Direct Affected Area,

which may affect the Project Activities; and

* 1. (**easements**): all Easements over or in connection with the Project Area,

1. whether or not they were in existence or known to Project Co or a Project Co Associate before the date of this Deed.
2. **Site Information Report** means each report identified as a Site Information Report in the Contract Particulars and any other report in respect of Site Conditions that is prepared by a person engaged by the State or a State Associate that is provided to or made available to Project Co or a Project Co Associate for the purposes of the Project.
3. **Site Information Report Provider** means any person that prepares a Site Information Report.

**Site Interface Works** means works, services, activities or functions which are carried out by any of the following persons:

* 1. the State or any of its Associates acting in connection with the Project;
  2. [not used];
  3. the State Representative;
  4. any other person to whom the State delegates a right, power, function or duty in accordance with a State Project Document or that person's Associates, in each case, acting in accordance with the delegation; or
  5. [##], ***[Note: Further parties (if any) to be included on a project specific basis.]***

1. and which are carried out:
   1. simultaneously with Project Co's performance of the Project Activities; and
   2. on, in, under or over the Project Area (including where they also extend to outside of the Project Area) during the Term,
2. but excludes any Direct Interface Works and any works, services, activities or functions undertaken by a Utility provider or any of its Associates in respect of Utility Infrastructure.
3. **Social Procurement Commitment** has the meaning given in Schedule 21 (*Relevant State Policies Schedule*).
4. **Social Procurement Commitment Schedule** has the meaning given in Schedule 21 (*Relevant State Policies Schedule*).
5. **Social Procurement Framework** has the meaning given in Schedule 21 (*Relevant State Policies Schedule*).
6. **Social Procurement Target** has the meaning given in Schedule 21 (*Relevant State Policies Schedule*).

**Solvent** has the meaning given in the Corporations Act.

1. **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 State gives notice to Project Co 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 Project Co:
      1. is expressly required by the terms of any State Project Document, by Law or by direction of the State to comply; or
      2. should comply in accordance with Best Industry Practices,
   3. in carrying out the Project Activities, provided such standard, code, guideline, specification, rule, policy, procedure, directive, circular or practice is available to Project Co, is publicly available or otherwise would have been available to Project Co exercising Best Industry Practices,
2. but excludes all Laws and any conditions or requirements under any Laws.
3. **State** means the Crown in the right of the State of Victoria.

**State Approval** means each of the Approvals set out in Attachment 2. ***[Note: To be included on a project specific basis.]***

1. **State Approval Event** means:
   1. legal action being taken in connection with a State Approval;
   2. any review or revocation of, or change to, a State Approval; or
   3. any review or revocation of, or change to, an Approval (other than a State Approval) as a result of the circumstances specified in paragraphs (a) and (b),
2. but does not include:
   1. any event set out in paragraphs (a) to (c) that is due to a Project Co 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 State Approval (other than as contemplated in paragraph (c)) or any amendment to a State Approval of a type referred to in clause 6.1(b); or
      2. a State Approval or any further or secondary Approval due to:
         1. a Project Co Act or Omission;
         2. a change to the design or delivery methodology in relation to the Project, the Project Assets or the Project Activities (other than where this is due to a State Initiated Modification); or
         3. a failure by Project Co or any Project Co Associate to comply with any Law;
   3. legal action being taken by Project Co or a Project Co Associate;
   4. a General Change in Law; or
   5. [##].

***[Note: To be amended on a project specific basis and may include matters such as the CHMP or the EPBC Act Approval. Project Teams may wish to also exclude Project Co initiated changes to land access arrangement from the State Approval on a project specific basis.]***

1. **State Associate** means each of the following persons:
   1. any Associate of the State;
   2. the State Representative; and
   3. any other person to whom the State delegates a right, power, function or duty in accordance with a State Project Document,
2. and their respective Associates, each only when acting in connection with the Project, but does not include:
   1. Project Co or any Project Co Associate;
   2. any Interface Party when undertaking Interface Works;
   3. any Utility provider or any of its Associates acting in connection with the Project;
   4. the Independent Reviewer, the CDPD Defects Assessor or the Handover Reviewer (acting in those capacities), or any of their respective Associates acting in connection with the Project; or
   5. any Site Information Report Provider or any of its Associates acting in connection with the Project.
3. **State Audit** has the meaning given in clause 15.3(a).
4. **State Concurrent Event** has the meaning given in clause 26.14(b)(i).
5. **State Contribution** means an amount equal to $[*Insert*]. ***[Note: To be included on a project specific basis.]***
6. **State Contribution Notice** has the meaning given in clause 33.2(a).
7. **State Cure Notice** has the meaning given in the D&C Contractor Direct Deed or the Services Contractor Direct Deed as applicable.
8. **State Initiated Modification** means:
   1. those Change Compensation Events listed in clause 35.2(a) in respect of which the State issues a Modification Order; and
   2. a Modification which is the subject of a direction by the State in respect of which the State issues a Modification Order under clause 35.5 or clause 35.10.
9. **State 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 State Project Document; or
      2. the relevant Insurance policy,
   2. by the State or a State Associate; or
   3. conduct of the State or a State Associate which is an exclusion under the relevant Insurance or any other act of the State or a State Associate which results in the relevant Insurance not responding.
10. **State IP** has the meaning given in the Intellectual Property Schedule.
11. **State Project Documents** means those Project Documents to which the State is a party.
12. **State Representative** means the person identified as such in the Contract Particulars or any replacement appointed in accordance with clause 7.2(e).
13. **State Security** means the document entitled "[##] - State Security" between the State and Project Co.
14. **State Share of Refinancing Gain** has the meaning given in clause 37.4(b).

**Step-In Event** has the meaning given in clause 38.2(a).

1. **Sub-Independent Reviewer Deed of Appointment** means the document entitled "[##] - Sub-Independent Reviewer Deed of Appointment" between Project Co, the D&C Contractor and the Independent Reviewer as the sub-independent reviewer.
2. **Subcontract** means an agreement which:
   1. Project Co enters into with a Subcontractor; or
   2. a Subcontractor enters into with another Subcontractor,
3. in connection with the Project Activities.
4. **Subcontractor** means:
   1. any person who enters into a contract in connection with the Project Activities with Project Co or any Key Subcontractor or Significant Subcontractor (and includes the Key Subcontractors, Significant Subcontractors and Management Services Contractor); and
   2. for the purposes of:
      1. clauses 9.1, 9.5(b), 9.5(c), 9.5(d), 9.5(e), 15.1, 20.1, 39 and 55.5;
      2. sections 2.1(d), 2.8(a)(ii), 2.9 and 2.17(b) of the Intellectual Property Schedule;
      3. [*##*] of the PSDR; and
      4. [sections 2.8, 4.2, 7.2 and 8.2] of Schedule 21 *(Relevant State Policies Schedule),*
   3. any person whose subcontract is in connection with the Project Activities and is in a chain of contracts where the ultimate contract is with Project Co or any Key Subcontractor or Significant Subcontractor (and includes the Key Subcontractors and Significant Subcontractors),
5. but excludes the Direct Interface Parties, the Financiers and the Independent Reviewer. [***Note: Cross references to be checked on a project specific basis.***]
6. **Subcontractor Direct Deed** means the direct deed in the form set out in Schedule 7 (*Form of Subcontractor Direct Deed)*. ***[Note: The State will determine the need for this document based on the successful Respondent's contractual structure. If required, the form of this Deed will be based on the D&C Contractor Direct Deed.]***
7. **Subcontractor Termination Amount** has the meaning given in clause 9.3(g).
8. **Submitted Document** has the meaning given in the Review Procedures.
9. **Supplier**, for the purposes of clause 61, has the meaning given in clause 61.1(c).
10. **Syndicated Facilities Agreement** means the agreement entitled "[##] - Syndicated Facilities Agreement" dated on or about the date of this Deed.
11. **Tax** or **Taxes** means any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature, which is imposed, levied or administered by an Authority or the State, together with any interest, penalty, charge, fee or other amount imposed or made on, or in connection with, any of the foregoing, including any amount imposed under the National Tax Equivalent Regime or by the Australian Tax Office but excluding any Rates.
12. **Tax Invoice** has the meaning given in the GST Law.
13. **Tax Period** has the meaning given in the GST Act.
14. **Taxable Supply** has the meaning given in the GST Law, excluding section 84-5 of the GST Act.
15. **Temporary Works** means the temporary physical things or works which Project Co must design, supply, construct, install, produce or complete for the purpose of carrying out the Development Activities and includes access, ingress, egress and laydown requirements, but excludes those things or works which will form part of the Maintained Assets or Returned Assets.
16. **Term** means the term of this Deed:
    1. commencing in accordance with clause 4.1; and
    2. ending on the Expiry Date.
17. **Termination Payment** means a termination payment calculated in accordance with the Termination Payments Schedule.
18. **Termination Payments Schedule** means Schedule 6 (*Termination Payments Schedule)*.
19. **Threshold Amount** has the meaning given in clause 47.9(a).
20. **Traffic Management Plan** means the traffic management plan set out in the Site Access and Interface Protocols. ***[Note: to be completed on a project specific basis.]***
21. **Trust** means [##] constituted under the Trust Deed.
22. **Trust Deed** means the trust deed dated [##], executed by the Trustee.
23. **Trustee** means [##].
24. **Uninsurable Risk** means a risk that is required to be insured under this Deed and is insurable at the date of this Deed, but during the Term:
    1. insurance becomes unavailable in both the Australian and the recognised international insurance market from Reputable Insurers in respect of that risk; or
    2. the insurance premium required to be paid to insure that risk with a Reputable Insurer, or the available terms and conditions of the relevant insurance, are such that the risk is no longer generally insured against in Australia or the recognised international insurance market by private sector providers of infrastructure similar to the Project Assets or activities similar to the Project Activities,
25. provided that the conditions referred to in paragraphs (a) and (b) have not come about due to any Project Co Act or Omission.
26. **User** means any person who is specified as a User in the PSDR or is otherwise entitled by Law or by the State to use any part of the Maintained Assets.
27. **Utility** means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater, communications and data services (including telephone, text message, facsimile, and internet).

**Utility Activities** means to construct, provide, relocate, remove, reinstate, repair, protect, decommission or modify any Utility Infrastructure.

**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.

1. **Utility Interruption** means any one or more Utilities not being available for use at the Operational Phase Area (at all or in the necessary quantity) notwithstanding compliance by Project Co with the requirements of the PSDR (including any requirement to provide alternate or back up power).
2. **Warranted Asset** means each part of the Project Assets referred to in [*#*#] of the PSDR.
3. **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 Acceptance for that Returned Asset; or
   2. if the Warranted Asset is a Maintained Asset, the Date of Commercial Acceptance unless the Warranted Asset is replaced during the Operational Phase, in which case, the date on which the replacement has been completed.
4. ***[Note: To be considered on a project specific basis.]***
5. **Warranted Life Warranty** has the meaning given in clause 28.6(a).
6. **WHS Accreditation Scheme** means The Work Health and Safety Accreditation Scheme in force pursuant to [section 43] of the FSC Act. ***[Note: Definition to be deleted if Commonwealth funding not applicable to the project.]***
7. **WHS Management Plan** means [##]. ***[Note: To be defined on a project specific basis.]***
8. **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.
9. **Work Around** has the meaning given in clause 32.7(a)(ii).
10. **Working Group** means:
    1. [##];
    2. [the Design Working Group as described in the Delivery Requirements]; and
    3. any other working group or liaison group that Project Co is required to establish under this Deed, including the PSDR.
11. ***[Note: To be considered on a project specific basis.]***

**Working Parameters** means:

* 1. [insert]; and
  2. [insert],

1. specified in the conditions and requirements of the [State Approvals]. [***Note: Working Parameters are to be bid back by Proponents. This term is used in the definition of General Change in Law (Development Phase). These must be objective criteria which are measurable against the State Approvals and if changed by a Change in Law during the Development Phase may give rise to relief.***]
2. **Works** means all of the physical things which Project Co must design, manufacture, supply, construct, install, commission or complete in accordance with the requirements of this Deed as part of the Development Activities including the Temporary Works and those physical things that will form the:
   1. Maintained Assets (including the Remaining Works); or
   2. Returned Assets (including the Returned Works Outstanding Items),
3. 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 (including a trustee);

### (**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 clauses 36 or 36A, 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 State is expressly required under a State Project Document to act reasonably in exercising a power, right or remedy, the State can exercise any power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

### (**"may"**): without limiting clause 2.1(t), unless the State is expressly required under a State Project Document to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

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

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

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

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

## Composition of this Deed

1. This Deed comprises:

### clauses 1 to 63;

### 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 63, Schedule 21 (*Relevant State Policies Schedule),* Schedule 25 (*OHS Schedule)* and *S*chedule 26 (Executive Review Group Terms of Reference);

#### Schedules [##]; ***[Note: To be determined on a project specific basis but should include Schedules 1 to 6, 10 to 16, 18, 19, 22, 23, 24 and 27.]***

#### 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.

### (**Higher or greater requirement**): To the extent that any part of this Deed imposes on Project Co a higher or greater requirement, standard, quality, level of service, staffing level, quantum or scope than any other part of this Deed, unless the context otherwise expressly requires, that higher or greater requirement, standard, quality, level of service, staffing level, quantum or scope prevails.

## Inconsistency between State Project Documents

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

### the Finance Direct Deed;

### this Deed; and

### the remaining State Project Documents.

1. ***[Note: Hierarchy for inconsistencies within the PSDR to be addressed in PSDR.]***

## Inconsistency between this Deed and Project Plans

1. To the extent that any Project Plan imposes on Project Co a higher or greater requirement, standard, quality, level of service, staffing level, quantum or scope than any part of this Deed, unless the context otherwise expressly requires,that higher or greater requirement, standard, quality, level of service, staffing level, quantum or scope prevails.

## Resolution of inconsistency, ambiguity or discrepancy

### (**Notification**): If either party identifies any inconsistency, ambiguity or discrepancy within or between any of the State Project Documents or between this Deed and the Project Plans, then that party must notify the other party of the inconsistency, ambiguity or discrepancy as soon as possible and, in any event, within 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.

### (**Resolution**): The State must direct Project Co 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 2.5 (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 State must direct Project Co to adopt the option the State requires Project Co to proceed with (which may be the higher or greater requirement, standard, quality, level of service, staffing level, quantum or scope).

### (**No further action**): Project Co 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 State under clause 2.6(b).

## Annexures

1. Save in respect of the PSDR, to the extent that the content of any Annexure seeks to impose any obligation on the State, Project Co will not be entitled to make any Claim against the State in connection with that obligation unless that same obligation is expressly imposed on the State in a clause or Schedule of this Deed.

## Plans, Reports and Procedures

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

## Version of documents Project Co must comply with

1. If Project Co is required to comply with a document, plan, process, program, manual, sample, mock-up, model, approval, condition or other like thing, and it or any update of it is required to be submitted for review in accordance with the Review Procedures or the PSDR, Project Co must comply with the version of the document, plan, process, program, manual, sample, mock-up, model, approval, condition or other like thing that has been submitted, reviewed and amended (if applicable) in accordance with the Review Procedures or the PSDR (as applicable).

## Prior approval or consent

1. If Project Co is required by a State Project Document to obtain the State's or the State Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained as a condition precedent to the action, document or thing occurring or coming into effect.

## 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 Project Co, all things must be done by Project Co without undue delay.

## Provisions limiting or excluding Liability, rights or obligations

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

### (**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. Project Co acknowledges and agrees that to the extent the PSDR specifies a minimum requirement, the performance of the Development Activities or performance of the Services in accordance with that minimum requirement may not, of itself, be sufficient to discharge Project Co's obligations under this Deed.

## Relationship of the parties

1. Nothing in any State Project Document:

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

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

1. unless otherwise expressly stated.

## State's rights, duties and functions

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

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

#### the State is not obliged to exercise any executive or statutory right, duty or function, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of any of its executive or statutory rights, duties or functions; and

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

### (**No Claim**): Unless otherwise expressly stated in the State Project Documents and subject to clause 5.6(c), Project Co will not be entitled to make any Claim against the State in connection with any exercise or failure of the State to exercise any of its legal, executive or statutory rights, duties or functions.

## Reasonable endeavours of State

1. A statement in a State Project Document providing that the State 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 State must take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities but does not mean that the State or any 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 State 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.

## Indexation

### (**Indexed amounts**): All amounts required to be adjusted under this Deed by an Index will be Indexed in accordance with the Indexes Schedule.

### (**Changes to indexes**): Any changes to Indexes will be calculated in accordance with the Indexes Schedule.

## Final and Binding

1. Subject to clause 2.21(c), if a determination, decision, opinion or direction (including that of the Independent Reviewer) 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. Project Co irrevocably:

### (**appointment of attorney**): appoints the State, and the State's nominees from time to time, jointly and severally, as its attorney with full power and authority to:

#### execute any agreement, deed or novation contemplated by clause 8.4(a), clause 47.2(a)(v), section 2.13 of the Intellectual Property Schedule or section [18.5(a)(iv)] of the Augmentation Process Schedule;

#### exercise the State's rights in accordance with clause 38 or section 2.13 of the Intellectual Property Schedule; and

#### undertake Project Co's obligations in accordance with clause 46.7 or section 2.13 of the Intellectual Property Schedule; and

### (**ratification**): agrees to ratify and confirm whatever action is taken by the attorney appointed by Project Co under clause 2.19(a).

## Proportionate liability

1. The operation of Part IVAA (Proportionate Liability) 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.

## References to Independent Reviewer

### (**Interpretation**): References to the Independent Reviewer will be interpreted only to the extent of the Independent Reviewer's role under the Independent Reviewer Deed of Appointment (including the term of such appointment).

### (**Where no Independent Reviewer**): To the extent that this Deed requires the Independent Reviewer to exercise a right or carry out an obligation where there is no Independent Reviewer appointed under the Independent Reviewer Deed of Appointment at that time:

#### where it is for the purpose of the Independent Reviewer determining a Dispute as an expert under clause 49.1, the parties must appoint another party as the expert in accordance with clause 49.1; and

#### in all other circumstances, the State must exercise that right or carry out that obligation on a similar basis as the Independent Reviewer would have, acting in accordance with the Independent Reviewer Deed of Appointment and this Deed.

### (**Capable of review**): Notwithstanding clause 8.3, any exercise of a right or carrying out of an obligation by the State in the circumstances referred to in clause 2.21(b)(ii) will:

#### be a decision or determination of the State;

#### not be a decision or determination of the Independent Reviewer for the purposes of clause 2.18, clause 8.3, or clauses 48 to 50; and

#### not be final and binding on the parties and will be capable of being referred for resolution in accordance with clauses 48 to 50.

## Prevent

1. For the purposes only of each of:

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

### the definition of Force Majeure Termination Event;

### clause 5.6(d)(ii);

### clause 6.2(c);

### clause 26.11;

### clause 32;

### clause 38.1(c); and

### clause 45.5 in respect of Intervening Events only,

1. 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 (h) above relate within the relevant timeframes (if any) specified in this Deed.
2. [***Note: List to be checked for each project.***]

PART B - PROJECT COMMENCEMENT AND TERM

# Conditions Precedent

## Commencement of obligations

1. ***[Note: clauses commencing on the date of this Deed to be confirmed once Deed is settled.]***
2. This Deed will not automatically commence until the date set out in the State'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 State 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 (State's rights, duties and functions);

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

### clause 2.18 (Final and Binding);

### clause 2.20 (Proportionate liability);

### this clause 3 (Conditions Precedent);

### clause 4.1 (Commencement date);

### clause 5.6 (All risks);

### clauses 7.2 (State Representative) and 7.3 (Project Co Representative);

### [not used];

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

### clause 39 (Probity Investigations and Probity Events);

### clause 43.1 (General indemnity);

### clause 43.2 (Indemnity for Project Co breach);

### clause 43.3 (Project Information indemnity and release);

### clause 43.4 (Utility and Contamination indemnities);

### clause 43.5 (Intellectual Property and Moral Rights indemnity);

### clause 43.6 (Limits on Project Co Liability to indemnify);

### clause 43.7 (Third party claim under indemnity);

### clause 43.8 (Continuing obligation);

### clause 43.10 (Limit on State liability to Project Co for Relief Events);

### clause 43.11 (Indirect or Consequential Loss);

### clause 43.12 (Benefits held on trust);

### clauses 44 (Insurance);

### clause 48 (Dispute resolution procedure) to 50 (Arbitration) (including clause 48A (Dispute Resolution Team) and clause 48B (Senior negotiations));

### clause 51 (Corporate representations, warranties and obligations);

### clause 52 (Assignment and change in control);

### clause 53.1 (Provision of the Financial Close Financial Model);

### clause 55 (Confidential Information and privacy);

### clause 56 (Intellectual Property);

### clause 62 (Notices and bar to Claims);

### clause 63 (Miscellaneous); and

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

1. 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.

### (**Project Co to satisfy**): Unless otherwise waived in accordance with clause 3.3(b), Project Co must satisfy each Condition Precedent it is obliged to satisfy in accordance with the Conditions Precedent Schedule by the relevant date specified next to that Condition Precedent in the Conditions Precedent Schedule or such other date as the parties may agree (**Condition Precedent Deadline**) and must notify the State as each Condition Precedent is satisfied or waived.

### (**State to satisfy**): Unless otherwise waived in accordance with clause 3.3(b), the State must satisfy each Condition Precedent it is obliged to satisfy in accordance with the Conditions Precedent Schedule by the relevant Condition Precedent Deadline and must notify Project Co as each such Condition Precedent is satisfied or waived.

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

## 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:

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

### (**State Project Documents terminated**): if the State terminates this Deed under clause 3.4(a), each State Project Document will be taken to have been terminated at the time this Deed is terminated and will be of no further force or effect; and

### (**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.

## Financial Close Adjustment Protocol and Model Output Schedule

### (**Financial Close Adjustment Protocol**): The parties acknowledge and agree that they will update and audit the Contract Close Financial Model at Financial Close in accordance with the Financial Close Adjustment Protocol.

### (**Model Output Schedule**): The parties acknowledge that the Financial Close Financial Model will contain the Model Output Schedule.

### (**Deemed amendment**): At Financial Close, each State Project Document will be deemed to be amended by the Model Output Schedule to the extent that the Model Output Schedule contains outputs for the relevant State Project Document.

### (**Copies**): As soon as practicable after Financial Close, the parties will prepare copies of the State Project Documents incorporating the amendments to this Deed which are deemed to be made in accordance with clause 3.5(c).

# Term

## Commencement date

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

## Expiry Date

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

PART C - GENERAL OBLIGATIONS

# Overarching obligations of Project Co

## Project Activities

1. Without limiting Project Co's obligations under this Deed, Project Co must finance, or procure the financing of, the Development Activities and otherwise carry out the Project Activities in accordance with:

### the State Project Documents;

### all applicable Laws;

### all applicable Standards; and

### Best Industry Practices.

## Comply with directions

### (**Comply with directions**): Subject to clause 5.2(b), Project Co must and must procure that each Project Co Associate complies with:

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

#### subject to clause 35.11, all directions of the State that constitute or involve a Modification;

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

#### all directions or determinations given by the Independent Reviewer in accordance with the State Project Documents,

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

### (**Project Co not to act**): Except as otherwise required by Law, Project Co must not accept or act upon directions or determinations in connection with the Project from an officer, employee or agent of the State other than the State Representative or the State Representative's delegates appointed under clause 7.2(f) acting in accordance with their delegation.

### (**State direction**): Subject to clause 5.2(e), if Project Co considers that a direction or determination would entitle Project Co to make a Claim against the State, Project Co must, within 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 State that it considers the direction or determination will give rise to a Claim against the State and specifying details of the Claim.

### (**Conditions for Project Co claim**): Without limiting any other limitations on Project Co's entitlement to make a Claim as set out in this Deed, Project Co is not entitled to make any Claim against the State in respect of a direction or determination unless it has given a notice under clause 5.2(c) within the period identified in that clause.

### (**Directions that are Modifications**): Project Co's obligation to notify the State in respect of a direction or determination that Project Co claims gives rise to a Modification is set out in clause 35.11.

## Provide all Project Co Material

1. Project Co must provide or make available to:

### the State all Project Co Material in connection with the Project; and

### the Independent Reviewer all Project Co Material in connection with the Development Activities,

1. that Project Co (or any Project Co Associate) has in its power, possession or control, as requested by the State or the Independent Reviewer (as applicable) and allow the State and the Independent Reviewer to make copies of such Project Co Material.

## Not put State in breach

1. In carrying out the Project Activities, Project Co must ensure that neither it nor any Project Co Associate causes the State or any State Associate to breach or fail to comply with:

### any applicable Law or Standard; or

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

## Fit For Purpose warranty

### (**Maintained Assets**): On and from the Date of Commercial Acceptance until the Final Expiry Date (but without limiting clauses 28.6 and 47), Project Co warrants that the Maintained Assets (excluding the Remaining Works):

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

#### comply with:

##### the requirements of this Deed;

##### all applicable Laws; and

##### all applicable Standards.

### (**Maintained Assets including Remaining Works**): On and from the Date of Final Acceptance until the Final Expiry Date (but without limiting clauses 28.6 and 47), Project Co warrants that the Maintained Assets:

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

#### comply with:

##### the requirements of this Deed;

##### all applicable Laws; and

##### all applicable Standards.

### (**Returned Assets**): As at the Date of Returned Works Acceptance for a Returned Asset, Project Co warrants that the relevant Returned Asset (excluding any Remaining Works or Returned Works Outstanding Items):

#### is Fit For Purpose by reference to the purposes, functions and uses which are current and apply as at the Date of Returned Works Acceptance 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 5.5(c)(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 Acceptance for that Returned Asset:

##### in accordance with Best Operational Practices;

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

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

### (**Returned Assets that were Remaining Works or** **Returned Works Outstanding Items**): As at the Date of Final Acceptance, Project Co warrants that the Returned Assets that were Remaining Works or Returned Works Outstanding Items:

#### are Fit For Purpose by reference to the purposes, functions and uses which are current and apply as at the Date of Final Acceptance for each relevant Returned Asset;

#### comply with:

##### the requirements of this Deed;

##### all applicable Laws; and

##### all applicable Standards; and

#### if the Returned Assets or any part of the Returned Assets are Warranted Assets are capable of remaining Fit For Purpose by reference to the purposes, functions, uses and requirements referred to in clause 5.5(d)(i) (without any major maintenance or refurbishment works) for their Warranted Life, provided that the Returned Assets are operated and maintained following the Date of Final Acceptance for each Returned Asset:

##### in accordance with Best Operational Practices;

##### such that any damage to the Returned Asset or any part of the Returned Asset occurring after the Date of Final Acceptance for that Returned Asset is promptly rectified in accordance with Best Industry Practices; and

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

## All risks

### (**All risks and no Claim**): Except as otherwise expressly provided in the State Project Documents as between the State and Project Co:

#### Project Co accepts all risks (and the cost of such risks) in connection with delivering the Project (including the Site, the Site Conditions, the Project Assets and the Project Activities); and

#### Project Co is not entitled to make any Claim against the State or any State Associate in connection with the Project or the Project Documents.

### (**Right to defend**): Subject to any provision of a State Project Document that prescribes, limits or proscribes the bases on which Project Co is entitled to defend, or reduce its liability in respect of, a Claim, in which case, Project Co's right to defend, or reduce its liability in respect of, that Claim will be limited to the rights set out in that provision, clause 5.6(a) does not preclude or limit Project Co from raising any defence available at Law to any Claim made by the State or State Associates against Project Co.

### (**State Liability**): Without limiting clauses 5.6(d) or 34.5(b), clauses 2.15(c), 5.6(a) and 5.6(b) do not exclude or limit any Claim that Project Co may have against the State or a State Associate, or any Liability the State or any State Associate may have to Project Co or any Project Co Associate, under the State Project Documents or at Law:

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

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

### (**Project Co acknowledgement**): Project Co acknowledges and agrees that, except in respect of its rights to the payment of interest for late payments as set out in clause 34.5, Project Co's sole financial remedy, and the State’s sole financial Liability:

#### for delay, disruption or disturbance to the progress of any part of the Development Activities, including by reason of an Extension Event, is limited to the amount payable by the State to Project Co in accordance with clauses 26.12, 26.18, 26.19, 35.7 and 35.8(g) and the Change Compensation Principles; and

#### for prevention of the performance of the Services, including by reason of an Intervening Event, is limited to the amount payable by the State to Project Co in accordance with clauses 32.3(d), 32.4, 32.5, 32.7, 35.7 and 35.8(g) and the Change Compensation Principles.

#### [***Note: Clauses to be checked prior to execution.***]

### (**PSDR**): Project Co 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;

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

#### it is not entitled to make any Claim against the State in respect of any:

##### incompleteness, incorrectness, inaccuracy, inappropriateness, inadequacy or unsuitability of the PSDR; or

##### omissions, ambiguities, discrepancies or inconsistencies in or between the PSDR.

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

# 5A. Partnership Framework

## 5A.1 Project Objectives

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

#### facilitate achievement of the [##]; ***[Note: To be inserted on a project specific basis.]***

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

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

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

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

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

#### ***[Note: insert additional project specific items.]***.

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

## 5A.2 Relationship Principles

### (**Principles**): Each party agrees that, in giving effect to the Project Objectives, they will promote 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 State;

#### being transparent in all dealings and sharing all relevant information in a timely way and on an open book basis in accordance with the Change Compensation Principles;

#### 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.

## 5A.3 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 collective and collaborative workshops to facilitate handover induction and transition:

#### from the procurement teams to the delivery teams; and

#### from the delivery teams to the operating teams.

(each a **Kick-off Workshop**).

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

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

#### ensure the relevant 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 or technical issues and risks;

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

#### collaborate and coordinate interfaces between the relevant teams;

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

#### share learnings identified during the procurement phase or the Development Phase (as appliable) with the delivery team or operating team (as applicable) to develop the capability of the relevant teams.

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

#### (**Timing**): The parties must ensure that a Kick-off Workshop occurs:

##### within [20] Business Days of [Financial Close]; and

##### within [20] Business Days of the Date of Commercial Acceptance,

### or as otherwise agreed between the parties.

#### (**Participants**): The State and Project Co must each ensure that all key commercial, technical and legal stakeholders from the relevant teams attend the Kick-off Workshop, including the State Representative, Project Co Representative and any on-site project directors of Project Co. 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**): Each Kick-off Workshop must occur in person (unless otherwise agreed by the parties) and at a location to be agreed between the parties.

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

##### seek input from the Project Co Representative and State Representative (as applicable) in determining an agenda for each 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.

#### (**No effect on rights and obligations**): The Kick-off Workshops are consultative in nature and its function will not affect or alter the rights and obligations of the parties under this Deed.

## 5A.4 Proactive State Engagement

### (**Acknowledgement**): The parties acknowledge that some of the risks allocated to, or shared by, Project Co 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 State'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

#### ***[Note: List to be expanded as necessary on a project specific basis.]***,

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

### (**KRAs**):

#### To give effect to these matters, the parties have agreed the following KRAs:

##### [insert];

##### [insert]; and

##### [insert].

#### Achievement (or otherwise) of the KRAs:

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

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

## 5A.5 General

Neither party:

### is entitled to make any Claim against the other party; nor

### will have any Liability to the other party,

1. in connection with any breach of this clause 5A or any KRA under this clause 5A by either party and nothing in this clause 5A, nor any failure of Project Co or a Project Co Associate or the State or a State Associate to comply with this clause 5A, will relieve the parties from or alter their Liabilities or obligations under the State Project Documents or at Law

# 5B. Sustainability

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

* ***whether Project Co must obtain and maintain a Climate Active Carbon Neutral Certification (CACN);***
* ***whether Project Co must use best endeavours to not exceed the Delivery Phase Emissions Baseline (the estimated baseline of carbon emissions in the performance of the Development Activities, as at Financial Close);***
* ***whether Project Co must not commence any Works on the Site until it prepares a Sustainability Plan that has been certified by the Independent Reviewer;***
* ***whether carbon offsetting will be implemented.]***

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

### Without limiting clause 5B(a), Project Co 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 5B(b), but without limiting that clause, Project Co 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 State as required; and

#### provide any documentation required by the [##] and the State.

# Approvals

## State Approvals

### (**State Approvals**): The State: [***Note: In respect of specific State Approvals, the Project Team should consult with its planning experts to consider whether Project Co needs the benefit of such approvals. This should be addressed on an Approval specific basis. For example, if the State 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 State will ensure that Project Co 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 State Approvals on or before the dates set out in Attachment 2; and

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

### (**Changes to State Approvals**): The State must obtain any changes to a State Approval required as a consequence of:

#### a State Initiated Modification;

#### an Extension Event; or

#### an Intervening Event.

(**Reasonable assistance**): Project Co must provide to the State all reasonable assistance and all information reasonably requested by the State in order for the State to:

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

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

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

(**State Approval Event**): If a State Approval Event occurs:

#### at the request of the State, Project Co must provide all reasonable assistance in connection with dealing with the State Approval Event;

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

#### the State Approval Event will be deemed to be a Modification in respect of which Project Co may submit a Modification Proposal in accordance with clause 35.2(a) and Project Co's or the State's entitlements will be determined in accordance with clause 35 and the Change Compensation Principles as if the State Approval Event was a State Initiated Modification.

### (**Condition precedent**): Project Co is not entitled to make any Claim against the State in respect of any State Approval Event (including its impact) unless it has given notice under clause 35.2(a)(ii).

## Relevant Approvals to be obtained and complied with by Project Co

### (**Project Co to obtain Approvals (other than State Approvals)**): Project Co must:

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

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

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

### (**Project Co to obtain secondary approvals**): Project Co must:

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

#### undertake other action,

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

### (**Project Co to comply**): Project Co must not take or fail to take (as the case may be) any action that will prevent the State 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 Project Co, deviates from the Project that is permitted by and will comply with the State Approvals, Project Co must, subject to clause 6.1(b), obtain and comply with any:

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

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

#### and Project Co must reimburse the State for any costs incurred by the State in connection with Project Co requesting or obtaining amendments to a State Approval.

### (**Copies of Approvals**): Project Co must promptly provide to the State:

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

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

### (**Condition precedent**): Project Co must, as a condition precedent to Commercial Acceptance, 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.

## Conditional Approvals

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

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

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

1. Project Co must promptly:

### (**Provide notice**): notify the State 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 Project Co's detailed proposal for satisfying those conditions in a manner that would not have such an effect, to the State Representative for review in accordance with the Review Procedures.

# Parties and personnel

## Authorities

### (**Jurisdiction of Authorities**): Project Co acknowledges and agrees that:

#### there are Authorities with jurisdiction over aspects of the Project Activities and the Project Area;

#### such Authorities may, from time to time and at any time, exercise their functions and powers in such a way as to disrupt, interfere with or otherwise affect the Project Activities or the Project Area; and

#### it will co-operate with and co-ordinate its Project Activities with such Authorities as is required by them.

### (**Provide information**): Project Co must give the State Representative copies of:

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

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

#### details of any other material communication between Project Co or a Project Co Associate and an Authority,

in connection with the Project.

## State Representative

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

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

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

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

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

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

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

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

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

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

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

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

## Project Co Representative

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

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

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

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

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

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

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

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

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

### (**Duties during the Term**): The Project Co Representative must perform the duties of the Project Co Representative under the State Project Documents, including to:

#### (**spokesperson**): act as the spokesperson for Project Co;

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

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

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

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

## Other Representatives

### (**Natural person**): Project Co must appoint a natural person as:

#### the Design Development Coordinator for the duration of the Development Phase; and ***[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.]***

#### [##], ***[Note: Certain key personnel of Project Co and its Subcontractors may be nominated in a particular role in respect of the Project. To be included based on successful Respondent's Proposal.]***

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

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

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

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

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

### (**Authority and skills**): Project Co must ensure that at all times during their appointment, each Other Representative has the authority to perform its role and duties and discharge its obligations in accordance with this Deed.

### (**Role**): The role of each Other Representative is as set out in:

#### in the case of the Design Development Coordinator, the Design Development Process Schedule; and

#### otherwise, the relevant Appendices of the PSDR which describes that Other Representative's role, function and obligations.

## Key People

1. Project Co must:

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

### (**State 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 State's approval (which approval will not be unreasonably withheld or delayed); and

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

## Senior Representatives Group

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

#### a director of Project Co;

#### a senior representative of the Financiers;

#### prior to the expiry of the last defects liability period under the D&C Contract, a senior representative of the D&C Contractor (who must be a director or senior management executive of the D&C Contractor);

#### a senior representative of the Services Contractor (who must be a director or senior management executive of the Services Contractor);

#### a senior representative of the Equity Investors (who must be a director of one of the Equity Investors); ***[Note: If there is more than one Equity Investor, this will be updated so that each Equity Investor may have 1 senior representative.]***

#### the State Representative;

#### the Project Co Representative;

#### senior representatives from the State;

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

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

* 1. ***[Note: Representatives will be determined on a Project specific basis.]***

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

#### review the performance of the Project Activities;

#### review performance against the KRAs;

#### review the Development Phase Reports and the Operational Phase Reports;

#### assist in the resolution of any matters referred to the Senior Representatives Group by a party, including any Dispute referred to it under clause 48B(d); 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.

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

#### Quarterly during the Development Phase:

##### no earlier than 5 Business Days after the receipt of the Monthly Development Phase Progress Report for the last Month in the previous Quarter; or

##### as otherwise agreed in writing between the State Representative and the Project Co Representative;

#### annually during the Operational Phase:

##### at the end of the third Quarter of each Operating Year; or

##### as otherwise agreed in writing between the State Representative and the Project Co Representative; and

#### when otherwise called to meet on no less than 10 Business Days' notice by the State Representative or the Project Co Representative (or on such earlier notice as otherwise agreed by them or as is required under clause 48B(d)),

#### and conduct its meetings in the manner agreed from time to time between the State Representative and the Project Co Representative.

### (**Other attendees**): The State may require that one or more representatives of the Independent Reviewer or any Interface Party attend a meeting of the Senior Representatives Group and Project Co agrees to those representatives attending the relevant meeting.

## Project Control Group

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

#### during the Development Phase:

##### the State Representative;

##### [not used];

##### the Project Co Representative;

##### the Design Development Coordinator;

##### the on-site project director of the D&C Contractor;

##### the project director of the Services Contractor;

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

##### any other person the parties agree is appropriate; and

#### during the Operational Phase:

##### the State Representative;

##### [not used];

##### the Project Co Representative;

##### the project director of the Services Contractor;

##### any other person the State nominates from time to time; 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 Project Activities and compliance with the requirements of the State Project Documents;

#### assist in the resolution of any matters referred to the Project Control Group by a party including Disputes referred to it under clause 48B(d);

#### review all reports and plans provided by Project Co, its Subcontractors and the Independent Reviewer during the Term;

#### during the Operational Phase, discuss the application of the Abatement regime described in the Payment Schedule and agree to any changes to that regime (if any);

#### discuss and address matters in relation to Augmentations including those arising out of clause 35.15, the Augmentation Process Schedule and potential Augmentations;

#### 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 during the Development Phase (not later than 15 Business Days after the end of each Month);

##### Quarterly during the Operational Phase (not later than 15 Business Days after the end of each Quarter); and

##### as otherwise:

###### agreed by the State Representative and the Project Co Representative; or

###### called to meet on 10 Business Days' notice by the State Representative or the Project Co Representative (or on such other notice as otherwise agreed by them or as is required under clause 48B(d)); and

#### conduct its meetings in the manner agreed from time to time between the State Representative and the Project Co Representative.

### (**Reports**): Project Co must give each member of the Project Control Group and the Independent Reviewer:

#### prior to Final Acceptance, a Monthly Development Phase Progress Report for the previous Month prepared in accordance with the PSDR no later than 10 Business Days after the end of each Month, and in any event no later than 5 Business Days before each meeting of the Project Control Group convened in accordance with clause 7.7(c)(i)A; and

#### after Commercial Acceptance, a Monthly Operational Phase Performance Report for the previous Month prepared in accordance with the PSDR no later than 10 Business Days after the end of each Month, and in any event no later than 5 Business Days before each meeting of the Project Control Group convened in accordance with clause 7.7(c)(i)B.

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

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

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

## Executive Review Group

1. ***[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 Project Co must procure that the Key Subcontractors participate) in the Executive Review Group in accordance with the Executive Review Group Terms of Reference.

### (**Independent Member costs**): Project Co 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). ***[Note: This is optional – depending on whether an Independent Member is appointed which is not required for every Project.]***

## Working Groups

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

## General requirements for meetings

### (**Meeting agendas**): The State must determine the agenda for each meeting of the Project Control Group, the Senior Representatives Group and any Working Group and in determining each agenda will:

#### seek input from the Project Co 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 State 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 Project Co that it requires Project Co 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 State Representative unless otherwise agreed by the parties. ***[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**): Project Co and each Project Co Associate must freely and openly discuss the Project Activities at all meetings conducted with the State and Project Co must, and must procure that each Project Co Associate, fully respond to any questions which the State may ask Project Co or the relevant Project Co Associate at any meetings conducted in accordance with this Deed within 5 Business Days.

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

## Stakeholder and community engagement

***[Note: This clause is to be considered on a project specific basis.]***

### (**Community liaison**): Project Co:

#### acknowledges that the areas where the Project Activities are being carried out are of great importance to many people, including local residents and businesses; and

#### must manage and participate in all community relations programs and activities as:

##### required by this Deed;

##### required by any Laws;

##### contained in the Communications and Community Relations Plan; and

##### reasonably requested by the State from time to time.

### (**Communications approach**): Without limiting the generality of clause 7.11(a), Project Co must not, and must procure that any Project Co Associate does not, communicate with the media or communicate any information publicly with regard to the Project without the consent of the State Representative.

### (**Community obligations**): Project Co must (to the extent not otherwise addressed in the Communications and Community Relations Plan) promptly notify the State Representative of any requests, problems and complaints received from members of the community in connection with the Project and not liaise directly with members of the community in relation to requests, problems and complaints without the consent of the State Representative.

## [Not used]

# Independent Reviewer

## Appointment of Independent Reviewer

1. ***[Note: Timing of appointment and role of Independent Reviewer to be considered on a project specific basis.*** ***This clause may need to be altered if the details of the Independent Reviewer procurement process are specified elsewhere. If any of paragraphs (a), (b) or (c) are deleted then clause 3.1(r) will need to be updated accordingly.]***

### [Not used.]

### [Not used.]

### [Not used.]

### (**Appointment and engagement**): The State and Project Comust jointly appoint the Independent Reviewer to act as Independent Reviewer:

#### in accordance with the terms of this Deed and the Independent Reviewer Deed of Appointment; and

#### independently and not as an agent of either party.

### (**Role of Independent Reviewer**): The parties acknowledge and agree that the role of the Independent Reviewer includes general overview and reasonable checking of the Development Activities and is otherwise set out elsewhere in this Deed and in the Independent Reviewer Deed of Appointment. ***[Note: Role of Independent Reviewer to be considered on a project specific basis.]***

### [Not used.]

### [Not used.]

### [Not used.]

### (**Costs**): Subject to clause 8.1(j)(i), the State and Project Co must each pay an equal portion of the costs and expenses of the Independent Reviewer in accordance with the Independent Reviewer Deed of Appointment (excluding any payments due to the Independent Reviewer in respect of any Downstream Independent Reviewer Functions which, as between the State and Project Co, must be paid by Project Co).

### (**Costs for reports**): Subject to clause 8.2(h) and provided it has obtained the prior consent of the other party, either party may require the Independent Reviewer to prepare a report not otherwise required by this Deed or the Independent Reviewer Deed of Appointment, and:

#### the costs of the Independent Reviewer of preparing such an additional report must be paid directly by the party requesting the report; and

#### a copy of that additional report must be provided by the Independent Reviewer to both parties.

## Other Project roles of Independent Reviewer

### (**No** **conflict**): Project Co must ensure that:

#### the Financiers do not appoint the Independent Reviewer to act in any role in connection with the Finance Documents or Subcontracts, without the consent of the State Representative and on such terms approved by the State Representative; and

#### the Independent Reviewer is not appointed to any role where it certifies payments to be made to the D&C Contractor under the D&C Contract. ***[Note: Assumption is that Financiers' Certifier will certify progress payments. The State will not accept that the same party can certify progress payments and Acceptance under the Project Deed.]***

### (**Independent Reviewer role**): Subject to clause 8.2(a)(ii), the State consents to the Independent Reviewer acting as the sub-independent reviewer under the D&C Contract, provided that Project Co notifies the State of this and ensures that any agreement in accordance with which Project Co and the D&C Contractor engage the Independent Reviewer as sub-independent reviewer for the purposes of the D&C Contract:

#### includes an acknowledgment and agreement by the parties to the paramountcy and independence of the Independent Reviewer role under this Deed; and

#### does not contain terms which otherwise prejudice or compromise the paramountcy or independence of the Independent Reviewer role under this Deed.

### (**Copy to be provided**): Project Co must provide to the State a copy of any agreement which appoints the Independent Reviewer as the sub-independent reviewer under the D&C Contract in relation to the Project.

### (**No cross-subsidisation**): Project Co must at all times ensure that the amounts being paid by the State to the Independent Reviewer under the Independent Reviewer Deed of Appointment are not cross-subsidising any other services which the Independent Reviewer is performing in relation to the Project and must provide evidence to that effect to the State Representative on request.

### (**Separation of roles**): If the Independent Reviewer is appointed as the sub- independent reviewer under the D&C Contract or in any other role in connection with the Project, Project Co must put in place and ensure the Independent Reviewer puts in place appropriate arrangements to provide for the separation of the Independent Reviewer's roles under this Deed and the D&C Contract or other relevant contract.

### (**No compromise**): Project Co must not, and must ensure that none of the Project Co Associates, do anything which would prejudice or compromise the paramountcy of the Independent Reviewer's role under this Deed.

### (**No other roles**): Unless otherwise expressly stated in this Deed, neither party may engage the Independent Reviewer in respect of any other role in connection with the Project without the consent of the other party.

### (**No compromise of independence**): Neither party may engage the Independent Reviewer to undertake any work that is in conflict with its independence or is not consistent with its role as the Independent Reviewer.

## Determinations of Independent Reviewer

1. Subject to clause 2.18, determinations of the Independent Reviewer under this Deed will be final and binding on the State and Project Co unless there is an express provision in this Deed to the contrary. ***[Note: This should be considered on a project specific basis having regard to the role of the Independent Reviewer – for example, if the role of the Independent Reviewer is limited to completion, the look forward and extensions of time, determinations of the Independent Reviewer should be final and binding (excluding determinations in respect of extensions of time (clause 26.21) and defects (clause 27.8)). If the Independent Reviewer has further roles, for example, in considering site conditions, defects or design development, this may not (on a project specific basis) be final and binding.]***

## Replacement of Independent Reviewer

### (**Replacement**): If:

#### the Independent Reviewer Deed of Appointment is terminated; or

#### the Independent Reviewer is, for any reason, not appointed or ceases to act as the Independent Reviewer in accordance with the State Project Documents,

* 1. then the parties must:

#### jointly appoint another person to act as Independent Reviewer agreed in accordance with clause 8.4(f) or selected by the State in accordance with clause 8.4(g); and

#### enter into an Independent Reviewer Deed of Appointment with that new or replacement Independent Reviewer on substantially the same terms as the Independent Reviewer Deed of Appointment.

### (**State nominates up to 5 firms**): If a new or replacement Independent Reviewer is required in accordance with clause 8.4(a), the State must provide Project Co with a notice setting out up to 5 firms which the State considers appropriate to act as Independent Reviewer.

### (**Project Co nominates 3 firms**): Within 10 Business Days after receipt of the State's notice under clause 8.4(b), Project Co must nominate 3 firms out of the firms listed in the State's notice from whom the State may seek a proposal, each of whom must:

#### have appropriate qualifications and experience;

#### have no interest or duty which may conflict with the role of the Independent Reviewer under this Deed;

#### indicate its willingness to execute the Independent Reviewer Deed of Appointment without substantial amendment;

#### have professional indemnity insurance in accordance with the requirements of the Independent Reviewer Deed of Appointment; and

#### provide such information in relation to fees and other matters as the State reasonably requires.

### (**State refusal**): If the State, acting reasonably, refuses to seek a proposal from one of the 3 firms nominated by Project Co in accordance with clause 8.4(c) within 10 Business Days after Project Co's nomination, Project Co must, within 5 Business Days after receiving notice from the State of that refusal, nominate a firm to replace that firm which satisfies the requirements set out in clause 8.4(c).

### (**Proposals**): The State must, on behalf of the State and Project Co, seek proposals from:

#### each of the 3 firms nominated by Project Co in accordance with clause 8.4(c) or clause 8.4(d) (as applicable); or

#### if Project Co does not nominate at least 3 firms in accordance with clause 8.4(c) or clause 8.4(d), any of the firms referred to in clause 8.4(b),

#### and each proposal procured must:

#### address the requirements set out in clause 8.4(c);

#### include details of all proposed fees and costs, which must be capable of evaluation on an open book basis;

#### disclose any details of any current or proposed downstream role; and

#### include any other information the State reasonably requires.

### (**State and Project Co select**): The State and Project Co must seek to agree to the selection of an Independent Reviewer from the firms that have submitted a proposal in accordance with clause 8.4(e) within 30 Business Days after receiving the last of those proposals.

### (**State selection**): If no agreement is reached by the State and Project Co in accordance with clause 8.4(f), the State will select the Independent Reviewer from the firms that have submitted a proposal in accordance with clause 8.4(e).

### (**Not an agent**): The Independent Reviewer is appointed jointly by the parties and will act independently and not as an agent of either party.

### (**Decisions of previous Independent Reviewer**): The new or replacement Independent Reviewer appointed under clause 8.4(a) is bound by the exercise of any functions exercised or decisions made by the State or Project Co or the prior Independent Reviewer where such functions were exercised or decisions were made under this Deed or the Independent Reviewer Deed of Appointment.

# Subcontracting and third party arrangements

## Subcontracting

1. Project Co:

### (**requirements for Subcontracting**): must not subcontract the performance of the Project Activities or any part of them except in accordance with this clause 9;

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

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

### (**Actions of Subcontractors**): for the purposes of the *Wrongs Act 1958* (Vic), without limiting clause 2.20, is entirely responsible for any failure to take reasonable care on the part of any Subcontractor or their Associates.

## Notification of Subcontracts

### (**Notify the State of all Subcontractors**): Project Co must provide the State with notice of:

#### each proposed Key Subcontractor and Significant Subcontractor, [12] Business Days prior to their engagement to perform any of the Project Activities; and ***[Note: Timeframe to be considered on a project specific basis.]***

#### any other Subcontractor, within [5] Business Days of a request from the State Representative,

#### provided that clause 9.2(a)(i) will not apply to the Management Services Contractor or any Key Subcontractor or Significant Subcontractor who, as at the date of this Deed, has already been selected by Project Co and named in the Contract Particulars.

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

### (**Subcontracting requirements**): Without limiting clause 9.3 or 39, Project Co must not engage, and must ensure that none of its:

#### Key Subcontractors engage, any Significant Subcontractor unless the State, within [12] Business Days after receipt of notification under clause 9.2(a), does not require a Probity Investigation to be carried out in respect of that Significant Subcontractor; and ***[Note: Depending on the nature of the Project (for example, correctives), this regime may need to be reconsidered.]***

#### Key Subcontractors or Significant Subcontractors engage any Subcontractor, unless the proposed Subcontractor has the financial capacity, experience and capability to perform the obligations of Project Co to be subcontracted to the Subcontractor to at least the standards required by the State Project Documents. ***[Note: Subject to Project Co's subcontracting structure.]***

### (**Copies of Subcontracts**): Project Co:

#### must provide to the State:

##### a copy of any Key Subcontract, Significant Subcontract and Management Services Contract no later than 10 Business Days prior to the date on which Project Co proposes to enter into the relevant Key Subcontract, Significant Subcontract or Management Services Contract (as the case may be);

##### a copy of any Key Subcontract, Significant Subcontract and Management Services Contract within 15 Business Days after the relevant Subcontract is entered into; and

##### a copy of any other Subcontract requested by the State to which Project Co or a Key Subcontractor, Subcontractor to a Key Subcontractor or Significant Subcontractor has access or, to which a prudent, competent and experienced person in the position of Project Co, the Key Subcontractor, the Subcontractor to a Key Subcontractor or a Significant Subcontractor exercising Best Industry Practices would have access, within 15 Business Days after any request by the State; and

#### other than in respect of the Key Subcontracts and Management Services Contract, may redact any commercially sensitive information from any Subcontract provided under clause 9.2(d)(i) before it is provided to the State.

## Specific requirements for Key Subcontracts, Significant Subcontracts and Management Services Contract

### (**Roles**): Project Co must ensure that those Key Subcontractors, Significant Subcontractors and the Management Services Contractor specified in the Contract Particulars are engaged in the roles assigned to them in the Contract Particulars.

### (**Amendments**): Project Co must provide to the State a copy of any amendment it proposes to make to any Key Subcontract, Significant Subcontract or Management Services Contract before it is made.

### (**State consent**): Without limiting clause 52.1, Project Co must not, and must ensure that none of the Project Co Associates:

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

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

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

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

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

### (**Direct deeds**): Project Co must:

#### procure an executed direct deed:

##### from the D&C Contractor, in the form of the D&C Contractor Direct Deed;

##### from the Services Contractor, in the form of the Services Contractor Direct Deed; and

##### from each other Key Subcontractor in the form of the Subcontractor Direct Deed (if required by the State);

#### procure that any Significant Subcontractor execute a direct deed substantially in the form of the Subcontractor Direct Deed in respect of its Significant Subcontract if required by the State; and

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

### (**Prescribed terms**): Project Co must ensure that each Key Subcontract and Significant Subcontract contains provisions expressly recognising and permitting the exercise by the State of its rights under and contains all relevant provisions prescribed by (if applicable), clauses 7.5, 9.1, 9.2, 9.3, 15.1, 15.3, 19, 20.2, 20.4, 26, 35, 38, 39, 44, 45, 46, 47, 52, 54, 55 and 57.3(b)(ii). ***[Note: To be confirmed on a project specific basis and may need to also include some schedules such as the Relevant State Policies Schedule and OHS Schedule.]***

### (**No Liability on termination**): Subject to clause 9.3(g), Project Co must ensure that if this Deed is terminated under clause 46 that the State has no Liability to Project Co in respect of any Liability Project Co may have to any Subcontractor as a consequence of the termination.

### (**Subcontractor Termination Amount**): If Project Co:

#### terminates a Key Subcontract due to the termination of this Deed by the State under clause 46.2 or clause 46.3; and

#### is obliged to pay the Key Subcontractor any amount under that Key Subcontract as a consequence of any such termination (**Subcontractor Termination Amount**),

* 1. the State's Liability to Project Co for any Subcontractor Termination Amount that the State is otherwise liable to pay Project Co in accordance with the Termination Payments Schedule due to the termination of this Deed by the State under clause 46.2 or clause 46.3 must not exceed:

#### for work carried out prior to the date of termination, the amount which would have been payable if the Key Subcontract had not been terminated and the Key Subcontractor had submitted a payment claim in accordance with the relevant Key Subcontract for work carried out in accordance with the Key Subcontract to the date of termination;

#### the cost of the plant and equipment and other items reasonably ordered by the Key Subcontractor for the Project Activities, that cannot be cancelled without payment provided that:

##### the value of the plant and equipment and other items has not been previously paid to the Key Subcontractor or otherwise included in an amount payable under this clause 9.3(g); and

##### title in the plant and equipment and other items will vest in the State upon payment;

#### demobilisation costs (including with respect to redundancies, relocation and repatriation of employees employed full time with respect to the Project Activities, making the Site safe and removing from the Site temporary equipment and, to the extent required by the State, Temporary Works) reasonably and properly incurred by the Key Subcontractor with respect to the Project Activities and that could not reasonably have been avoided;

#### the reasonable cost of meeting the obligations in respect of Handover that the Key Subcontractor is required to meet under the Key Subcontract other than to the extent the State has exercised its rights under clause 47.7(a)(ii); and

#### in the case of the termination of this Deed by the State under clause 46.2 only, the lesser of:

##### [##]% of the unpaid balance of the contract sum that would have been payable to the relevant Key Subcontractor in accordance with the Key Subcontract (after deducting the amounts payable in accordance with clauses 9.3(g)(iii), 9.3(g)(iv) and 9.3(g)(v)) but for the termination; and

##### [##]% of the unpaid balance of the contract sum that would have been payable to the relevant Key Subcontractor in accordance with the Key Subcontract (after deducting the amounts payable in accordance with clauses 9.3(g)(iii), 9.3(g)(iv) and 9.3(g)(v)) but for the termination, for the 12 Month period from the date of the termination.

* + 1. ***[Note: Bid profit percentage as contained in the Financial Close Financial Model. To be considered on a project specific basis, including whether different values should apply during the Development and Operational Phases.]***

## Competence

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

### (**Incompetence**): If the State notifies Project Co that, in the State's reasonable opinion, any person employed or engaged on the Project Activities is incompetent, does not meet the standard required by clause 9.4(a), or is negligent, dishonest or guilty of misconduct, then, without limiting Project Co's other obligations under this Deed, Project Co must promptly ensure that such person is removed from performing any Project Activities for the remainder of the Project and following removal of any person in accordance with this clause 9.4(b), Project Co must not employ or engage, and must ensure that none of the Project Co Associates employ or engage, that person in respect of the Project Activities without the prior written consent of the State.

## Payment of amounts owed to Subcontractors

### (**Payment to Key Subcontractors and Significant Subcontractors**): Project Co must ensure that:

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

#### each Key Subcontract and Significant Subcontract contains an equivalent provision to clause 9.5(a)(i) in relation to that Subcontract and Subcontractor.

### (**Payment to other Subcontractors**): Project Co must use reasonable endeavours to ensure that all other Subcontractors not referred to in clause 9.5(a) are paid in accordance with the terms of their Subcontracts.

### (**Copies of notices under Security of Payment Act**): Project Co 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 Project Co 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, Project Co from any of its Subcontractors,

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

### (**Suspension under Security of Payment Act**): If a Subcontractor has become entitled to suspend work under a Subcontract in accordance with the Security of Payment Act because of a failure by Project Co or any Project Co Associate to pay amounts to the Subcontractor, the State may pay to the Subcontractor the amount owing to the Subcontractor in connection with that work, and any amount so paid by the State, will be a debt due and payable by Project Co to the State.

### (**State may pay Subcontractors**): Notwithstanding clause 9.5(d), if any amount is:

#### certified as payable; or

#### otherwise due and payable,

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

## Notification of Subcontractor claims and disputes

1. Project Co must notify the State Representative:

### (**existence of claims and disputes**): of the existence of any claims or disputes of which it is aware that have arisen under any Key Subcontract, Significant Subcontract or a Subcontract with a Key Subcontractor or Significant Subcontractor (regardless of whether Project Co is a party to that Subcontract), if the claims process or dispute resolution process under that Subcontract has been activated by any party to it; and

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

## Obligations as to Claims made on pass-through basis

### (**Genuine Claim**): If Project Co makes a Claim against the State as a consequence of a Claim that has been made by a Key Subcontractor against Project Co, Project Co must:

#### in respect of any aspect of the Claim which is made by Project Co not attributable to a Key Subcontractor, certify to the State that the Claim; and

#### take reasonable steps to ensure that any such claim, and procure that, as part of the Key Subcontractor's Claim, the Key Subcontractor certify (for the benefit of the State), that the Claim,

meets the following requirements:

#### it is made in good faith and has a reasonable prospect of success;

#### has a proper legal, technical or factual basis; and

#### if it is for an amount of compensation, it is not grossly in excess of the amount that the Subcontractor can reasonably expect to recover.

### (**Certification**): Where the State determines (acting reasonably) that Project Co has not taken all of the steps required in accordance with clause 9.7(a), the State may require Project Co to procure (at Project Co's cost) a signed letter from a Victorian Queen's or King's Counsel, Senior Counsel or from a reputable firm within Australia (each with expertise in the subject nature of the Claim) certifying that on the factual and legal material available at present the Claim has a proper basis and provide that certification to the State*.*

### (**Privilege**): The State acknowledges and agrees that the provision of the certification pursuant to clause 9.7(b) will not waive privilege in the underlying brief, instructions or advice given by the Victorian Queen's or King's Counsel, Senior Counsel or reputable firm within Australia (as applicable).

## Industrial issues

1. Project Co:

### (**sole responsibility**): has sole responsibility for and must manage all aspects of industrial relations in connection with the Project Activities; and

### (**State to be kept informed**): must keep the State fully and immediately informed of industrial relations issues or action which affect or are likely to affect the carrying out of the Project Activities and what action or measures (including settlements) Project Co has taken or proposes to take to overcome the effects of such industrial relations issues or action.

PART D - SITE

# Project and Site Information

1. ***[Note: Site Conditions are a key risk on major infrastructure projects, including PPPs. Regimes dealing with Site Conditions including:***

* ***Contamination***
* ***Utilities***
* ***Artefacts / Heritage Claims / Native Title Claims***
* ***Geotechnical Conditions,***

1. ***need to be carefully considered on a project specific basis, having regard to the nature of the site, the information / investigations which have been made available to private sector as part of the tendering process and also balanced against value for money considerations.***
2. ***In light of the above, the State will endeavour to provide Project Co with its site information as early as possible in the procurement process.***
3. ***To assist agencies, this deed includes sample regimes which could be incorporated (as appropriate) on a project specific basis based on these considerations.]***

## No representations or warranties from the State

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

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

### (**Project Area**):

#### title to the Project Area or adequacy of or access to the Project Area 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 Project Assets including those made available to Project Co by or on behalf of the State during the Term. ***[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 Project Assets made available by or on behalf of the State 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 Project Co or***
* ***Option (2): obtain a third party warranty from the Site Information Report Provider in favour of Project Co.***

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

**10.1A Site Information Reports Warranties**

The State will either:

### (**Assignment**): assign to Project Co the benefit of any warranties provided to the State in respect of the Site Information Reports Warranties by the author of the Site Information Reports; or

### (**Collateral Site Information Report Warranties**): procure that the author of the Site Information Reports Warranties provide Project Co 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(a)(iv) and clause 43.3.]***

## No State liability for review

### (**No obligation**): The State does not owe any duty of care to Project Co to (including to procure or ensure that any of the State Associates) review or inspect:

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

#### the Project Activities or the Project Assets,

* 1. for Defects, other errors or omissions or for compliance with the State 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 Project Co Material, Project Activities or the Project Assets by the State or any State Associate; or

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

* 1. will:

#### relieve Project Co from, or alter or affect, its Liabilities, obligations or responsibilities whether under the State 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 Project Activities;

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

#### constitute an approval by the State of Project Co's performance of its obligations under the State Project Documents.

## Representations and warranties by Project Co

### (**Project Co representations**): Project Co acknowledges and agrees that:

#### (**entry into State Project Documents**): it enters into the State 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 Project Area and its surroundings;

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

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

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

#### (**no reliance**): it did not rely upon any Project Information or any other information, data, representation, statement or document provided by or on behalf of the State or any State Associate, or the accuracy, adequacy, suitability or completeness of the Project Information, for the purposes of entering into the State Project Documents or delivering the Project;

#### (**adequacy of** **PSDR**):without limitingclause 5.6(e), it has satisfied itself that there is nothing in the Project Documents which would prevent:

##### the Project Assets from being Fit For Purpose; or

##### the Services from being carried out in accordance with the PSDR;

#### (**Intellectual Property Rights**): all Intellectual Property Rights in the Project Information remain the property of the State, the relevant State Associate or the Site Information Report Providers (as the case may be); and

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

### (**Project Co warranties**): Project Co warrants that it has, and will be deemed to have, done everything (including all assessments, tests or studies of the Project Area and its surroundings and making all reasonable enquiries with all relevant Utility providers in respect of the existence, adequacy, location, condition, completeness or availability of Utility Infrastructure on, in, over, under or in connection with, the Project Area) that would be expected of a prudent, competent and experienced person in the position of Project Co exercising Best Industry Practices:

#### in assessing the risks regarding Site Conditions;

#### in ensuring that this Deed contains allowances to protect it against any of the risks regarding Site Conditions eventuating;

#### in order to determine the suitability of the Project Area and its surroundings for the Project;

#### in assessing the existence, adequacy, location, condition (including fitness for purpose), type, number, availability and suitability of the Project Assets (including those made available to Project Co by or on behalf of the State in accordance with this Deed as at Financial Close); and

#### in assessing the Project Activities that it needs to carry out to enable Project Co to comply with its obligations in connection with the Project Documents.

***[Note: If Geotechnical Conditions are a significant risk on the project and insufficient information / investigations the private sector has not been able to conduct investigations as part of the tendering process, the State could consider including a regime to deal with Unknown Geotechnical Conditions.***

***A sample regime is set out below.]***

1. **1.1 Definitions**
2. **Compensable Extension Event** means
3. (##) an Unknown Geotechnical Conditions Compensation Event;
4. **Principal Geotechnical Data** means the raw factual data which is:
5. (a) within the categories specified in [##section of the PSDR##] as raw factual data for the purposes of this paragraph; and
6. (b) contained in Project Information that are specified in [##section of the PSDR##] as geotechnical reports for the purposes of this paragraph,
7. but does not include any interpretation, extrapolation, conclusion, assumption, projection or analysis of the Principal Geotechnical Data, whether it is contained or stated in the Project Information or made, drawn or undertaken by Project Co or any Project Co Associates.
8. **Unknown Geotechnical Conditions** means a material factual inaccuracy in the Principal Geotechnical Data to the extent that the inaccuracy:
9. (a) was not known, or not substantially known, to Project Co at the date of this Deed; and
10. (b) could not have been reasonably foreseen or anticipated at the date of this Deed by a prudent, competent and experienced person in the position of Project Co, who had done those things that Project Co warrants under clause 10.3 that it has done exercising Best Industry Practices.
11. **Unknown Geotechnical Conditions Compensation Event** has the meaning given in clause 12A(c).
12. **12A Unknown Geotechnical Conditions**
    1. [***Note: Rather than using this regime, Project Teams may wish to utilise the mandatory Modification regime (with amendments to align with the commercial offer).***]

### Without limiting Project Co's obligations under this Deed, this clause 12A will apply to Unknown Geotechnical Conditions.

### If Project Co becomes aware of an Unknown Geotechnical Conditions, Project Co must:

#### as soon as practicable and in any event within [5] Business Days of becoming aware, or ought reasonably to have become aware, of the Unknown Geotechnical Conditions, provide the State and Independent Reviewer with written notice of the existence and possible scope of the Unknown Geotechnical Conditions; and

#### within [15] Business Days after becoming aware of the Unknown Geotechnical Conditions, provide the State and Independent Reviewer with written notice containing all relevant details, including:

##### details of how the Principal Geotechnical Data is inaccurate;

##### the location of the Unknown Geotechnical Conditions;

##### the nature and extent of the Unknown Geotechnical Conditions;

##### the Unknown Geotechnical Conditions and in what respects it will have a material impact upon the Project Activities;

##### the additional work and resources which Project Co estimates to be necessary to deal with the Unknown Geotechnical Conditions;

##### the time Project Co anticipates will be required to deal with the Unknown Geotechnical Conditions and the expected delay in achieving a Date for Acceptance;

##### Project Co's estimate of the cost of the measures necessary to deal with the Unknown Geotechnical Conditions; and

##### other details reasonably required by the State.

### If Project Co gives notices under clauses 12A(b)(i) and (ii) and the State agrees (acting reasonably) that an Unknown Geotechnical Conditions has been encountered (**Unknown Geotechnical Conditions Compensation Event**), this will be deemed to be a Change Compensation Event in respect of which Project Co may submit a Change Notice and Project Co's entitlements will be determined in accordance with the Change Compensation Principles.

### Project Co is not entitled to make any Claim against the State in respect of any Unknown Geotechnical Conditions (including its impact) other than in accordance with this clause and unless it has given notice under clauses 12A(b)(i) and (ii).

**Schedule 5 Change Compensation Principles**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item** | **Change Compensation Event** | **Clause reference in Deed** | **Compensation entitlement of Project Co or the State where the Change Compensation Event occurs during the Development Phase and relevant section of this schedule for calculating the compensation entitlement** | **Compensation entitlement of Project Co or the State where the Change Compensation Event occurs during the Operational Phase and relevant section of this schedule for calculating the compensation entitlement** |
|  | Unknown Geotechnical Conditions Compensation Event | Clause 10.4 | Construction Base Costs.  Construction Margin on Construction Base Costs.  (sections 3.2, 3.3 and 5) | None. |

# The Site

## Environmental issues

### (aa) (**Project Co obligations**): Project Co must:

#### ensure that it does not do or fail to do anything that would or would be likely to cause the State to breach the *Environment Protection Act 2017* (Vic); and

#### comply with all reasonable requests of the State to assist the State to not breach the *Environment Protection Act 2017* (Vic).

### (**No Hazardous Substance**): Project Co must not and must procure that any Project Co 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 Project Area; or

#### except as authorised by Law and then, only as necessary to carry out the Project Activities, remove, handle, disturb, discharge or release any Hazardous Substance in, on, over or under the Project Area or cause any Hazardous Substance to migrate from the Project Area in a manner which is likely to cause or contribute to an Environmental Hazard.

### (**Environmental responsibility**): Project Co must:

#### (**Environmental responsibility**): at all times carry out the Project Activities in accordance with the Environmental Requirements and the applicable Environmental Management Plan;

#### (**notification**): immediately notify the State of any non-compliance or alleged or potential non-compliance with any Environmental Requirement or any applicable Environmental Management Plan;

#### (iia) (**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 State 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 State 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 State with copies of any notice(s) or other documentation issued by the relevant Authority in relation to the notifiable incident or notifiable contamination];

#### (iib) [not used];

#### (iic) (**contaminated land**): immediately notify the State if, at any time, land which is in, on or under the Project Area is 'contaminated land' (as defined in section 35 of the *Environment Protection Act 2017* (Vic));

#### (**manage waste disposal**): subject to clause 11.1(b)(iv), 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 Project 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 State (acting reasonably) regarding the removal from the Project Area 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 State Project Document;

#### (**Development Phase Area**): at all times keep the Development Phase Area clean and tidy; and

#### (**Contaminated Land Notice**): to the extent that Project Co reasonably believes a person may be affected by Contamination and Project Co 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 State with a copy of the Contaminated Land Notice;

##### provide the State with a reasonable opportunity to review and comment on the Contaminated Land Notice;

##### address any comments received by the State in accordance with clause 11.1(b)(vii)B prior to providing the Contaminated Land Notice to that person; and

##### simultaneously provide the State with a copy of the Contaminated Land Notice provided to that person.

### (**Remediate contaminated land**): Project Co must Remediate any 'contaminated land' (as defined in section 35 of the *Environment Protection Act 2017* (Vic)) which is in, on, over or under the Project Area the State directs Project Co to Remediate and Project Co is not otherwise obliged to Remediate in accordance with this Deed.

### (**Management of Site**): Notwithstanding any other provision of this Deed, Project Co acknowledges and agrees that for the period during which it has occupation of the Project Area under clause 13:

#### it has management or control of the Project Area 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 the Environmental Requirements.

## Native Title Claims and Heritage Claims

### (**Native Title**): As between the State and Project Co, the State is responsible for:

#### dealing with any Native Title Claim in connection with any part of the Project Area; and

#### the payment of any compensation or other amount required to be paid to the native title holders of any part of the Project Area as a consequence of a successful Native TitleClaim.

### (**Artefacts**): If an Artefact is discovered on or under the surface of the Project Area:

#### as between the State and Project Co, it will be the absolute property of the State; and

#### Project Co must:

##### immediately notify the State of the discovery;

##### permit the State to watch or examine any excavation or treatment on the Project Area; and

##### take every reasonable precaution in carrying out the Project Activities so as to prevent Artefacts being damaged, removed, disturbed or destroyed until appropriate arrangements for dealing with, or removing, the Artefacts have been made.

### (**Project Co must continue to carry out**): If there is a:

#### Native Title Claim or Heritage Claim in connection with; or

#### discovery of Artefacts in, on, under or over,

* 1. any part of the Project Area, Project Co must:

#### continue to carry out its obligations under this Deed, except to the extent otherwise:

##### directed by the State 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 State in connection with dealing with the Native Title Claim, Heritage Claim or Artefact.

### (**State directions**): Project Co must comply with all reasonable directions of the State concerning Artefacts in, on, under or over the Project Area and the protection of Aboriginal Cultural Heritage.

## Interference, obstruction and nuisance

### (**Project Co's obligations**): In undertaking the Project Activities, Project Co must:

#### not interfere with the free movement of traffic (vehicular or pedestrian) into and out of, adjacent to, around, on or about the Project Area except to the extent such interference is a direct and unavoidable result of carrying out and completing the Project Activities in accordance with the State Project Documents, all applicable Laws and Standards and Best Industry Practices;

#### prevent nuisance including any nuisance caused by unreasonable noise, dust, light emission, vibration or disturbance, air pollution, odour on or adjacent to the Project Area above the levels required in the Environmental Management Plan and the Environmental Requirements;

#### ensure the safety of people and property in accordance with Best Industry Practices;

#### give priority to and minimise the impact on the safety of persons or property; and

#### on completion of any Project Activities, remove all temporary protection or other structures or equipment erected in connection with those Project Activities as soon as practicable, and in accordance with Best Industry Practices.

### (**Unreasonable levels of nuisance or interference**): If, in the reasonable opinion of the State, Project Co has failed to meet its obligations under clause 11.3(a), Project Co must comply with any reasonable direction of the State to:

#### stop or change the manner of undertaking the Project Activities; and

#### amend the applicable Project Plan to Cure the nuisance or interference and submit it to the State for review in accordance with the Review Procedures.

### (**Project Co to comply with the Fences Act**): Project Co must comply with any notice issued by an occupier of any adjoining land to the Project Area 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, Project Co must, and must ensure that the Project Co Associates (as applicable), during the carrying out of the Project Activities, manage all traffic on, and to and from, the Project Area (as the case may be) but only to the extent affected by those Project 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 Project Co otherwise complies with the requirements of this Deed.

### (**Compliance**): Project Co must:

#### at all times when performing the Project Activities comply with the Traffic Management Plan, Road Management Act, Relevant Legislation and the requirements of this Deed in connection with traffic management; and

#### comply with the directions of the State and any relevant road authority under the Road Management Act in connection with the management of traffic.

1. ***[Note: Traffic management systems may be considered on a project specific basis.]***

## Security

1. Without limiting anything in the PSDR, Project Co must provide reasonable security measures in accordance with Best Industry Practices or otherwise as are provided on similar projects (by parties performing similar activities to Project Co) for the protection and security of the Project Assets against theft, vandalism, unauthorised entry into the Project Area and any other unlawful acts.

## Contamination

***[Note: Contamination is a key risk for the private sector and should be carefully considered on a project specific basis. This provision sets out a core regime which applies to contamination. There are also project specific matters which can be considered and are shaded yellow below. The State may also consider other options available for risk sharing, depending on the nature of the site and the investigations.]***

### (**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 Project Area or in the Direct Affected Area; or

#### that has emanated or migrated, or is emanating or migrating, from or to:

##### the Project Area; or

##### the Direct Affected Area,

#### (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 relevant details in relation to the Contamination to the other party as soon as practicable and, in any event within [10] Business Days after the discovery of the Contamination, including:

##### whether the notice relates to "notifiable contamination" (as defined under the *Environment Protection Act 2017* (Vic);

##### the type of Contamination;

##### the location of the Contamination;

##### the nature and extent of the Contamination;

##### any information required to be provided to the relevant Authority under section 41(2) of the *Environment Protection Act 2017* (Vic); and

##### whether it considers the Remediation of the Contamination will give rise to a Contamination Compensation Event.

### (**Further notice**): Project Co must notify the State of any further relevant details of the Contamination in accordance with clause 11.6(b) to the extent such details are not included in the notice delivered in accordance with clause 11.6(b)(iv), as soon as reasonably practicable after becoming aware of those details.

### (**Remediation**): Project Co must Remediate any Contamination:

#### to the extent that:

##### Project Co or any Project Co Associate has caused or contributed to the Contamination, and which is:

###### in, on, over or under the Project Area; 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 Industry Practices and the use of the Project Area for the purposes of the Project;

###### prevent the migration of the Contamination from the Project Area to adjoining sites; or

###### ensure that the Project Area is Fit For Purpose (and where the Contamination is located in the Direct Affected Area, that the Direct Affected Area is fit for its purpose);

#### to the extent that Project Co 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 Project Co or any Project Co Associate; and

##### such Contamination is:

###### in, on, over or under the Project Area; or

###### in the Direct Affected Area (where it is part of Contamination that is also in, on, over or under the Project Area) and Project Co is required to Remediate such Contamination in accordance with Best Industry 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 Industry Practices and the use of the Project Area for the purposes of the Project;

###### prevent the migration of the Contamination from the Project Area to adjoining sites; or

###### ensure that the Project Area is Fit For Purpose (and where the Contamination is located in the Direct Affected Area, that other area is fit for its purpose),

#### provided that Project Co'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 Project 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 Project Activities);

#### to the extent that the Contamination is in an area that is not:

##### in, on, over or under the Project Area; or

##### the Direct Affected Area,

##### because:

##### it has migrated from:

###### in, on, over or under the Project Area; or

###### the Direct Affected Area:

##### Project Co or any Project Co 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 Project Area that is the subject of a Contamination Notice to Project Co or any Project Co Associate and which Project Co is not otherwise required to Remediate in accordance with clauses 11.6(d)(i), 11.6(d)(ii), 11.6(d)(iii) or 11.6(d)(iv); or

#### which the State directs Project Co to Remediate and Project Co is not otherwise obliged to Remediate in accordance with clauses 11.6(d)(i), 11.6(d)(ii), 11.6(d)(iii) or 11.6(d)(iv),

* 1. regardless of whether the Contamination occurred or migrated before or after Project Co was given access to the Project Area and provided that Project Co is not required to trace to the source of such Contamination, except to the extent the Contamination is caused or contributed to by Project Co or any Project Co Associates.

### (**Disputing a Contamination Notice**): Nothing in this clause 11.6 prevents Project Co from disputing the issue of a Contamination Notice with the EPA 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.

## Project Co's entitlement to compensation for Remediation

### (**Contamination Compensation Event**): To the extent that Project Co is required to Remediate Contamination:

#### in accordance with clause 11.6(d)(v) or clause 11.6(d)(vi);

#### in accordance with clause 11.6(d)(ii) or 11.6(d)(iii) to the extent that:

##### the Contamination is not in, on, over or under the Project Area;

##### the Contamination was not caused or contributed to by a Project Co Act or Omission; and

##### the legal obligation to remediate such Contamination, has not occurred as a result of any:

###### Wilful Misconduct, fraudulent, reckless, negligent, unlawful or malicious act or omission; or

###### breach of this Deed,

###### by Project Co or a Project Co Associate; or

#### to comply with section 39(1) of the *Environment Protection Act 2017* (Vic) where Project Co is not otherwise required to Remediate Contamination under clause 11.6(d),

#### (**Contamination Compensation Event**), this will be deemed to be a Modification in respect of which Project Co may submit a Modification Proposal in accordance with clause 35.2(a)(iii) and Project Co's entitlements will be determined in accordance with clause 35 and the Change Compensation Principles as if the Contamination Compensation Event was a State Initiated Modification, provided that in the case of clause 11.7(a)(iii), such relief will be to the minimum extent necessary to ensure compliance with section 39(1) of the *Environment Protection Act 2017* (Vic) where Project Co is not otherwise required to Remediate Contamination under clause 11.6(d).

### (**Conditions for Project Co Claim**): Project Co is not entitled to make any Claim against the State in respect of any Contamination Compensation Event (including its impact) unless notice has been given under clause 11.6(b) and clause 35.2(a)(iii).

***[Note: Definition of Contamination Compensation Event must be considered on a project specific basis, having regard to the Project Area.]***

1. ***[Note: The allocation of pre-existing contamination risk may be considered on a project specific basis. There may be value for money or other reasons for dealing with this risk differently during the various phases of the Project. If the Project represents a significant contamination risk, the State could consider including:***

* ***a regime in respect of Unknown Contamination;***
* ***a bespoke regime in respect of PFAS, if PFAS is considered a significant risk on the project; or***
* ***a bespoke regime in respect of groundwater (noting this is not included in the Unknown Contamination regime).***

***A sample clause in respect of Unknown Contamination (which may include PFAS) is set out below to provide guidance.]***

1. **1.1 Definitions**
2. **Unknown Contamination** means Contamination that:
3. (a) in the case of Contamination in existence in, on, over or under an area that is the Project Area or the Direct Affected Area at the date of this Deed, such Contamination:
4. (i) was not known, or not substantially known, to Project Co at the date of this Deed; and
5. (ii) differs materially in nature, location, extent or scope from what could have been reasonably foreseen or anticipated at the date of this Deed by a prudent, competent and experienced person in the position of Project Co, who had done those things that Project Co warrants under clause 10.3 that it has done exercising Best Industry Practices; or
6. (b) in the case of Contamination in existence outside the Project Area or the Direct Affected Area at the date of this deed which migrates onto the Project Area or the Direct Affected Area after the date of this Deed, it could not have been reasonably foreseen or anticipated at the date of this Deed by a prudent, competent and experienced person in the position of Project Co, who had done those things that Project Co warrants under clause 10.3 that it has done exercising Best Industry Practices that such Contamination would migrate onto the Project Area or the Direct Affected Area as a result of the Project Activities and such migration is not caused by or contributed to by Project Co or any Project Co Associates,
7. excluding any contaminated groundwater that is able to be remediated or treated to the standard required by this Deed using treatment facilities already in existence or otherwise required by this Deed.
8. **Unknown Contamination Compensation Event** has the meaning given in clause 11.8(c).
9. **11.8 Unknown Contamination**
   1. [***Note: Rather than using this regime, Project Teams may wish to utilise the mandatory Modification regime (with amendments to align with the commercial offer).***]

### Without limiting Project Co's obligations under clause 11.6, this clause 11.8 will apply to Unknown Contamination.

### If Project Co becomes aware of an Unknown Contamination, Project Co must:

#### as soon as practicable and in any event within [2] Business Days of becoming aware of the Unknown Contamination, provide the State and Independent Reviewer with written notice of the existence and possible scope of the Unknown Contamination; and

#### within [10] Business Days after becoming aware of the Unknown Contamination, provide the State and Independent Reviewer with written notice containing all relevant details, including:

##### the location of the Unknown Contamination;

##### the nature, extent and treatment of the Unknown Contamination;

##### the Unknown Contamination and in what respects it will have a material impact upon the Project Activities;

##### the additional work and resources which Project Co estimates to be necessary to deal with the Unknown Contamination;

##### the time Project Co anticipates will be required to deal with the Unknown Contamination and the expected delay in achieving a Date for Acceptance;

##### Project Co's estimate of the cost of the measures necessary to deal with the Unknown Contamination; and

##### other details reasonably required by the State.

### If Project Co gives notices under clauses 11.8(b)(i) and (ii) and the State agrees (acting reasonably) that an Unknown Contamination has been encountered (**Unknown Contamination Compensation Event**), this will be deemed to be a Change Compensation Event in respect of which Project Co may submit a Change Notice and Project Co's entitlements will be determined in accordance with the Change Compensation Principles.

### Project Co is not entitled to make any Claim against the State in respect of any Unknown Contamination (including its impact) other than in accordance with this clause and unless it has given notice under clauses 11.8(b)(i) and (ii).

**Schedule 5 Change Compensation Principles**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item** | **Change Compensation Event** | **Clause reference in Deed** | **Compensation entitlement of Project Co or the State** | |
| **Change Compensation Event occurs during the Development Phase** | **Change Compensation Event occurs during the Operational Phase** |
| [#] | **Unknown Contamination Compensation Event** | Clause 11.8 | Construction Base Costs.  Construction Margin on Construction Base Costs.  (sections 3.2, 3.3 and 5) | None. |

# Utilities

### (**Project Co's obligations in relation to Utilities during the Development Phase and the Operational Phase**): Project Co must:

#### 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;

#### consult with and keep the State fully informed as to Project Co's dealings with the Utility providers and owners of Utility Infrastructure;

#### 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 Project 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 Project Activities, including in accordance with the requirements of Utility providers; and

##### any access to the Site or interference with the Project Activities by or on behalf of a Utility provider;

#### undertake, or procure (at its own cost) that a Utility provider undertakes all work in connection with Utility Activities necessary for Project Co to comply with its obligations under the State Project Documents and ensure that any Project Assets that are lost or damaged in connection with such Utility Activities or relevant Utility Infrastructure are replaced or rectified;

#### ensure the continuous supply and sufficiency of Utilities required for the Project Activities;

#### negotiate and enter into (or procure that the D&C Contractor or the Services Contractor (as applicable) enters into) all agreements for the supply of Utilities for the Project Activities;

#### pay for, or procure that the D&C Contractor or Services Contractor (as applicable) pays for, all Utilities consumed or used in connection with the Project Activities in accordance with any agreements entered into with Utility providers, including any other costs, expenses or charges incurred in connection with the supply, consumption or use of such Utilities;

#### obtain the State's consent (such consent not to be unreasonably withheld or delayed) to:

##### carry out any Utility Activities outside the Project Area during the Term; and

##### carry out any Utility Activities within the Project Area during the Operational Phase;

#### notify the State at least 10 Business Days before any planned connection, disconnection or interference with existing Utility Infrastructure and liaise with the State as to how best to manage the connection, disconnection or interference taking into account the nature and requirements of the Project Area, the State, any State Associate, all relevant Interface Parties and all relevant Utility providers;

#### give all Utility providers reasonable access to any part of the Project Area to undertake any work or provide any service in respect of the Utilities;

#### not damage or destroy the Utility Infrastructure; and

#### 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.

### [Not used.]

### [Not used.]

1. ***[Note: Where there are Project Co Areas or Commercial Opportunities, the reference to the Operational Phase Area in this clause should exclude those areas or should be amended so that Project Co is liable for the supply and cost of Utilities for those areas.]***
2. ***[Note: The allocation of Utility risk may be considered on a project specific basis. There may be value for money or other reasons for dealing with this risk differently during the various phases of the Project. If the Project represents a significant utilities risk, the State could consider including regimes in respect of:***

* ***delays in critical non-contestable utilities; or***
* ***Unknown Utilities (ie where Project Co could not foresee the utility or the treatment of the utility).***

1. ***Samples clauses are set out below to provide guidance.]***
2. **1.1 Definitions**
3. **Compensable Extension Event** means
4. (##) a Critical Non-Contestable Utilities Works Delay;
5. **Critical Non-Contestable Utilities Work** means the part of the Works specified in [#insert relevant provision of PSDR] as "critical non-contestable utilities work". ***[Note: As part of their tender, bidders should be requested to propose the list of Critical Non-Contestable Utilities Work (which is to be a subset of non-contestable utilities work). Bidders will need to demonstrate the proposed work is a critical path activity or there is a material risk the work will become a critical path activity, and cannot be effectively managed otherwise e.g. by commencing activities early***.***]***
6. **Unknown Utility Service** meansa Utility to the extent that the Utility is in existence on the Project Area and:
   1. the existence of the Utility could not have been reasonably foreseen or anticipated at the date of this Deed by a prudent, competent and experienced person in the position of Project Co, who had done those things that Project Co warrants under clause 10.3 that it has done exercising Best Industry Practices; or
   2. the Utility differs materially in nature, location, scope or condition from what could have been reasonably foreseen or anticipated at the date of this Deed by a prudent, competent and experienced person in the position of Project Co, who had done those things that Project Co warrants under clause 10.3 that it has done exercising Best Industry Practices.

An Unknown Utility Service does not include a Utility:

* 1. that is redundant, except to the extent:
     1. the Utility must be removed to enable the Project Activities to be performed in accordance with this Deed; [or]
     2. the removal of the Utility requires the consent of the owner, operator or controller of the Utility;
  2. connecting a property to a main or common Utility; or
  3. that is not:
     1. a medium or high pressure gas mains;
     2. a DN200 or greater potable watermain;
     3. a rising sewer main;
     4. an 11kv or greater electrical cables; or
     5. a fibre optic telecommunication cables.

1. ***[Note: This is a sample definition. It should be considered on a case by case basis and reviewed by the State's technical team.]***
2. **Unknown Utility Service Compensation Event** has the meaning given in clause 12A(c).

# 12A. Unknown Utility Services

1. ***[Note: Rather than using this regime, Project Teams may wish to utilise the mandatory Modification regime (with amendments to align with the commercial offer).]***

### Without limiting Project Co's obligations under clause 12, this clause 12A will apply to Unknown Utility Services.

### If Project Co becomes aware of an Unknown Utility Service, Project Co must:

* + 1. as soon as practicable and in any event within [2] Business Days of becoming aware of the Unknown Utility Service, provide the State and Independent Reviewer with written notice of the existence and possible scope of the Unknown Utility Service; and
    2. within [15] Business Days after becoming aware of the Unknown Utility Service, provide the State and Independent Reviewer with written notice containing all relevant details, including:

##### the location of the Unknown Utility Service;

##### the nature, extent and treatment of the Unknown Utility Service;

##### the Unknown Utility Service and in what respects it will have a material impact upon the Project Activities;

##### the additional work and resources which Project Co estimates to be necessary to deal with the Unknown Utility Service;

##### the time Project Co anticipates will be required to deal with the Unknown Utility Service and the expected delay in achieving a Date for Acceptance;

##### Project Co's estimate of the cost of the measures necessary to deal with the Unknown Utility Service; and

##### other details reasonably required by the State.

### If Project Co gives notices under clauses 12A(b)(i) and (ii) and the State agrees (acting reasonably) that an Unknown Utility Service has been encountered (**Unknown Utility Service Compensation Event**), this will be deemed to be a Change Compensation Event in respect of which Project Co may submit a Change Notice and Project Co's entitlements will be determined in accordance with the Change Compensation Principles.

### Project Co is not entitled to make any Claim against the State in respect of any Unknown Utility Services (including its impact) other than in accordance with this clause and unless it has given notice under clauses 12A(b)(i) and (ii).

# 12B. Critical Non-Contestable Utilities Work

### Without limiting Project Co's obligations under clause 12, this clause 12B will apply to Critical Non-Contestable Utilities Work.

### A failure by the owner, operator or controller of the relevant Utility service to complete any Critical Non-Contestable Utilities Work:

#### by the date for completion of that work set out in [the Contract Particulars];

#### within timeframes that could have been reasonably foreseen or anticipated at the date of this Deed by a competent and experienced person in the position of Project Co who had done those things that Project Co warrants under clause 10.3 that it has done exercising Best Industry Practices; or

#### by the time required to avoid any delay to the relevant Acceptance,

### (whichever is the later) except to the extent Project Co fails to take all reasonable steps to avoid or minimise such failure, which will include:

#### completing relevant design, contacting the owner, operator or controller of the relevant Utility and scheduling times for the work sufficiently in advance;

#### providing required information (including any approvals) to the owner, operator or controller of the relevant Utility sufficiently in advance;

#### complying with the provisions of any agreement entered into with the owner, operator or controller of the relevant Utility;

#### proactively monitoring, managing, liaising and coordinating with the owner, operator or controller of the relevant Utility (or its relevant contractor); and

#### to the extent reasonably practicable, scheduling and (where relevant) rescheduling the Project Activities so as to minimise the risk that such failure will delay the relevant Date for Acceptance,

### will be a Critical Non-Contestable Utilities Works Delay and will be Compensable Extension Event.

**Schedule 5 Change Compensation Principles**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item** | **Change Compensation Event** | **Clause reference in Deed** | **Compensation entitlement of Project Co or the State** | |
| **Change Compensation Event occurs during the Development Phase** | **Change Compensation Event occurs during the Operational Phase** |
| [#] | **Unknown Utility Service Compensation Event** | Clause 12A | Construction Base Costs.  Construction Margin on Construction Base Costs.  (sections 3.2, 3.3 and 5) | None. |

# Land

1. ***[Note: To be drafted on a project specific basis if the acquisition of land is relevant or otherwise should be marked "Not Used".]***

# Occupations

1. ***[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".]***

# State access and Project monitoring

## State's right to enter, inspect and test

### (**Right of entry**):Subject to clause15.1(b), Project Co must permit the State, any State Associate, the Independent Reviewer and any other person directly authorised by the State to do so to enter any part of the Site to:

#### inspect, observe, photograph, film or test any part of the Project Assets or the Project Activities;

#### conduct any State Audit in accordance with clause 15.3 or Asset Condition Survey in accordance with clause 15.4;

#### exercise any right (including any step-in right), power or function or carry out any obligation which the State has under any State Project Document or Law;

#### observe any Acceptance tests;

#### examine and make copies of all Project Co Material in connection with the Project; or

#### take such other action as the State 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, Project Co must permit any Interface Party to enter any part of the Site to carry out the relevant Interface Works subject to and in accordance with the Site Access and Interface Protocols.

### (**Conditions of access during the Development Phase**):When entering the Site controlled by Project Co (or any Project Co Associate) during the Development Phase, the State must, and must ensure any State Associate and any other person authorised to enter the Site by the State and any Interface Party undertaking Proximate Interface Works or Site Interface Works:

#### only does so during Business Hours or upon giving reasonable notice to Project Co (except in the case of an Emergency that occurs on or in respect of the Project Area when no notice is required);

#### complies with the Site Access and Interface Protocols;

#### does not unnecessarily or unreasonably interfere with the carrying out of the Project Activities; and

#### does not damage the Project Assets or the Site.

### (**State access to Project Co Areas**): At all times during the Operational Phase, the State, the State Associates and any person authorised by the State:

#### [not used];

#### will have free and unfettered access to the Project Co Areas to:

##### inspect, observe or test any part of the Project Assets or the Project Activities;

##### conduct any State Audit in accordance with clause 15.3 or Asset Condition Survey in accordance with clause 15.4;

##### exercise any right (including any step-in right), power or function or carry out any obligation which the State has under any State Project Document or Law; and

##### observe any Final Acceptance tests; and

#### will have free and unfettered access to Project Co's officers to discuss Project Co's activities or those of any Subcontractor relating to the Services, at such times and as often as may be reasonably requested by any such person, provided that the discussions:

##### may be supervised by Project Co if required; and

##### do not unreasonably disrupt the duties of the relevant officer.

* 1. ***[Note: This may be amended on a project specific basis where the State carries out Operations. See Guidance Notes for more detail.]***

### (**Project Co to assist**):If requested by the State, Project Co must assist the State, any State Associate and any person authorised by the State in connection with any access, observation, inspection or testing including:

#### providing access to such part of the Project Assets and all Project Co Material as may be required by the State;

#### preparing and providing such samples of materials used in connection with the Project Assets as required by the State; and

#### if requested by the State, carrying out any tests (including tests reasonably required by the State that are not otherwise required by this Deed) and providing the results of those tests to the State.

### (**Project Assets not to be covered up**):

#### The State may direct that any part of the Project Assets must not be covered up or made inaccessible without the State's approval, which will not be unreasonably withheld or delayed.

#### If a direction has been given under clause 15.1(f)(i) and a part of the Project Assets has been covered up or made inaccessible without the State's approval and the State wishes to inspect or test that part of the Project Assets, Project Co must uncover or make accessible such part of the Project Assets.

### (**Costs of inspection or testing**): Subject to clause 15.3(g):

#### the State will bear the costs incurred by it; and

#### Project Co will be entitled to claim (by way of Change Notice) compensation as set out in Item 1 of Table 1 of the Change Compensation Principles, which will be calculated and determined in accordance with the Change Compensation Principles, if Project Co or any Project Co Associate incurs additional costs,

* 1. due to any inspection or test of the Project Assets or the Project Activities undertaken by the State, unless the inspection or test:

#### is in connection with Project Assets covered up or made inaccessible without the State's approval if such approval was required;

#### reveals a Defect or shows that the Project Activities are not in accordance with the requirements of this Deed; or

#### was otherwise required by this Deed to be carried out by Project Co or should have been carried out by Project Co in accordance with Best Industry Practices, and Project Co did not do so,

* 1. in which case, Project Co will not be entitled to make any Claim against the State in connection with any such inspection or test undertaken by the State and must pay all reasonable costs incurred by the State in connection with the inspection or test, which will be a debt due and payable by Project Co to the State.

## Public access areas

1. Project Co acknowledges that those parts of the Project Area available for public access are not part of the Project Area controlled by Project Co for the purposes of clause 15.1 and nothing in this Deed fetters the State's right to access such areas.

## State audits

### (**Audit for compliance**): The State may initiate an audit at any time to verify Project Co’s compliance with its obligations under the State Project Documents and the Project Plans and its capacity to continue to do so (**State Audit**).

### (**Project Co obligations**): Project Co must:

#### provide, and procure that any relevant Project Co Associates provide, all Project Co Material requested by the State or any State Associate undertaking the State Audit that is relevant to the conduct of the State Audit;

#### arrange for those undertaking the State Audit to meet with any Project Co Associates that they nominate; and

#### provide, and procure that any relevant Project Co Associate provides, the State or any person carrying out the State Audit all other assistance and information reasonably required by the State.

### (**Audit**): A State Audit may include examination of:

#### the Project Assets or any part of the Project Assets;

#### the carrying out of the Project Activities;

#### Project Co Material;

#### the amount of the recurrent Services Base Costs being paid to Project Co for a Change Compensation Event; and

#### Project Co’s and any Project Co Associates' processes and methodologies.

* 1. ***[Note: On a project specific basis, Project Teams may wish to also include compliance with quality management systems and other requirements of the State Project Documents.]***

### (**Minimise disruption**): The State must use reasonable endeavours to minimise any disruption a State Audit might cause to the Project Activities.

### (**Provision of audit report**): Subject to clause 15.4(b) in respect of Asset Condition Survey reports, the State may provide a copy of any report prepared as a consequence of a State Audit to Project Co and any relevant Project Co Associates and may require Project Co and any relevant Project Co Associates to attend a meeting to discuss the State Audit report.

### (**Cure of failures**): If a State Audit report provided to Project Co reveals any failure on the part of Project Co or any Project Co Associate to comply with any of its obligations under the State Project Documents or Project Plans, then, Project Co must promptly take such steps as are necessary to Cure or mitigate those failures and the effect of those failures.

### (**Costs**): Project Co will not be liable for any costs incurred by the State in performing State Audits in accordance with this clause 15.3 unless a State Audit establishes that Project Co has breached a material obligation under this Deed or has breached this Deed in a way that has a material impact on the State, any State Associate or the Operations, or has acted improperly in the performance of any of the Project Activities, in which case the State’s reasonable costs of performing the State Audit must be paid by Project Co as a debt due and payable by Project Co to the State.

### (**Auditor-General's rights**): Without limiting this clause 15.3, the parties acknowledge and agree that, notwithstanding any provision of any State Project Document to the contrary:

#### the powers and responsibilities of the Auditor-General for the State of Victoria under the *Audit Act 1994* (Vic) (or any substituted Legislation) are not limited or affected by the terms of any State Project Document and each party submits to those powers and responsibilities;

#### the State or Project Co may be the subject of an audit by the Auditor-General pursuant to section 94A of the *Constitution Act 1975* (Vic) or the *Audit Act 1994* (Vic); and

#### without limiting clause 15.3(h)(i), Project Co undertakes to the State that it will, and it will procure that each Project Co Associate will, at its own cost, co-operate and fully comply with the directions and requests of the Auditor-General and the State in relation to any audit referred to in clause 15.3(h)(ii).

### (**Not a State Audit**): An audit referred to in clause 15.3(h)(ii) is not a State Audit.

## Asset Condition Survey

### (**Purpose and notice**): If a State Audit involves the Maintained Assets and is to assess whether Project Co is maintaining those Maintained Assets in accordance with the requirements of this Deed (**Asset Condition Survey**), the State will:

#### consult with and then notify Project Co at least 10 Business Days in advance of the date on which it wishes to carry out or procure the carrying out of each Asset Condition Survey;

#### not undertake the Asset Condition Survey more than once a year after the Date of Commercial Acceptance;

#### not undertake an Asset Condition Survey after the appointment of the Handover Reviewer under clause 47.5; and

#### notify Project Co of any person it appoints to conduct the Asset Condition Survey and prepare any Asset Condition Survey report.

### (**Provision of report**): The State must provide Project Co with a copy of each Asset Condition Survey report.

### (**Discussion and agreement**): The Project Control Group must discuss the contents of each Asset Condition Survey report provided in accordance with clause 15.4(b) and seek to agree:

#### any action Project Co must undertake to ensure that it meets the requirements set out in clauses 5.1 and 5.5; and

#### the time within which any such action must be undertaken,

* 1. within 20 Business Days after Project Co receives the Asset Condition Survey report.

### (**State direction**): To the extent that the parties are unable to reach an agreement in accordance with clause 15.4(c), the State Representative may (acting reasonably and in accordance with the findings of the Asset Condition Survey) direct Project Co as to:

#### any action Project Co must undertake to meet the requirements referred to in clauses 5.1 and 5.5; and

#### the time in which any such action must be undertaken by Project Co.

### (**Costs**): Project Co will not be liable for any costs incurred by the State in performing an Asset Condition Survey in accordance with this clause 15.4 (including the cost of any person the State appoints in accordance with clause 15.4(a)(iv)), unless the Asset Condition Survey establishes that Project Co has breached a material obligation under this Deed or has breached this Deed in a way that has a material impact on the State, any State Associate or the Operations, or has acted improperly in the performance of any of the Project Activities, in which case the State's reasonable costs of performing the Asset Condition Survey must be paid by Project Co as a debt due and payable by Project Co to the State.

## Performance data audits

### (**Audit report**): Project Co must provide to the State, within 30 Business Days after the end of each Operating Year, an audit report, prepared as a minimum on a "negative assurance basis" by an independent and reputable auditor approved by the State (such approval not to be unreasonably withheld or delayed), who has audited the Performance Data and the Operational Phase Reports for that Operating Year.

### (**Performance Audit Notice**): At any time up to 36 Months after the end of any Operating Year, but no later than 12 Months after the Expiry Date, the State may give notice to Project Co requiring an audit of the Performance Data, the Operational Phase Reports or the application of the Payment Schedule in connection with that Operating Year to verify their accuracy (**Performance Audit Notice**).

### (**Performance Auditor**): If the State gives Project Co a Performance Audit Notice:

#### the State must appoint and notify Project Co of a person to conduct the audit and provide an audit report (**Performance Auditor**), and subject to clause 15.5(e)(ii), at the State’s cost and on terms reasonably determined by the State; and

#### Project Co must, and must procure that any Project Co Associate, within a reasonable period, make the Performance Data, the Operational Phase Reports and any information related to the application of the Payment Schedule available, and provide all necessary assistance (including access to senior management and personnel as reasonably required by the Performance Auditor) to the Performance Auditor.

### (**Inaccurate Performance Data or Operational Phase Report**): If:

#### a report provided to the State under clause 15.5(a); or

#### the report prepared by the Performance Auditor under clause 15.5(c)(i),

* 1. reveals that the Performance Data or an Operational Phase Report is not accurate, Project Co must fix the inaccuracy and reissue the relevant data or report to the State within 5 Business Days after Project Co receives the relevant report.

### (**Inaccurate payment or abatement**): Without limiting the State's other rights under this Deed as a consequence of any such inaccuracy, if the report prepared by the Performance Auditor under clause 15.5(c)(i) reveals that:

#### an Abatement is not correct or that the Payment Schedule has not been correctly applied, the State may adjust subsequent Service Payments to accurately reflect any Abatement or payment that should or should not have been made but for the inaccuracy; or

#### an Abatement is not correct or that the Payment Schedule has not been correctly applied or the Performance Data or an Operational Phase Report is not accurate, in each case in all material respects, Project Co must reimburse the State for any costs of the Performance Auditor paid by the State in connection with:

##### the relevant audit; and

##### the next audit to be undertaken as a consequence of the Performance Audit Notice,

* + 1. and such amounts will be a debt due and payable by Project Co to the State.

# Work health and safety and Quality Assurance System

## Work health and safety

1. Project Co must comply with its obligations under Schedule 25 (*OHS Schedule)*.

## Quality Assurance System

1. Project Co must develop, implement and maintain a quality assurance system that covers:

### (**Development Activities**): the carrying out of the Development Activities;

### (**Services**): the performance of the Services; and

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

1. (**Quality Assurance System**) during the Term in accordance with the PSDR.
2. ***[Note: QA Systems used to be considered on a project specific basis.]***

# Project Plans, reports and certificates

## Project Plans

### (**Submission**): Project Co must:

#### update the Bid Project Plans in accordance with [##] of the PSDR by the "Project Plan submission date" set out in [##] of the PSDR; and

#### for any other Project Plan in respect of which there is no Bid Project Plan, prepare the Project Plan in accordance with [##] of the PSDR,

* 1. and submit those Project Plans to the State (and, where applicable, in accordance with [##] of the PSDR, the Independent Reviewer) for review in accordance with the Review Procedures.

### (**Updates**): Project Co must update the Project Plans in accordance with [##] of the PSDR.

### (**Not part of this Deed**): The Project Plans do not form part of this Deed. ***[Note: May be amended on a project specific basis. See Guidance Notes for further detail.]***

### (**Delivery**): Unless otherwise agreed by the State, notwithstanding clause 17.1(c), Project Co must carry out the Project Activities in accordance with the Project Plans.

### (**Additional information**): Project Co must provide to the State and, where applicable, the Independent Reviewer, any additional information in connection with the Project Plans reasonably requested by the State and, where applicable, the Independent Reviewer.

## Development Phase Reports and Operational Phase Reports

### (**Preparation and submission**): Except in respect of the Monthly Development Phase Progress Report and the Monthly Operational Phase Performance Report, which must be submitted in accordance with clause 7.7(d), Project Co must prepare and submit the Development Phase Reports and the Operational Phase Reports to the State and the Independent Reviewer (where applicable) in accordance with [##] of the PSDR.

### (**Additional information**): Project Co must provide to the State and, where applicable, the Independent Reviewer, any additional information in connection with the Development Phase Reports and Operational Phase Reports reasonably requested by the State and, where applicable, the Independent Reviewer.

## Schedule of Certificates and Notices

1. If a certificate or notice is required to be provided by Project Co to the State or the Independent Reviewer under the State Project Documents, Project Co must provide the relevant certificate or notice to the State and, where applicable, the Independent Reviewer, 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 State and Project Co, all things affixed to the Project Area (**Fixtures**) will be:

### owned by the State (other than the Returned Assets which will be owned by the owner of that part of the Project Area to which the Returned Assets are affixed); and

### free from any Security Interest,

1. from the time they are affixed.

## Moveable Assets

### (**Project Co to acquire title**): Project Co 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 Commercial Acceptance;

#### acquired during the Operational Phase, on the date on which it has paid for that Moveable Asset; and

#### in all other cases, by no later than the Expiry Date.

### (**Date of transfer of ownership**): Project Co must ensure that all rights, title and interest, in and to the Moveable Assets (other than the Hired Moveable Assets) transfer to the State:

#### upon the earlier of:

##### in the case of any such Moveable Asset forming part of the Works, no later than the Date of Commercial Acceptance;

##### in the case of any such Moveable Asset acquired during the Operational Phase, as and when Project Co acquires title to that Moveable Asset (other than the Hired Moveable Assets), which it must do no later than when it has paid for the Moveable Asset; and

##### the Expiry Date; and

#### free from any Security Interest,

* 1. and must deliver, and procure that any relevant Project Co Associate delivers, to the State all deeds and documents of title held by or under the control of Project Co or any Project Co Associate relating to the Moveable Assets (other than the Hired Moveable Assets) no later than when title to the relevant Moveable Asset (other than the Hired Moveable Assets) is transferred to the State.

### (**Licence**): The State grants Project Co a licence (including a right to sub-license) to use the Moveable Assets that the State owns for the purpose of fulfilling Project Co'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 State and terminates at the end of the Term.

### (**No warranty**): The State does not give any warranty as to the:

#### condition of the Moveable Assets (the subject of a licence under clause 18.2(c)); or

#### fitness for purpose of the Moveable Assets (the subject of a licence under clause 18.2(c)) for providing the Services.

### (**Effect of Expiry Date**): The State and Project Co each acknowledge and agree that if the Expiry Date occurs prior to Project Co acquiring title to any Moveable Asset (other than Hired Moveable Assets) forming part of the Project Assets, as between the State and Project Co, the State owns the relevant Moveable Asset.

### (**Hired Moveable Assets**):

#### Project Co must not enter into any lease or hire-purchase arrangement in respect of a Moveable Asset unless:

##### the State (acting reasonably) agrees to Project Co hiring or leasing that Moveable Asset and the terms of that lease or hire-purchase arrangement; and

##### the proposed lease or hire-purchase arrangements permit the novation of the rights and obligations under the lease or hire-purchase arrangement to the State (or its nominee) at the end of the Term.

#### If, during the Term, the State gives notice to Project Co that the State wishes to acquire title to a Hired Moveable Asset that is the subject of a hire-purchase arrangement, Project Co must promptly procure the transfer of the title to that Hired Moveable Asset upon payment by the State of the residual value of that Hired Moveable Asset in accordance with the relevant hire-purchase arrangement.

#### [Not used.]

## Moveable Asset register

1. Project Co must include in the Asset Information System details of all Moveable Assets and provide it to the State in accordance with Appendix [##] of the PSDR and otherwise upon request by the State.

# Interface requirements

1. ***[Note: Interface requirements to be amended on a project specific basis.]***

## No restrictions on State's planning and development rights

### (**No exclusivity**): Project Co acknowledges that:

#### neither it nor any Project Co Associate is or will be the exclusive provider or supplier of works or services to the State, any State Associate or any third party on, in, under or over the Project Area or in the direct vicinity, but outside, of the Project Area; and

#### the State, any State Associate or any third party may procure works and services to be performed on, in, under or over the Project Area or in the direct vicinity, but outside, of the Project Area, in each case from any third party.

### (**Examples**): Without limiting clause 19.1(c) and Project Co's rights under this Deed in respect of Change Compensation Events, the State and any Authority may, on its own account, exercise or not exercise (and may authorise others including Interface Parties to exercise or not exercise) any right it has to:

#### construct or install new transport infrastructure, including on, in, under or over the Project Area or in the direct vicinity of, but outside, the Project Area;

#### 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.

### (**No restriction on changes to transport network**): Nothing in the Project Documents will restrict, or require the exercise of, any right of the State, or any Authority, to develop, manage or change the State's transport network or make policy decisions in relation to the development and implementation of transport planning in Victoria.

### (**Participation**): Project Co must participate as reasonably required by the State in the development and implementation of transport planning that may impact the Project. This participation may include:

#### attending meetings, consultation forums and other similar events;

#### reviewing and contributing to the development of proposals and strategies put forward by the State or other stakeholders;

#### providing comments on the impact of proposals and strategies on the Project Activities and the Project Assets; and

#### cooperating in good faith in the implementation of the State's public transport policy objectives, as notified to Project Co.

## General Interface Requirements

### (**Coordination**): Project Co acknowledges that Interface Parties may carry out Interface Works.

### (**Notification**): Other than if they are Direct Interface Works, the State must notify Project Co when it intends to undertake or authorise any Interface Works and will provide Project Co with details of the Interface Works and the proposed time for the Interface Works.

### (**Co-operation**): Project Co must, subject to the terms of the Direct Interface Deed with the Direct Interface Party if they are Direct Interface Works:

#### permit the Interface Parties to undertake their Interface Works on, in, under or over the Project Area or in the direct vicinity of the Project Area;

#### fully co-operate with the Interface Parties, including to facilitate the implementation of the Interface Works, including:

##### providing information to co-ordinate and permitting reasonable temporary closure of parts of the Project Area, and other areas affected by the Interface Works and rescheduling or otherwise adjusting Project Activities; and

##### providing information and assistance reasonably requested by the State, and within the timeframe reasonably required by the State, to facilitate the delivery of the Interface Works;

#### carefully co-ordinate and interface the Project Activities with the Interface Works carried out or to be carried out by the Interface Parties;

#### carry out the Project Activities so as to minimise interference, disruption or delay to the Interface Works;

#### notify the State of any matter in connection with the undertaking or intended undertaking of the Interface Works that may have an adverse effect upon the carrying out of the Project Activities or the safety of persons as soon as possible after becoming aware of such matter;

#### provide sufficient, safe access to the Project Area to an Interface Party to enable the relevant Interface Party to undertake the Interface Works;

#### assist the State with the tender process for any Interface Works by providing information required by the State and meeting with tenderers as required by the State;

#### attend any meetings called by the Interface Parties that relate to Interface Works;

#### use its best endeavours and act in accordance with Best Industry Practices to ensure that the Project Assets are protected from accidental damage by the Interface Parties;

#### not tender, and must:

##### ensure that none of the Key Subcontractors; and

##### use reasonable endeavours to ensure that none of the Significant Subcontractors,

##### tender, for or carry out any element of the Interface Works without the approval of the State; and

#### notify the State of any matter which the undertaking or intended undertaking of any Interface Works by the Interface Parties may have on the carrying out of the Project Activities or the safety of any persons as soon as possible after becoming aware of such matter.

### (**Compliance**): Project Co must enter into, and comply with all of its obligations under, each Direct Interface Deed.

### (**No State liability**): Except to the extent set out in an agreement between the State and a relevant Key Subcontractor or Significant Subcontractor for the carrying out of the Interface Works:

#### the State will not have any Liability to Project Co or any Project Co Associate; and

#### neither Project Co nor any Project Co Associate will be entitled to make any Claim against the State,

* 1. in connection with any Interface Works carried out by a Key Subcontractor or Significant Subcontractor and any such Key Subcontractor or Significant Subcontractor will not be a State Associate.

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

#### except where the Interface Works are undertaken by a Direct Interface Party, procure that any Interface Party complies with the relevant Site Access and Interface Protocols when accessing the Site; and

#### subject to the terms of any Direct Interface Deed, if the Interface Works are Direct Interface Works, procure that any Interface Party provides Project Co with all as-built drawings and any other Material in respect of the Interface Works as may be reasonably requested by Project Co and that are relevant to the carrying out of the Project Activities (provided that Project Co complies with any reasonable confidentiality requirements of the Interface Party).

### (**Maintenance responsibility**): If the State constructs or procures the construction of any Site Interface Works, the State may, at any time, issue to Project Co a Modification Request under clause 35.1 or a Modification Order under clause 35.10, in relation to the maintenance and repair of those Site Interface Works.

## Operations

### [Not used.]

### (**Coordination with the Operations**): Project Co:

#### warrants that it has made full allowance in its Service Payment to ensure the coordination of the provision of the Services with:

##### the possession, occupation and use of the Maintained Assets by the State, the State Associates and the Users as contemplated by this Deed; and

##### the carrying out of the Operations;

#### must:

##### perform the Services in accordance with the requirements specified in the Service Requirements so as to co-ordinate with and minimise disruption to the normal functioning of the Maintained Assets and the undertaking of the Operations; and

##### take any steps which are necessary or otherwise reasonably required by the State to minimise disruption or inconvenience to the State, the State Associates or the Users and to the Operations; and

#### will not, unless otherwise expressly permitted in this Deed:

##### be relieved of its obligations under this Deed, including to perform the Services in accordance with the requirements specified in the Service Requirements; or

##### be entitled to make any Claim against the State in connection with any fact, matter or thing arising out of or in connection with the possession, occupation and use of the Maintained Assets by the State, the State Associates or the Users or the carrying out of the Operations as contemplated by this Deed.

### 

PART E - DEVELOPMENT PHASE OBLIGATIONS

# Development Phase Obligations

1. ***[Note: Land tenure to be considered on a project specific basis and in conjunction with the Land and Occupations clauses (if any).]***

## Development Phase Licence

### (**Licence for Development Activities**): Subject to Project Co having submitted reviewed and amended the WHS Management Plan in accordance with clause 17.1 and the Review Procedures, the State must grant, or procure the grant of, a non-exclusive licence to Project Co to use and occupy, and permit the Subcontractors to use and occupy, the Development Phase Area:

#### for the purpose of performing the Development Activities;

#### until the Date of Commercial Acceptance; and

#### in accordance with the requirements of this Deed and the Site Access and Tenure Schedule,

* 1. (**Development Phase Licence**).

### (**Terms of Development Phase Licence**): The Development Phase Licence granted or procured in accordance with clause 20.1(a) must be:

#### for a term which commences on Financial Close and ends on the Date of Commercial Acceptance;

#### subject to clause 20.1(b)(iii), on the same terms and conditions as the relevant Development Phase Licence set out in the Site Access and Tenure Schedule;

#### on such other terms imposed by the State (acting reasonably) having regard to the nature, location, hours and mode of construction of the Works for which the Development Phase Licence is granted; and

#### executed by Project Co.

### (**Comply with Development Phase Licence**): Project Co must comply with the Development Phase Licence for the duration of the Development Phase.

### (**Access to Returned Assets for Defect rectification**): The State must grant, or procure the grant of, a non-exclusive licence to Project Co to access, and permit the relevant Subcontractors to access the Returned Assets for the purpose of rectifying Defects in those Returned Assets in accordance with clause 27.

### (**Other access**): Except for:

#### the State's obligation to grant or procure the grant of the Development Phase Licence under clause 20.1(a) and the licence for the Returned Assets under clause 20.1(d); and

#### the obligations imposed on the State in the Development Phase Licence,

* 1. Project Co is responsible for gaining access to and from the Development Phase Area, and to and from any land outside the Development Phase Area, to which access is required to carry out the Development Activities.

### (**Coordination**): Project Co bears the risk of coordinating its access to the Development Phase Area with any other person that uses the access ways to the Development Phase Area.

### (**Permitted use**): Project Co must not use or permit the use of the Development Phase Area for any purpose other than as permitted for the Development Phase either under this Deed or the Development Phase Licence.

## Design

### (**FFP obligation**): Project Co must design the Project Assets and develop the Design Documentation in accordance with the Delivery Requirements and so that the Project Assets, when manufactured or constructed in accordance with the Construction Documentation will satisfy the relevant FFP Warranty.

### (**Design Development Process**): Project Co must:

#### prepare the Design Documentation; and

#### submit it for review by the [Independent Reviewer] and the State, ***[Note: To be updated on a project specific basis to align with the Primary and Secondary Reviewer under the Design Development Process Schedule.]***

* 1. in accordance with the design development process set out in the Design Development Process Schedule (**Design Development Process**).

### (**No Claim**): The Design Development Process itself does not constitute a Modification and Project Co is not entitled to make any Claim against the State or any State Associate for any Liabilities suffered or incurred by Project Co in connection with the conduct of the Design Development Process.

## Construction

1. Project Co 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:

#### the Maintained Assets, Remaining Works and Returned Assets satisfy the relevant FFP Warranty;

#### the Temporary Works are Fit For Purpose; and

#### the Maintained Assets are wholly located within the area identified in the Operational Phase Area Plan. ***[Note: To be considered further on a project specific basis.]***

## State right to require Project Co to call on D&C Contractor Construction Bond

### (**Call on D&C Contractor Construction Bond**): Without limiting the State's rights under this Deed or at Law, the State may require Project Co to call on any Performance Bond provided by the D&C Contractor in favour of Project Co, (**D&C** **Contractor Construction Bond**) that Project Co holds, or is held on Project Co's behalf, to satisfy any debt due and payable by Project Co to the State if Project Co has the right to call on the D&C Contractor Construction Bond under the D&C Contract and the relevant debt due and payable by Project Co to the State has not been paid within 10 Business Days after receipt of a demand for payment.

### (**Amount of call**): The amount the State may require Project Co to call under the D&C Contractor Construction Bond will, in aggregate, be limited to an amount no greater than:

#### (**prior to Commercial Acceptance**): prior to the Date of Commercial Acceptance, the D&C Contractor Construction Bond Amount, or if the amount the subject of the D&C Contractor Construction Bond at that time is less than the D&C Contractor Construction Bond Amount, that lesser amount; or

#### (**during defects liability period**): for the period commencing on the Date of Commercial Acceptance and expiring on the later of the date [24] Months after the Date of Commercial Acceptance and the expiration of the last defects liability period under the D&C Contract, the D&C Contractor DLP Bond Amount, or if the amount the subject of the D&C Contractor Construction Bond at that time is less than the D&C Contractor DLP Bond Amount, that lesser amount.

### (**Proceeds of D&C Contractor Construction Bond**): If the State requires Project Co to call on the D&C Contractor Construction Bond in accordance with clause 20.4(a), Project Co must procure that the proceeds of the call on the D&C Contractor Construction Bond are paid by the issuer of the D&C Contractor Construction Bond directly to, or to the order of, the State to the extent of, and in satisfaction of, the relevant debt due and payable by Project Co to the State.

1. ***[Note: For fully outsourced projects, include an ability for the State to call on the Services Contractor bond in the same way.]***

## [Not used]

## Independent Reviewer's review of construction

### (**Review by Independent Reviewer**): Project Co acknowledges that the Independent Reviewer will (including if requested to do so by the State) continually review (by general overview, reasonable checking, visits to the Development Phase Area and review of Project Co Material) the undertaking of the Works so that it may form an opinion as to whether or not the obligations of Project Co under the State Project Documents relating to the Works (including compliance with any Approvals) are being complied with.

### (**Notice of non-compliance**): If the Independent Reviewer believes that the obligations of Project Co under the State Project Documents relating to the Works are not being complied with, the Independent Reviewer may give notice to the State and Project Co of its opinion together with its reasons for forming that opinion.

### (**Project Co's response**): Within 5 Business Days of receipt of the Independent Reviewer's notice under clause 20.6(b), Project Co must:

#### notify the State and the Independent Reviewer of any matters in respect of which it disagrees with the Independent Reviewer's opinion together with its reasons for doing so (**Explanation**); and

#### to the extent it does not disagree, provide a plan and a program for the rectification of any non-compliance (**Remediation Plan**).

### (**Notice by Independent Reviewer**): Within 7 Business Days of receipt of the Explanation or Remediation Plan, the Independent Reviewer must give notice to the State and Project Co of its opinion as to whether or not the Explanation or the Remediation Plan satisfactorily addresses its concerns together with its reasons for forming that opinion.

### (**Project Co's risk**): Despite any opinion of the Independent Reviewer under clause 20.6(d) that the Explanation or the Remediation Plan does not satisfactorily address its concerns, Project Co may, subject to giving 2 Business Days' notice in accordance with clause 20.6(f) to the State and Independent Reviewer of its intention to proceed with construction of the Works or implementation of the Remediation Plan (as applicable), proceed with construction of the Works or implementation of the Remediation Plan at its own cost and risk (including the risk that a Certificate of Completion may not be issued). ***[Note: The ability to proceed at own risk in relation to notices under this clause to be considered on a project specific basis.]***

### (**Notice**): A notice provided by Project Co under clause 20.6(e) must include details of the reasons why Project Co intends to proceed with construction of the Works or implementation of the Remediation Plan, despite the opinion of the Independent Reviewer under clause 20.6(d).

# [Not used]

# [Not used]

# [Not used]

# Commercial Acceptance

## Commercial Acceptance tests

1. Project Co must develop, conduct and satisfy all tests required to determine Commercial Acceptance in accordance with the PSDR.

## Notice before Commercial Acceptance

### (**Notice**): Project Co must give the State and the Independent Reviewer notice:

#### 90 Business Days;

#### 60 Business Days; and

#### 20 Business Days,

prior to the date upon which it reasonably expects to achieve Commercial Acceptance. ***[Note: Notification period to be amended as required on a project specific basis.]***

### (**Revised date**): If, after Project Co gives the State and the Independent Reviewer a notice under clause 24.2(a), the date upon which Project Co reasonably expects to achieve Commercial Acceptance changes, Project Co must notify the State and the Independent Reviewer promptly of the revised date.

## Commercial Acceptance

### (**Notice by Project Co**): When Project Co considers that Commercial Acceptance has been achieved, Project Co must issue a notice in the form required by the Schedule of Certificates and Notices to the State and the Independent Reviewer which:

#### states that it considers that Commercial Acceptance has been achieved;

#### lists all Returned Assets and states that Returned Works Acceptance has been achieved in respect of all Returned Assets (other than any Returned Works Outstanding Items or Remaining Works);

#### asks the State to issue a Certificate of Commercial Acceptance;

#### includes any then current Collated Returned Works Outstanding Items List;

#### [not used]; and

#### includes the then current Remaining Works Schedule.

### (**Remaining Works**): Subject to clause 24.3(d), at any time prior to the Independent Reviewer issuing a notice under clause 24.3(j), the State and Project Co may agree or, subject to clause 24.3(c), the Independent Reviewer may determine that any Defect, work, act, matter, state of affairs or thing that is required in accordance with this Deed to have been performed, achieved, rectified, provided or completed by Project Co to achieve Commercial Acceptance, does not need to be so performed, achieved, rectified, provided or completed by Project Co to achieve Commercial Acceptance, in which case such Defect, work, act, matter, state of affairs or thing will be deemed to be Remaining Works.

### (**Minor Defects**): The Independent Reviewer may only make a determination under clause 24.3(b) if the relevant Defect, work, act, matter, state of affairs or thing is a Minor Defect.

### (**Returned Works**): Without limiting the parties' rights and obligations:

#### under clause 24.4 in respect of Returned Works Outstanding Items; and

#### in respect of Returned Assets that are listed in the Remaining Works Schedule at the date of this Deed,

* 1. the parties acknowledge and agree that any Defect, work, act, matter, state of affairs or thing in respect of any Returned Works, that is required, in accordance with this Deed, to have been performed, achieved, rectified, provided or completed by Project Co by Commercial Acceptance must not be included in the Remaining Works Schedule.

### (**Update Remaining Works Schedule**): If the State and Project Co make any agreement or the Independent Reviewer makes any determination in accordance with clause 24.3(b), Project Co must update the Remaining Works Schedule to reflect the Remaining Works so agreed or determined and provide it to the State and the Independent Reviewer for review in accordance with the Review Procedures.

### (**Notice by State**): Notwithstanding that Project Co may not have issued a notice under clauses 24.3(a) or 24.3(n)(ii), if the State considers that Commercial Acceptance has been achieved, the State may:

#### notify Project Co and the Independent Reviewer of its opinion; and

#### ask the Independent Reviewer to issue a Certificate of Commercial Acceptance.

### (**Project Co to provide lists**): If the State issues a notice to Project Co and the Independent Reviewer in accordance with clause 24.3(f), Project Co must, within 3 Business Days of receiving that notice from the State, provide to the State and the Independent Reviewer any then current:

#### Collated Returned Works Outstanding Items List;

#### [not used]; and

#### Remaining Works Schedule.

### [Not used.]

### (**Independent Reviewer to make determination**): As soon as reasonably practicable and, in any event, within 10 Business Days after Project Co issues a notice under clauses 24.3(a) or 24.3(n)(ii), or the State issues a notice under clause 24.3(f), the Independent Reviewer must determine whether Commercial Acceptance has been achieved.

1. (iA) (**State and Project Co right to agree Commercial Acceptance**): Whether or not the Independent Reviewer considers that Commercial Acceptance has been achieved, the State and Project Co may agree to require the Independent Reviewer to issue a Certificate of Commercial Acceptance at any time.

### (**Independent Reviewer determines** **Commercial Acceptance is achieved**): If the Independent Reviewer determines under clause 24.3(i) that Commercial Acceptance has been achieved, the Independent Reviewer must issue a Certificate of Commercial Acceptance to the State and Project Co:

#### certifying that Commercial Acceptance has been achieved;

#### stating the Date of Commercial Acceptance; ***[Note: For roads projects, the Date of Commercial Acceptance must be the date of the certificate but, where not a road project, the Date of Commercial Acceptance may be able to be prior to the date of the Certificate of Commercial Acceptance. Consider on a Project specific basis having regard to relevant regulatory framework.]***

#### attaching the then current Remaining Works Schedule; and

#### attaching the then current Collated Returned Works Outstanding Items List.

### (**Program**): Within 5 Business Days after the State issues any Certificate of Commercial Acceptance, Project Co must submit to the State and the Independent Reviewer, for review in accordance with the Review Procedures, a program for the rectification or completion of the Remaining Works in the Remaining Works Schedule, that ensures that the Remaining Works are rectified or completed by the Date for Final Acceptance.

### (**Completion Remaining Works**): Without limiting the State's rights under clause 27.6, Project Co must rectify or complete all Remaining Works in the Remaining Works Schedule in accordance with the program referred to in clause 24.3(k) and otherwise by the Date for Final Acceptance.

### (**Performance Failures**): Provided they are rectified or completed in accordance with clause 24.3(l), the Remaining Works, while they are being rectified or completed, will not of themselves be Performance Failures, but nothing in this clause 24.3 will relieve Project Co of its obligations and liabilities under this Deed to the extent that any such Remaining Works give rise to a Performance Failure.

### (**Independent Reviewer determines Commercial Acceptance is not achieved**): If the Independent Reviewer determines under clause 24.3(i) that Commercial Acceptance has not been achieved:

#### the Independent Reviewer must issue a notice to the State and Project Co:

##### listing the work remaining to be undertaken by Project Co to achieve Commercial Acceptance; or

##### stating that Commercial Acceptance is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 24.3(n)(i)A,

after which Project Co must continue to expeditiously and diligently progress the Development Activities to achieve Commercial Acceptance;

#### Project Co must give notice to the State and the Independent Reviewer in accordance with clause 24.3(a) when the work listed in a notice issued by the Independent Reviewer under clause 24.3(n)(i)A has been completed or, if clause 24.3(n)(i)B applies, when Project Co is otherwise of the view that Commercial Acceptance has been achieved; and

#### clauses 24.3(b) to 24.3(n) will apply in connection with Project Co's notice under clause 24.3(n)(ii) in the same way as if it was the original notice given under clause 24.3(a).

### (**No restriction on Independent Reviewer**): The State, in making its determination as to whether Commercial Acceptance has been achieved, will:

#### [not used];

#### not be restricted by any notice, list or opinion which:

##### it previously provided to Project Co under clause 24.3(n); or

##### [not used]; and

#### be entitled to raise any other items of work which are required to be completed in order to achieve Commercial Acceptance in accordance with this Deed which have not been so completed (other than any Returned Works Outstanding Items that are not required to be completed by Commercial Acceptance or Remaining Works) as a ground for determining that Commercial Acceptance has not been achieved.

### (**Certificate of Commercial Acceptance**): The issue of a Certificate of Commercial Acceptance in accordance with clause 24.3(j) does not constitute:

#### evidence that Project Co has satisfied the relevant FFP Warranty;

#### an approval by the State 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.

### [Not used.]

## Returned Works Acceptance

### (**Consultation**): Project Co 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:

##### Project Co 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 24.4(b) are satisfied;

#### complete the Returned Works in accordance with the relevant Returned Works Acceptance 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 Acceptance Requirements have been met in respect of the Returned Works.

### (**General obligations**): Project Co must progressively complete the Returned Works so as to ensure that:

#### Returned Works Acceptance 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 Project Co under a relevant Direct Interface Deed);

#### Returned Works Acceptance for all Returned Works is achieved by the Date for Commercial Acceptance, other than where Returned Works are Remaining Works or Returned Works Outstanding Items; and ***[Note: Timing for Returned Works Acceptance for each Returned Asset to be determined on a project specific basis. There may be dates for completion of specific Returned Assets that precede the Date for Commercial Acceptance.]***

#### achievement of Returned Works Acceptance occurs in a smooth and orderly manner (rather than in a compressed period immediately prior to Commercial Acceptance) which:

##### is consistent with the Development Phase Program; and

##### provides the Independent Reviewer 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 Acceptance Requirements relevant to those Returned Works and carry out any reinspection or other activities required by the Independent Reviewer in order to determine whether the Returned Works Acceptance Requirements have been met.

### (**Returned Works Outstanding Item**): At any time prior to the Independent Reviewer making a determination under clause 24.4(k), the State and Project Co may agree or, subject to clause 24.4(d), the Independent Reviewer may determine that any Defect, work, act, matter, state of affairs or thing that is required in accordance with this Deed to have been performed, achieved, rectified, provided or completed by Project Co to achieve Returned Works Acceptance, does not need to be so performed, achieved, rectified, provided or completed by Project Co in order to achieve Returned Works Acceptance for the relevant Returned Works (**Returned Works Outstanding Item**).

### (**Minor Defects**): The Independent Reviewer may only make a determination under clause 24.4(c) if the relevant Defect, work, act, matter, state of affairs or thing is a Minor Defect.

### (**Returned Works Outstanding Items List**): If the State and Project Co make any agreement or the Independent Reviewer makes any determination in accordance with clause 24.4(c):

#### Project Co must prepare a list of the Returned Works Outstanding Items for the relevant Returned Works so agreed or determined (**Returned Works Outstanding Items List**); and

#### Project Co must collate each such list into one list for all then current Returned Works Outstanding Items and provide that collated list to the State and Independent Reviewer for review in accordance with the Review Procedures no later than the date on which it gives its notice under clause 24.2(a)(i) (**Collated Returned Works Outstanding Items List**).

### (**Update Collated Returned Works Outstanding Items List**): Project Co must update the Collated Returned Works Outstanding Items List, and provide it to the State and the Independent Reviewer for review in accordance with the Review Procedures, each time it creates or updates a Returned Works Outstanding Items List.

### (**Notice by Project Co**): When Project Co considers that it has met the Returned Works Acceptance Requirements for any Returned Works, Project Co must issue a notice in the form required by the Schedule of Certificates and Notices to the State, the Independent Reviewer and the relevant Returned Asset Owner which:

#### states that it considers that it has achieved all the Returned Works Acceptance Requirements in respect of those Returned Works; and

#### includes the Returned Works Outstanding Items List for those Returned Works.

### (**Notice by the State**): Notwithstanding that Project Co may not have issued a notice under clause 24.4(g) or clause 24.4(p)(i), if the State considers that Returned Works Acceptance has been achieved for any Returned Works, the State may:

#### notify Project Co, the relevant Returned Asset Owner and the Independent Reviewer of its opinion;

#### ask the Independent Reviewer to issue a Certificate of Returned Works Acceptance for those Returned Works; and

#### include in its notice, the Returned Works Outstanding Items List for those Returned Works.

### (**Joint inspection**): No more than 5 Business Days after receipt of Project Co's notice under clause 24.4(g) or clause 24.4(p)(i) or the State's notice under clause 24.4(h), Project Co, the Independent Reviewer, the State 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 Independent Reviewer).

### (**Right to agree Returned Works Acceptance**): The State, Project Co and the relevant Returned Asset Owner may agree, no later than 5 Business Days after the date of inspection under clause 24.4(i) that the Returned Works Acceptance Requirements have been met for the relevant Returned Works (other than any Remaining Works or Returned Works Outstanding Items), in which case, the State must promptly notify the Independent Reviewer accordingly and, whether or not it agrees with the State, the Returned Asset Owner and Project Co, the Independent Reviewer must issue a Certificate of Returned Works Acceptance in respect of the relevant Returned Works within 10 Business Days of the date of the inspection under clause 24.4(i), in accordance with clause 24.4(m).

### (**Independent Reviewer to make determination**): Subject to any agreement under clause 24.4(j), as soon as reasonably practicable and, in any event, within 10 Business Days following the date of inspection under clause 24.4(i), the Independent Reviewer must determine whether the Returned Works Acceptance Requirements for the relevant Returned Works have been met.

### (**Independent Reviewer to consider comments of Returned Asset Owner**): In determining whether the Returned Works Acceptance Requirements for the relevant Returned Works have been met, the Independent Reviewer must consider any reasonable comments of the relevant Returned Asset Owner provided within 5 Business Days after the date of the inspection under clause 24.4(i).

### (**Independent Reviewer determines Returned Works Acceptance Requirements met**): If:

#### the Independent Reviewer is required to issue a Certificate of Returned Works Acceptance under clause 24.4(j); or

#### the Independent Reviewer determines under clause 24.4(k) that the Returned Works Acceptance Requirements have been met for certain Returned Works,

* 1. the Independent Reviewer must issue a Certificate of Returned Works Acceptance for the relevant Returned Works to the State, Project Co and the relevant Returned Asset Owner:

#### certifying that the Returned Works Acceptance Requirements have been met in respect of the relevant Returned Works;

#### setting out the date on which Returned Works Acceptance will occur for the relevant Returned Works, which must be agreed between Project Co and the relevant Returned Asset Owner and notified to the Independent Reviewer no later than 5 Business Days after the date of inspection under clause 24.4(i), or if not agreed by that time, determined by the Independent Reviewer, provided that the Independent Reviewer must not determine a date of Returned Works Acceptance that is less than 5 Business Days after the issue of the Certificate of Returned Works Acceptance (**Date of Returned Works Acceptance**); and

#### attaching the then current Returned Works Outstanding Items List updated to include a timeframe within which all Returned Works Outstanding Items in the Returned Works Outstanding Items List must be rectified, which must be as soon as reasonably possible and no later than the Date of Final Acceptance.

### (**If Certificate of Returned Works Acceptance is issued**): If the Independent Reviewer issues a Certificate of Returned Works Acceptance in respect of Returned Works in accordance with clause 24.4(m):

#### notwithstanding that a Certificate of Returned Works Acceptance has been issued for the Returned Works, Returned Works Acceptance will not occur until the Date of Returned Works Acceptance;

#### Project Co must:

##### continue to maintain and repair the Returned Works and have control of the Returned Works until the Date of Returned Works Acceptance;

##### continue to rectify or complete any Returned Works Outstanding Items;

##### handover that Returned Asset to the Returned Asset Owner on the Date of Returned Works Acceptance; and

##### provide the State 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 Acceptance;

#### within 10 Business Days after the issue of the Certificate of Returned Works Acceptance by the Independent Reviewer under clause 24.4(m), Project Co must submit to the Independent Reviewer for review in accordance with the Review Procedures, a program for the completion or rectification of the Returned Works Outstanding Items which ensures that all Returned Works Outstanding Items are completed within a reasonable time, having regard to the timing of the relevant Date of Returned Works Acceptance and, in any case by the Date for Final Acceptance; and

#### without limiting the State's rights to accept or rectify any Defects in Returned Works or a Returned Asset in accordance with clause 27.6 or clause 27.7(g)(i) (as applicable), Project Co must complete or rectify any Returned Works Outstanding Items to the satisfaction of the Independent Reviewer and in accordance with program referred to in clause 24.4(n)(iii) and otherwise by the Date for Final Acceptance.

### (**Independent Reviewer determines Returned Works Acceptance Requirements not met**): If:

#### the Independent Reviewer determines under clause 24.4(k) that the Returned Works Acceptance Requirements have not been met for any Returned Works; and

#### the State, Project Co and the relevant Returned Asset Owner have not otherwise required the Independent Reviewer to issue a Certificate of Returned Works Acceptance in accordance with clause 24.4(j) for those Returned Works,

* 1. the Independent Reviewer must issue a notice to the State, Project Co and the relevant Returned Asset Owner:

#### listing the work remaining to be undertaken in order to meet the relevant Returned Works Acceptance Requirements for those Returned Works; or

#### stating that the Returned Works Acceptance 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 24.4(o)(iii),

* 1. after which Project Co must continue to expeditiously and diligently progress the Development Activities for those Returned Works to meet the Returned Works Acceptance Requirements.

### (**Notification of Returned Works Acceptance**): When, after the Independent Reviewer has issued a notice under clause 24.4(o), Project Co is of the view that the Returned Works Acceptance Requirements for the relevant Returned Works have been met:

#### Project Co must give notice to the State, the relevant Returned Asset Owner and the Independent Reviewer in accordance with clause 24.4(f), when the work listed in a notice issued by the Independent Reviewer under clause 24.4(o)(iii) has been completed or, if clause 24.4(o)(iv) applies, when Project Co is otherwise of the view that Returned Works Acceptance has been achieved; and

#### clauses 24.4(c) to 24.4(o) will apply in connection with Project Co's notice under clause 24.4(p)(i) in the same way as if Project Co's notice given under clause 24.4(p)(i) was the original notice given under clause 24.4(g).

### (**No restriction on Independent Reviewer**): The Independent Reviewer, in making its determination as to whether the Returned Works Acceptance 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 Project Co under clause 24.4(o); and

#### be entitled to raise any other items of work which are required to be completed in order to meet the relevant Returned Works Acceptance Requirements for those Returned Works in accordance with this Deed which have not been so completed (other than any relevant Remaining Works or Returned Works Outstanding Items) as a ground for determining that the relevant Returned Works Acceptance Requirements have not been met.

### (**Certificate of Returned Works Acceptance**): The issue of a Certificate of Returned Works Acceptance in accordance with clause 24.4(m) does not constitute:

#### evidence that Project Co has satisfied the relevant FFP Warranty;

#### an approval by the State 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.

# Final Acceptance

## Final Acceptance

### (**Final Acceptance tests**): Project Co must develop, conduct and satisfy all tests required to determine Final Acceptance in accordance with the PSDR.

### (**Notice**): Project Co must give the State and the Independent Reviewer notice 10 Business Days prior to the date upon which it reasonably expects to achieve Final Acceptance.

### (**Notice by Project Co**): When Project Co considers that Final Acceptance has been achieved, Project Co must issue a notice in the form required by the Schedule of Certificates and Notices to the State and the Independent Reviewer which:

#### states that it considers that Final Acceptance has been achieved and confirms all Remaining Works and all Returned Works Outstanding Items have been completed and attach to its notice the then current Remaining Works Schedule and Collated Returned Works Outstanding Items List showing the dates on which the Remaining Works and Returned Works Outstanding Items (as applicable) were completed; and

#### asks the Independent Reviewer to issue a Certificate of Final Acceptance.

### (**Notice by State**): Whether or not Project Co has issued a notice under clause 25.1(b), clause 25.1(c) or clause 25.1(h)(i), if, at any time after the Date of Commercial Acceptance, the State considers that Final Acceptance has been achieved, the State may:

#### notify Project Co and the Independent Reviewer of its opinion and confirm all Remaining Works and all Returned Works Outstanding Items have been completed and attach to its notice the then current Remaining Works Schedule and Collated Returned Works Outstanding Items List showing the dates on which the Remaining Works and Returned Works Outstanding Items (as applicable) were completed; and

#### direct the Independent Reviewer to issue a Certificate of Final Acceptance.

### (**Independent Reviewer to make determination**): Subject to clause 25.1(f) and no later than 10 Business Days after Project Co issues a notice in accordance with clause 25.1(c) or clause 25.1(h)(i), the Independent Reviewer must determine whether Final Acceptance has been achieved.

### (**Final Acceptance achieved**): If:

#### the Independent Reviewer determines that Final Acceptance has been achieved under clause 25.1(e); or

#### the State directs the Independent Reviewer to issue a Certificate of Final Acceptance in accordance with clause 25.1(d)(ii) or clause 25.2(a)(iii),

* 1. the Independent Reviewer must issue a Certificate of Final Acceptance to the State and Project Co:

#### certifying that Final Acceptance has been achieved; and

#### stating the Date of Final Acceptance.

### (**Final Acceptance not achieved**): If the State has not directed the Independent Reviewer to issue a Certificate of Final Acceptance in accordance with clause 25.1(d)(ii) or clause 25.2(a)(iii) and the Independent Reviewer otherwise determines that Final Acceptance has not been achieved, the Independent Reviewer must issue a notice to the State and Project Co:

#### listing the work remaining to be undertaken to achieve Final Acceptance; or

#### stating that Final Acceptance is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 25.1(g)(i),

* 1. after which Project Co must continue to expeditiously and diligently progress the Development Activities to achieve Final Acceptance.

### (**Resubmission**): If the Independent Reviewer issues a notice under clause 25.1(g):

#### Project Co must give notice to the State and the Independent Reviewer in accordance with clause 25.1(b) when the work listed in the Independent Reviewer's notice under clause 25.1(g)(i) has been completed, or if clause 25.1(g)(ii) applies, when Project Co is otherwise of the view that Final Acceptance has been achieved; and

#### clauses 25.1(c) to 25.1(g) will apply in the same way as if the notice given under clause 25.1(h)(i) was the original notice under clause 25.1(b).

### (**No restriction on Independent Reviewer**): The Independent Reviewer, in making a determination as to whether Final Acceptance has been achieved, will:

#### [not used];

#### not be restricted by any Certificate of Commercial Acceptance;

#### 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 Final Acceptance in accordance with this Deed which have not been so completed as a ground for determining that Final Acceptance has not been achieved.

### (**Certificate of Final Acceptance**): The issue of a Certificate of Final Acceptance in accordance with clause 25.1(f) does not constitute:

#### evidence that Project Co has satisfied the relevant FFP Warranty;

#### an approval by the State 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.

## Late Final Acceptance and Retention Amount

### (**Late Final Acceptance**): If Project Co does not achieve Final Acceptance by the Date for Final Acceptance, the State may at any time and from time to time from the Date for Final Acceptance, require the Independent Reviewer to determine:

#### the cost of the work required to achieve Final Acceptance; and

#### the Savings to Project Co if it was not required to complete any or all of the work required to be undertaken to achieve Final Acceptance,

and the State may:

#### direct the Independent Reviewer to issue a Certificate of Final Acceptance in accordance with clause 25.1(f), notwithstanding the work remaining to be undertaken to achieve Final Acceptance has not been completed, in which case the Independent Reviewer must comply with such direction; or

#### continue to require Project Co to achieve Final Acceptance and retain from any amount due and payable to Project Co by the State, up to 120% of the amount determined by the Independent Reviewer under clause 25.2(a)(i) until the Date of Final Acceptance, at which time, subject to clause 25.2(c), the State must return any such amount to Project Co.

### (**Payment to State**): Without limiting the State's rights under clause 27.6, if, at any time, the State makes an election under clause 25.2(a)(iii), Project Co must pay the State (as a debt due and payable to the State) the greater of:

#### the costs to complete the work required to be undertaken to achieve Final Acceptance; and

#### the Savings to Project Co if it was not required to complete the work required to be undertaken to achieve Final Acceptance,

* 1. as determined by the Independent Reviewer in accordance with clause 25.2(a).

### (**Set-off right**): The State must set-off any debt due and payable by Project Co under clause 25.2(b) or clause 27.6(c)(iii) against any amount retained under clause 25.2(a)(iv) before the State exercises its rights to set-off such amount under clause 34.7.

### (**No trust**): The State:

#### is not obliged to pay Project Co interest on any amount retained under clause 25.2(a)(iv);

#### does not hold any amount retained under clause 25.2(a)(iv) on trust; and

#### if Final Acceptance is not achieved before this Deed is terminated, will be absolutely entitled to any amount retained under clause 25.2(a)(iv), subject to paying any Termination Payment payable to Project Co.

# Time

## Primary obligation

1. Project Co must:

### (**commence**): promptly commence performance of the Development Activities on the Development Phase Area following Financial Close;

### (**progress**): regularly, expeditiously and diligently carry out and progress the Development Activities to achieve Acceptance; and

### (**achieve Acceptance**): achieve Acceptance by the relevant Date for Acceptance.

## Development Phase Program

### (**Submission**): Project Co must amend the Bid Development Phase Program in accordance with [##] of the PSDR and otherwise in accordance with this Deed and submit it to the State and the Independent Reviewer for review in accordance with the Review Procedures.

### (**Resubmission**): The parties acknowledge and agree that the Bid Development Phase Program including as submitted and amended in accordance with [##] of the PSDR and this Deed will be the Development Phase Program.

### (**Accuracy**): The Development Phase Program must accurately reflect the status and progress of the Development Activities.

### (**Not part of Deed**): Project Co acknowledges and agrees that:

#### the Development Phase Program does not form part of this Deed;

#### subject to clause 26.9(c), neither the State nor the Independent Reviewer is required to use the Development Phase Program for any purpose, including for the purpose of assessing the impact of any delay event or any extension of time, or any Claim made by Project Co, but may do so in their sole and absolute discretion; and

#### to the extent that the Development Phase Program seeks to impose any obligation on the State, Project Co will not be entitled to make any Claim against the State in connection with that obligation (unless that same obligation is expressly imposed on the State in a clause or Schedule of this Deed).

### (**Departure**): Subject to complying with its obligations under this clause 26, Project Co may depart from the Development Phase Program if it is necessary to do so to comply with the requirements of this Deed, except that any such departure will not relieve Project Co from its obligations under this Deed to achieve Acceptance by the relevant Date for Acceptance.

### (**Notice of departure**): Project Co must give notice to the State and the Independent Reviewer promptly upon becoming aware of any proposed or likely departure from the critical path in the then current Development Phase Program, together with the reasons why it is necessary to do so to comply with the requirements of this Deed.

### (**Updated Development Phase Program**): A notice under clause 26.2(f) must include a Development Phase Program updated to reflect any changes to the critical path in accordance with the requirements of [##] of the PSDR for review by the State and the Independent Reviewer in accordance with the Review Procedures.

### (**Warranty**): Project Co warrants that each update of the Development Phase Program accurately reflects the status and progress of the Development Activities, the critical path for the Development Activities and the date by which Project Co will achieve Acceptance.

## Sole remedy for late Acceptance

### (**Sole remedy**): Except in circumstances where the State elects to terminate this Deed as a result of a Default Termination Event and subject to clause 26.3(b), the State acknowledges and agrees that the State's sole financial remedy, and Project Co's sole financial liability, for a failure to achieve Commercial Acceptance by the Date for Commercial Acceptance, is limited to the amount of the Service Payment not required to be paid by the State in those circumstances.

### (**Preservation of rights and Liabilities**): Project Co acknowledges and agrees that clause 26.3(a) does not limit the State's rights and Project Co's Liability in respect of an event giving rise to the delay or the consequences of such event, other than the delay itself.

## Independent Reviewer's review of progress

### (**Review of Development Activities**): Project Co acknowledges that the Independent Reviewer will (without limiting clause 20.6, including if requested to do so by the State) continually review (including by general overview, reasonable checking, visits to the Development Phase Site and review of Project Co Material) the carrying out of the Development Activities to ensure that:

#### Commercial Acceptance will be achieved by the Date for Commercial Acceptance; and

#### the Development Phase Program accurately reflects the actual progress of the Works in all material respects.

### (**Notice of non-compliance by Independent Reviewer**): If, [at any time after the date that is 6 Months after Financial Close], the Independent Reviewer believes that:

***[Note: Timing of review by Independent Reviewer to be determined on a project specific basis having regard to the Development Phase Program.]***

#### subject to clause 26.4(m), Commercial Acceptance will not be achieved by the Date for Commercial Acceptance; or

#### the Development Phase Program does not accurately reflect the actual progress of the Works in all material respects,

* 1. the Independent Reviewer may make a determination to that effect and give notice to the State and Project Co of that determination, together with its reasons for making that determination.

### (**Frequency of review**): The Independent Reviewer must not make a determination under clause 26.4(b) more frequently than [once every 3 Months]. ***[Note: Timing to be determined on a project specific basis having regard to the Development Phase Program.]***

### (**Project Co's response**): Within 15 Business Days after receipt of the Independent Reviewer's notice referred to in clause 26.4(b), Project Co must:

#### notify the State and the Independent Reviewer of any matters in connection with that notice with which it disagrees with the Independent Reviewer's opinion, together with its reasons for doing so (**Explanation**); and

#### to the extent it does not disagree, provide to the State and the Independent Reviewer a plan and a program for the rectification of any non-compliance, in accordance with the requirements set out in clause 26.4(f) (**Remediation Plan**),

* 1. for review in accordance with the Review Procedures.

### (**Explanation**): The Independent Reviewer must, within 10 Business Days after receipt of the Explanation from Project Co under clause 26.4(d)(i), give notice to the State and Project Co whether the Explanation:

#### adequately addresses its concerns such that it will withdraw the determination under clause 26.4(b), in which case, no further action is required from Project Co in connection with the notice issued by the Independent Reviewer under clause 26.4(b); or

#### does not adequately address its concerns (and the reasons for this) such that it is not prepared to withdraw the determination under clause 26.4(b), in which case Project Co will have 10 Business Days after receipt of the Independent Reviewer's notice under this clause 26.4(e)(ii), within which to provide a Remediation Plan (which complies with the requirements set out in clause 26.4(f)), for review in accordance with the Review Procedures.

### (**Remediation Plan requirements**): To the extent that a Remediation Plan has been prepared by Project Co in response to a notice under clause 26.4(b) or clause 26.4(e)(ii), a Remediation Plan will not be considered to be satisfactory unless at a minimum:

#### if the determination of the Independent Reviewer under clause 26.4(b) is that the Development Phase Program does not accurately reflect the actual progress of the Development Activities in all material respects, it includes a revised Development Phase Program which complies with the requirements of the Development Phase Program set out in this Deed and accurately reflects the actual progress of the Development Activities in all material respects;

#### if the determination of the Independent Reviewer under clause 26.4(b) is that Commercial Acceptance will not be achieved by the Date for Commercial Acceptance, it includes:

##### the date by which Commercial Acceptance will be achieved, which date may be later than the Date for Commercial Acceptance, but cannot be later than [24] Months after the Date for Commercial Acceptance; ***[Note: To be aligned with the period set out in clause 45.4(h).]***

##### a program for Curing the issues set out in the Independent Reviewer's notice referred to in clause 26.4(b) or clause 26.4(e)(ii) (as applicable), which must include:

###### 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 Commercial Acceptance will be achieved that is after the Date for Commercial Acceptance, evidence satisfactory to the Independent Reviewer (acting reasonably) that the date is the earliest date by which Commercial Acceptance can be achieved if Project Co takes those steps a prudent, experienced and competent person in the position of Project Co exercising Best Industry Practices would reasonably be expected to undertake to satisfy all requirements for Commercial Acceptance as expeditiously as possible (including a reasonable expenditure of amounts); and

##### any further information reasonably required by the Independent Reviewer.

### (**Review of Remediation Plan**): The Independent Reviewer and the State must review any Remediation Plan submitted by Project Co in accordance with the Review Procedures.

### (**Progress**): If the Independent Reviewer notifies the State and Project Co that, in its opinion, a Remediation Plan satisfactorily addresses the requirements of clause 26.4(f), where the Remediation Plan is prepared as a consequence of a determination by the Independent Reviewer that:

#### the Development Phase Program does not accurately reflect the actual progress of the Development Activities, no further action will be taken by the State or the Independent Reviewer under this clause 26.4; or

#### Commercial Acceptance will not be achieved by the Date for Commercial Acceptance, Project Co must:

##### diligently pursue that Remediation Plan; and

##### update that Remediation Plan and the Development Phase Program Monthly (and in respect of the Development Phase Program, in accordance with the requirements of [##] of the PSDR) to reflect actual progress of the Remediation and submit them to the Independent Reviewer and the State for review in accordance with the Review Procedures.

### (**Amended Remediation Plan**): If the Independent Reviewer notifies the State and Project Co that, in its opinion, a Remediation Plan does not satisfactorily address the requirements of clause 26.4(f), Project Co must, within 10 Business Days after the date of the Independent Reviewer’s notice, submit an amended Remediation Plan to the Independent Reviewer for review in accordance with the Review Procedures (**Amended Remediation Plan**).

### (**Outcome of Amended Remediation Plan**): If the Independent Reviewer notifies the State and Project Co that, in its opinion, an Amended Remediation Plan satisfactorily addresses the requirements of clause 26.4(f), then clause 26.4(h) will apply to that Amended Remediation Plan.

### (**Deemed Major Default**): If the Independent Reviewer notifies the State and Project Co:

#### that, in its opinion:

##### an Amended Remediation Plan does not satisfactorily address the requirements of clause 26.4(f); or

##### where the Amended Remediation Plan is prepared as a consequence of a determination that Commercial Acceptance will not be achieved by the Date for Commercial Acceptance, Project Co 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 Commercial Acceptance will not be achieved by the Date for Commercial Acceptance, that, in its opinion, Project Co will not be able to achieve Commercial Acceptance by the date that is [24] Months after the Date for Commercial Acceptance; or

#### that Project Co 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 26.4,

* 1. then a Major Default will be deemed to have occurred.

### (**Dispute**): If either party does not agree with a determination of the Independent Reviewer under this clause 26.4 either party may refer the matter by notice to the other party to expert determination in accordance with clause 48.2 within 20 Business Days after the Independent Reviewer's determination, save that neither party can refer a determination made by the Independent Reviewer under clause 26.4(b) to expert determination unless Project Co has first provided the Independent Reviewer and the State with an Explanation under clause 26.4(d)(i).

### (**Subsequent reviews**): While Project Co is diligently pursuing a Remediation Plan in accordance with clause 26.4(h)(ii) or an Amended Remediation Plan in accordance with clause 26.4(j) and clause 26.4(h)(ii), any subsequent review of the Development Activities under clause 26.4(a) must take into consideration that Remediation Plan or Amended Remediation Plan (as applicable).

## Delay to Acceptance

1. If Project Co becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Acceptance, it must promptly give the State and the Independent Reviewer notice of the matter and the delay it is likely to cause.

## Delays entitling Claim

Subject to this clause 26, if Project Co has been or will be delayed by an Extension Event in a manner which has delayed or will delay Project Co in achieving Acceptance, Project Co will be entitled to claim an extension of time to the relevant Date for Acceptance for the period of the delay.

## Change Notice

1. To claim an extension of time to the relevant Date for Acceptance under this Deed, Project Co must submit a Change Notice for that Extension Event, to the State and the Independent Reviewer no later than 20 Business Days after the earlier of the date on which Project Co:

### (**became aware of delay**): first became aware of the relevant delay to Project Co achieving Acceptance; and

### (**ought to have become aware**): ought reasonably to have become aware of the relevant delay to Project Co achieving Acceptance,

1. in accordance with the Change Compensation Principles and must continue to update the State and the Independent Reviewer in respect of the Extension Event in accordance with the Change Compensation Principles.

## Conditions precedent to extension

### (**Conditions precedent**): Subject to clause 26.10, it is a condition precedent to Project Co's entitlement to an extension of time that:

#### (**submission of Change Notice**): Project Co complies with clause 26.7;

#### (**effect of delay**): Project Co demonstrates that:

##### it has been or will be delayed from carrying out the Development Activities by the relevant Extension Event in a manner which has delayed or will delay the achievement of Acceptance; and

##### the relevant Extension Event has caused or will cause activities on the critical path contained in the then current Development Phase Program to be delayed; and

#### (**updated program**): subject to clauses 26.8(c) to 26.8(f), Project Co, at the time it submits:

##### the relevant Change Notice referred to in clause 26.7 and section [10.1(a)] of the Change Compensation Principles; and

##### any updated Change Notice referred to in section [10.1(e)] of the Change Compensation Principles,

##### submits an updated Development Phase Program to the State and the Independent Reviewer which:

##### complies with all the relevant requirements of this Deed;

##### takes into account the impact of the relevant Extension Event; and

##### contains a level of detail which is sufficient to enable the Independent Reviewer to determine Project Co’s entitlement to an extension of time.

### (**Independent Reviewer determines**): The Independent Reviewer will determine whether or not the requirements of this clause 26.8 have been satisfied.

### (**Determination of non-compliance**): If the Independent Reviewer determines that the updated Development Phase Program submitted in accordance with clause 26.8(a)(iii) does not comply with the requirements in clause 26.8(a)(iii), it must notify Project Co of that determination together with detailed reasons of the non-compliance, within 5 Business Days after receipt of the relevant Change Notice in accordance with clause 26.7.

### (**Updated Development Phase Program**): Project Co may submit to the Independent Reviewer (with a copy to the State) an updated Development Phase Program, within 10 Business Days after the notification from the Independent Reviewer under clause 26.8(c).

### (**Failure to submit**): If Project Co does not submit an updated Development Phase Program in accordance with clause 26.8(d), Project Co will be deemed not to have met the requirements set out in clause 26.8(a)(iii).

### (**Determination by Independent Reviewer**): If the Independent Reviewer determines that the updated Development Phase Program submitted by Project Co:

#### addresses the non-compliances previously notified by the Independent Reviewer to Project Co in accordance with clause 26.8(c), Project Co will be deemed to have met the requirements in clause 26.8(a)(iii); or

#### does not address the non-compliances previously notified by the Independent Reviewer to Project Co under clause 26.8(c) such that the requirements of clause 26.2(h) and clause 26.8(a)(iii)E are not (or it is not reasonably practicable to determine whether they are) satisfied, Project Co will be deemed not to have met the requirements in clause 26.8(a)(iii).

### (**Only one further update**): Project Co acknowledges and agrees that it will have only one opportunity to update the Development Phase Program in accordance with clause 26.8(d) for each Extension Event.

## Extension of Time determined by Independent Reviewer

### (**Extension of time**): If the conditions precedent in clause 26.8(a) have been satisfied then, unless:

#### the parties otherwise agree an extension to the relevant Date for Acceptance;

#### clause 26.9(b) applies; or

#### the State issues a direction under clause 26.16 beforehand,

the Independent Reviewer must, within 10 Business Days after the later of:

#### receipt of the relevant Change Notice in accordance with clause 26.7; and

#### where clause 26.9(b) applies, receipt of a compliant updated Development Phase Program in accordance with clause 26.8(f),

extend the relevant Date for Acceptance by a reasonable period and, subject to clause 26.14, the relevant Date for Acceptance will be extended (if at all) in accordance with the determination of the Independent Reviewer.

### (**Interim determinations**): In the circumstances contemplated by clause 26.9(a), the Independent Reviewer must, if it is reasonably able to do so, give interim determinations of Project Co's entitlement to an extension of time notwithstanding that the effects of the relevant Extension Event are continuing. In such circumstances, any interim determination of Project Co's entitlement to an extension of time must be made:

#### initially, on an interim basis and within the time for responding to a Change Notice and (where applicable) an updated Development Phase Program under clause 26.9(a);

#### as an update to that initial interim determination, within 20 Business Days of receipt of an update submitted by Project Co to the State and the Independent Reviewer in accordance with clause 26.7; and

#### thereafter, as an update to the previous interim assessment, on an interim basis (except for where a final update in accordance with clause 26.7 has been provided, in which case as a final determination) within 20 Business Days of receipt of an update submitted by Project Co to the State and the Independent Reviewer in accordance with clause 26.7.

### (**Independent Reviewer must consider evidence**): In dealing with an extension of time claim, the Independent Reviewer must consider all relevant evidence presented by the parties (but is not bound by any of that evidence).

## Unilateral extensions

### (**Unilateral extensions**): Whether or not Project Co has made, or is entitled to make, a claim for, or is entitled to, an extension of time under this clause 26 or under clause 35.7 for a State Initiated Modification, the State may at any time and from time to time, by notice to Project Co, unilaterally extend a Date for Acceptance.

### (**Acknowledgements**): The parties acknowledge that:

#### without limiting clause 2.1(t), the State is not required to exercise the State's power under clause 26.10(a) for the benefit of Project Co;

#### other than in accordance with clause 26.10(c), Project Co will not be entitled to make any Claim against the State as a consequence of the State exercising or not exercising its power under clause 26.10(a); and

#### other than in accordance with clause 26.10(c), the exercise or non-exercise of the State's power under clause 26.10(a) is not capable of being the subject of a Dispute or otherwise subject to review.

### (**Right to dispute**): If:

#### the State exercises its power under clause 26.10(a) in respect of an Extension Event or a State Initiated Modification for which, but for the exercise by the State of its powers under clause 26.10(a), Project Co would otherwise be entitled to an extension of time to a Date for Acceptance under clause 26.9; and

#### Project Co disputes that the determination made by the State under clause 26.10(a) in respect of the Extension Event or State Initiated Modification accurately reflects the extension of time Project Co would have been entitled to under clause 26.9, but for the exercise of the State's power under clause 26.10(a),

* 1. Project Co may refer the dispute to expert determination in accordance with clause 48.2 provided that Project Co does so within 10 Business Days after the State's exercise of its power under clause 26.10(a).

### (**Entitlements**): If the State has extended a Date for Acceptance under clause 26.10(a) and Project Co subsequently claims, in respect of the same events or circumstances that gave rise to that extension to a Date for Acceptance, to be entitled to an extension to a Date for Acceptance or compensation in respect of a Compensable Extension Event under clause 26.12(a)(i), a Force Majeure Event under clause 26.12(a)(ii) or a State Initiated Modification under clause 35.8(g), then:

#### any extension to the Date for Acceptance to which Project Co is entitled will be reduced to the extent of the extension granted by the State under clause 26.10(a); and

#### to the extent applicable, the value of Prolongation Costs and Development Phase Finance Amount calculated in accordance with section 3.4 of the Change Compensation Principles must be calculated by using the number of days extension to which Project Co would be entitled but for the operation of clause 26.10(d)(i).

## Force Majeure

1. If a Force Majeure Event occurs:

### (**suspension of obligations**): the obligations of each party under this Deed which are prevented by the Force Majeure Event will be suspended to the extent of such prevention; and

### (**no breach or default**): the failure to perform such suspended obligations will not be a breach of this Deed by Project Co or the State, a Project Co Act or Omission or an act or omission of the State, a Major Default or a Default Termination Event.

## Entitlement to financial compensation for delay

### (**General principle**): To the extent that Project Co is granted an extension of time to a Date for Acceptance under clause 26.9 for an Extension Event and that Extension Event is a:

#### Compensable Extension Event then, subject to clause 26.14, Project Co will be entitled to claim compensation as set out in Item 2 of Table 1 of the Change Compensation Principles; or

#### Force Majeure Event then, subject to clause 26.14, Project Co will be entitled to claim compensation as set out in Item 3 of Table 1 of the Change Compensation Principles,

* 1. which will be calculated and determined in accordance with the Change Compensation Principles by the Independent Reviewer for that extension of time, except to the extent that the relevant Compensable Extension Event or Force Majeure Event has given rise to loss or damage to the Project Assets and clause 42.4 or clause 42.5 applies, in which case, Project Co's entitlement to claim compensation will be as set out in clause 42.4 or clause 42.5 (as applicable).

### (**For unilateral extension**): If the State exercises its power under clause 26.10(a) in respect of a Compensable Extension Event, a Force Majeure Event or a State Initiated Modification for which, but for the exercise of that power, Project Co would otherwise be entitled to an extension of time to a Date for Acceptance, in addition to its rights under clause 26.10 (but subject to clause 26.14), Project Co will be entitled to claim compensation for that Compensable Extension Event, Force Majeure Event or State Initiated Modification in accordance with clause 26.12(a) or clause 35.8(g) (as the case may be).

### (**Modifications**): If a delay in achieving Acceptance is caused by an event which is the subject of a Modification Order, then Project Co's entitlement to an extension of time and any compensation for any such extension of time will be determined in accordance with clause 35 and the Change Compensation Principles and not this clause 26.

### (**Interim determinations**): If the Independent Reviewer makes an interim determination of Project Co's entitlement to an extension of time under clause 26.9(b), Project Co's entitlement to claim compensation (if any) will not be calculated and determined by the Independent Reviewer until the Independent Reviewer has given a final determination of Project Co's entitlement to an extension of time in relation to the relevant Extension Event.

## Not used

## Concurrent Delays

### (**No entitlement**): Subject to clause 26.14(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 Acceptance, and at least one event is an Extension Event or a State Initiated Modification and at least one event is not an Extension Event or a State Initiated Modification; and

#### any period of delay caused by the Extension Event or a State Initiated Modification referred to in clause 26.14(a)(i) is occurring at the same time as a period of delay caused by an event referred to in clause 26.14(a)(i) that is not an Extension Event or a State Initiated Modification (**Concurrent Delay**),

* 1. Project Co is not entitled to an extension of time in accordance with clauses 26.9, 35.8(a) or 35.10(b) or compensation in accordance with clauses 26.12, 35.8(g) or 35.10(d) (if applicable) for the period of that Concurrent Delay.

### (**Entitlement for State acts**): Subject to clause 26.14(c), Project Co's rights under clauses 26.9, 26.12, 35.8 and 35.10 are not limited by clause 26.14(a) if:

#### an event as referred to in clause 26.14(a)(i) is a:

##### Compensable Extension Event referred to in:

###### paragraph (a) of the definition of Compensable Extension Event; or

###### paragraph (b) of the definition of Compensable Extension Event, where the relevant act or omission referred to in paragraph (b) of the definition of Compensable Extension Event is an act or omission of the State or an Associate of the State; or

##### a State Initiated Modification,

##### (a **State Concurrent Event**); and

#### that State Concurrent Event occurs before any of the events referred to in clause 26.14(a)(i) that are not Extension Events or State Initiated Modifications.

### (**Entitlement to Development Phase Finance Amount only**): If, in accordance with clause 26.14(b), Project Co is granted an extension of time to the Date for Commercial Acceptance under clauses 26.9 or 35.8(a) for a Concurrent Delay, Project Co's entitlement to claim compensation under clauses 26.12 or 35.8(g) (if applicable) will be limited to the amount referred to in Item 4 of Table 1 of the Change Compensation Principles.

## Acceleration by Project Co

1. If Project Co chooses to compress the Development Activities or otherwise accelerate progress other than in accordance with a direction of the State under clause 26.19:

### (**no State action**): the State will not be obliged to take any action to assist or enable Project Co to achieve any particular sequencing or rate of progress of the Project Activities; and

### (**State obligations not affected**): the time for the carrying out of the State's obligations will not be affected.

## Acceleration Notice

1. If:

### (**delay by an Extension Event**): any part or the whole of the Development Activities are delayed by an Extension Event; and

### (**entitlement to extension of time**): Project Co is or would have been entitled to an extension of time to a Date for Acceptance for that Extension Event under this clause 26,

1. whether or not the Independent Reviewer has made a determination in accordance with clause 26.9, the State may direct Project Co to submit a claim (by way of Change Notice) to the State and the Independent Reviewer setting out the estimated time and cost consequences of accelerating any part or the whole of the Development Activities to overcome or minimise the extent and effect of some or all of the delay including, if required, in order to achieve Acceptance by the relevant Date for Acceptance, and Project Co must submit a Change Notice to the State and the Independent Reviewer within 10 Business Days after the State's direction and the Change Compensation Principles will apply.

## Reasonably achievable

### (**Acceleration reasonably achievable**): In any Change Notice submitted under clause 26.7 or in response to a direction under clause 26.16, Project Co must identify whether and to what extent the acceleration is reasonably achievable in the circumstances.

### (**Consequences if not reasonably achievable**): If some or all of the acceleration is not reasonably achievable in the circumstances, then the State must not direct the acceleration to the extent that it is not reasonably achievable.

## Partial acceleration

1. If the State gives Project Co a Change Response to accelerate in response to a Change Notice submitted by Project Co under clause 26.7 or clause 26.16 (as applicable) in accordance with the Change Compensation Principles and it only applies to part of the delay, any entitlement to an extension of time Project Co would have had but for the acceleration will only be reduced to the extent to which the instruction to accelerate requires Project Co to accelerate the relevant part or the whole of the Development Activities to overcome the delay.

## Acceleration

1. If the State gives Project Co a Change Response to accelerate in response to a Change Notice submitted by Project Co under clause 26.7 or clause 26.16 (as applicable) in accordance with the Change Compensation Principles:

### (**Project Co must accelerate**): Project Co must accelerate the relevant part, or the whole, of the Development Activities to overcome or minimise the extent and effect of some or all of the delay as set out in the Change Response including, if required, in order to achieve Acceptance by the relevant Date for Acceptance; and

### (**entitlement to actual costs**): if Project Co would, but for the instruction, have been entitled to an extension of time to the relevant Date for Acceptance for the cause of the delay, Project Co will be entitled to claim compensation as set out in Item 5 of Table 1 of the Change Compensation Principles, which will be calculated and determined in accordance with the Change Compensation Principles.

## State's rights and Project Co's obligations and liabilities not affected and time not at large

1. The State's rights and Project Co's liabilities for any failure by Project Co to achieve Acceptance by the relevant Date for Acceptance as set out in this Deed are not limited or affected by:

### (**acceleration**): the giving of any Change Response, to accelerate under clause 26.19; or

### (**other circumstances**): any:

#### breach of any State Project Document by the State;

#### Modification directed or Modification Order issued by the State or the State Representative;

#### other act or omission of the State, any State Associate or any Interface Party;

#### failure by the Independent Reviewer to grant any extension of time under clause 26.9 or to do so within the time required by that clause; or

#### other default, act or omission of the Independent Reviewer or any of its Associates,

1. and none of the matters mentioned in this clause 26.20 will set a Date for Acceptance or any other time at large.

## Extension of time disputes

1. Subject to clause 26.10, if either party disputes a determination of the Independent Reviewer under clause 26.8(b), clause 26.8(f), clause 26.9 or clause 26.12(a), either party may refer the matter to expert determination in accordance with clause 48.2, provided that the party disputing the Independent Reviewer's determination under clause 26.8(b), clause 26.8(f), clause 26.9 or clause 26.12(a) (as applicable) gives a notice to the other party within 10 Business Days after the determination.

# Defects

## Notification of Defects

### (**Notification by Project Co**): If Project Co identifies a Defect or likely Defect in:

#### the Works, or the Maintained Assets during the Term; or

#### a Returned Asset until the end of the relevant Returned Asset DLP,

#### Project Co must notify the State and the Independent Reviewer of that Defect or likely Defect.

### (**Notification by the Independent Reviewer**): If, at any time while the Independent Reviewer is appointed in that role, the Independent Reviewer believes there is a Defect or likely Defect in the Works, the Maintained Assets or a Returned Asset (until the end of the relevant Returned Asset DLP), the Independent Reviewer will give notice to Project Co and the State of that Defect or likely Defect.

### (**Notification by the State**): If at any time during the Term, the State believes there is a Defect or likely Defect in the Works, the Maintained Assets or a Returned Asset (until the end of the relevant Returned Asset DLP), the State may give notice to Project Co and the Independent Reviewer of that Defect or likely Defect.

### (**Likely Defects**): In this clause 27, the term "likely Defect" means any aspect of the Project Assets or the Returned Assets which will, or is likely to, result in a Defect.

## Defects list

### (**Defects list**): Project Co must prepare, maintain and update a register of all Defects identified by or notified to it in accordance with clause 27.1 which must:

#### meet the requirements of section [##] of the PSDR; and ***[Note: Agencies 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 State accepts or rectifies in accordance with clause 27.6(a)(ii) or clause 27.7(g)(i), include details of:

##### any information provided by the Independent Reviewer or Project Co in accordance with clause 27.6(b) or clause 27.7(h);

##### details of any amount paid by Project Co under clause 27.6(c)(iii) or clause 27.7(i)(i);

##### any reasonable conditions imposed by the State in accordance with clause 27.6(c)(iv) or clause 27.7(i)(ii); and

##### changes to this Deed that will be deemed to be made in accordance with clause 27.6(c)(v) or clause 27.7(i)(iii).

### (**Register**): Project Co must submit the register referred to in clause 27.2(a) to the State and the Independent Reviewer for review in accordance with the Review Procedures each time it is updated.

***[Note: On a project specific basis, the State may prefer to prepare and update the Defects Register.]***

## Defect Corrective Action Plan

### (**Development of plan**): Project Co must review and analyse the cause of all Defects and develop a plan of corrective action to minimise the likelihood of recurrence of each Defect (**Defect Corrective Action Plan**) and update the Defect Corrective Action Plan for each Defect that is identified.

### (**Submission**): Project Co must submit the Defect Corrective Action Plan and any update of the Defect Corrective Action Plan to the State for review in accordance with the Review Procedures.

### (**Compliance**): Project Co must comply with the Defect Corrective Action Plan.

## Rectification of Defects in the Works

1. During the Development Phase, Project Co must promptly rectify all Defects in the Works as soon as they are identified, unless the Defect is:

### [not used];

### (**Remaining Works Schedule**): included in the Remaining Works Schedule, in which case Project Co's obligations to rectify the Defect are set out in clause 24.3(l);

### (**Returned Works Outstanding Items**): a Returned Works Outstanding Item in which case Project Co's obligations to rectify the Defect are set out in clause 24.4(n)(iv); or

### (**accepted or rectified**): a Defect which the State accepts or rectifies in accordance with clause 27.6(a).

## Defects in the Maintained Assets are Service Failures

***[Note: This Project Deed assumes that rectification and the commercial incentives for rectification of Defects in Maintained Assets will be addressed in the Services Specification and the Abatement Regime. Care should be taken to ensure that the Abatement Regime is calibrated accordingly. Where this is not feasible, refer to Guidance Notes for more information on project specific amendments.]***

1. During the Operational Phase if:

### (**Defect in Maintained Assets**): there is a Defect in a Maintained Asset; and

### (**no Performance Failure**): that Defect is not a Performance Failure and does not give rise to a Performance Failure,

1. the Defect will be deemed to be a Service Failure under ***[Note: insert [#] reference to Services Specification.]***, except that:

### (**failure to rectify**): if the Defect is required to be rectified in accordance with clause 24.3(l), without limiting clause 24.4(m), that Defect will only become a Service Failure if Project Co fails to rectify the Defect in accordance with clause 24.3(l); or

### (**Service Failure**): if the State accepts or rectifies (or engages others to rectify) the Defect in accordance with clause 27.6, that Defect will not be a Service Failure. ***[Note: The expectation is that a catch all for Defects will be included as a Service Failure in the Services Specification. The catch all needs to be consistent with the above risk allocation. See Guidance Notes for further detail.]***

## State right to accept or rectify Defects in Works or Maintained Assets

### (**State's right to accept or rectify**): Notwithstanding any other term of this Deed:

#### during the Term, the State and Project Co may agree that the State will accept or rectify (including engaging others to rectify) a Defect in the Works or the Maintained Assets; or

#### if Project Co has not rectified a Defect in a Maintained Asset in the timeframe within which it is required to rectify that Defect in accordance with this Deed or, if no timeframe is required in accordance with this Deed, expeditiously and diligently, the State may notify Project Co and the Independent Reviewer that the State will accept or rectify (including engaging others to rectify) that Defect.

### (**Notice to Independent Reviewer**): Before it agrees or determines to accept or rectify any Defect in accordance with clause 27.6(a), the State may:

#### issue a notice to the Independent Reviewer and Project Co requiring the Independent Reviewer to determine, within 20 Business Days of the issue of that notice:

##### the cost necessary to rectify the relevant Defect;

##### any Savings to Project Co as a result of the Defect and not having to rectify the Defect; and

##### the relevant diminution in value of the Works or the Maintained Assets (as applicable) as a consequence of the Defect; and

#### require Project Co to provide details of:

##### the Defect;

##### the impact of the Defect on the Operations;

##### any impact of the Defect on the Project Assets, the Returned Assets or other assets in the vicinity of the Project Assets or Returned Assets and the Project 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 State will have on Project Co'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 State and the risk management strategy, including risk mitigation actions, Project Co will put in place if the Defect is accepted or rectified by the State; and

##### any other information the State may reasonably require.

### (**State rectification or acceptance**): If:

#### the State and Project Co agree under clause 27.6(a)(i); or

#### the State gives notice under clause 27.6(a)(ii),

* 1. that the State will accept or rectify (or engage others to rectify) a Defect in the Works or the Maintained Assets:

#### Project Co must pay the State (as a debt due and payable to the State) the greater of:

##### the costs necessary to rectify that Defect;

##### any Savings to Project Co as a result of the Defect and not having to rectify the Defect; and

##### the relevant diminution in value of the Project Assets as a consequence of that Defect,

* + 1. as determined by the Independent Reviewer in accordance with clause 27.6(b);

#### if the State accepts the Defect, the State may impose reasonable conditions on any such acceptance and provide notice of these to Project Co; and

#### the State must (acting reasonably) determine and notify Project Co of the changes that will be deemed to be made to this Deed to reflect any acceptance or rectification of the Defect by the State including appropriate amendments to the requirements for Acceptance, relief from Abatements, Handover 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 27.6(c)(v), no acceptance or rectification of a Defect in the Works or a Maintained Asset by the State will otherwise relieve Project Co of its obligations and Liabilities, or limit the State'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 Acceptance relating to that Returned Asset; and

#### subject to clause 27.7(e), expires 24 Months after the Date of Commercial Acceptance.

### (**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 Independent Reviewer of that Defect; or

#### the Independent Reviewer believes there is a Defect or likely Defect in a Returned Asset, the Independent Reviewer will give notice to Project Co, the Returned Asset Owner and the State of that Defect or likely Defect.

### (**Program**): Within 10 Business Days after a notice is provided under clause 27.7(b) notifying Project Co of a Defect, Project Co must submit to the State and the Independent Reviewer, 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**): Project Co must rectify the Defect in the Returned Asset in accordance with the program referred to in clause 27.7(c) to the satisfaction of the Independent Reviewer.

### (**Extension of Returned Asset DLP**): If Project Co 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 Commercial Acceptance; and

#### the date which is 12 Months after the rectification of the Defect.

* 1. ***[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 Project Deed assumes all Returned Assets will be completed by Commercial Acceptance. This may not be the case.]***

### (**No rectification after Returned Asset DLP**): Without limiting the State's or the Returned Asset Owners' rights for breach of this Deed or otherwise at Law, Project Co 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 Independent Reviewer determines that Project Co has failed to rectify a Defect in accordance with clause 27.7(d), the State may elect to:

#### accept or rectify (or engage others to rectify) the relevant Defect in which case the State will notify Project Co and the Independent Reviewer accordingly and may exercise its rights under clause 27.7(i); or

#### require Project Co to continue to rectify the Defect.

### (**Notice to Independent Reviewer**): Before the State agrees to accept or rectify any Defect in a Returned Asset in accordance with clause 27.7(g)(i), the State may:

#### issue a notice to the Independent Reviewer and Project Co requiring the Independent Reviewer to determine within 20 Business Days of its receipt of that notice:

##### the cost necessary to rectify the relevant Defect;

##### any Savings to Project Co as a result of the Defect and not having to rectify the Defect; and

##### the relevant diminution in value of the Returned Asset and any Project Assets as a consequence of the Defect; and

#### require Project Co to provide the information referred to in clause 27.6(b)(ii) as if the Defect in the Returned Asset was a Defect in the Works or the Maintained Assets.

### (**State rectification or acceptance**): If the State gives notice under clause 27.7(g)(i):

#### Project Co must pay the State (as a debt due and payable to the State) the greater of:

##### the costs necessary to rectify that Defect;

##### any Savings to Project Co as a result of the Defect; and

##### the relevant diminution in value of the Project Assets or relevant Returned Assets as a consequence of that Defect,

* + 1. as determined by the Independent Reviewer in accordance with clause 27.7(h)(i):

#### if the State accepts the Defect, the State may impose reasonable conditions on any such acceptance and provide notice of these to Project Co; and

#### the State must (acting reasonably) determine and notify Project Co of the changes that will be deemed to be made to this Deed to reflect any acceptance or rectification of the Defect by the State including appropriate amendments to the requirements for Acceptance, Handover 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 27.7(i)(iii), no acceptance or rectification of a Defect in the Returned Asset by the State will otherwise relieve Project Co of its obligations and Liabilities, or limit the State'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.

### (**Retain from Service Payment**): If the State requires Project Co to continue to rectify a Defect in accordance with clause 27.7(g)(ii), the State may retain from the Service Payment an amount up to 120% of the greatest of the amounts determined by the Independent Reviewer in accordance with clause 27.7(h)(i) until 10 Business Days after such time as the Defect is rectified by Project Co or the State accepts or rectifies the Defect (including by engaging others to rectify the Defect) in accordance with clause 27.7(g)(i).

### (**Rectification**): If the State makes any retention under clause 27.7(k), and:

#### Project Co rectifies the relevant Defect in the Returned Asset, the State must return to Project Co the amount that it has retained in respect of that Defect under clause 27.7(k); or

#### the State subsequently accepts or rectifies or engages others to rectify the Defect in the Returned Asset, the State may use the amount retained under clause 27.7(k) to the extent necessary to pay any debt due and payable to the State under clause 27.7(i) and must otherwise pay the remainder of the retention to Project Co.

### (**No trust**): The State:

#### is not obliged to pay Project Co interest on any amount retained under clause 27.7(k);

#### does not hold any amount retained under clause 27.7(k) on trust; and

will be absolutely entitled to any amount retained under clause 27.7(k) for all incomplete or unrectified Defects in a Returned Asset prior to this Deed being terminated in accordance with its terms, subject to paying any Termination Payment payable to Project Co.

## Disputed Defects

### (**Dispute**): If Project Co disagrees:

#### that anything alleged by the Independent Reviewer or by the State to be a Defect or likely Defect in the Works, the Maintained Assets or the Returned Assets, under clauses 27.1(b), 27.1(c) or 27.7(b) is a Defect;

#### with any determination by the Independent Reviewer under clauses 27.6(b), 27.7(d) or 27.7(h)(i);

#### any conditions imposed by the State in accordance with clauses 27.6(c)(iv) or 27.7(i)(ii); or

#### with a determination by the State 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 27.6(c)(v) or 27.7(i)(iii),

* 1. Project Co must notify the State and the Independent Reviewer of such disagreement not later than 10 Business Days after Project Co receives the relevant notice or determination, and the State and Project Co must use reasonable endeavours to resolve the disagreement.

### (**Determination by Independent Reviewer**): If the disagreement is not resolved within 10 Business Days after the notice given by Project Co under clause 27.8(a) and the disagreement is in respect of any notice or determination by the State under clauses 27.1(c), 27.6(c)(iv), 27.6(c)(v), 27.7(b), 27.7(i)(ii) or 27.7(i)(iii), either party may, by notice to the other party and the Independent Reviewer refer the matter for determination by the Independent Reviewer, who must, within 20 Business Days after the date of the notice referring the matter to the Independent Reviewer, 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 Independent Reviewer under clauses 27.1(b) or 27.7(b); or

##### determination by the Independent Reviewer under clauses 27.6(b), 27.7(d), 27.7(h)(i) or 27.8(b); or

#### the Independent Reviewer is no longer engaged in respect of the Project,

* 1. either party may, by notice to the other party, refer the matter to expert determination in accordance with clause 48.2, provided that, if applicable, the party disputing any Independent Reviewer's determination or notice gives a notice to the other party within 20 Business Days after the Independent Reviewer's determination.

## 

PART F - OPERATIONAL PHASE OBLIGATIONS

# Operational Phase Obligations

## Operational Phase Licence

1. ***[Note: To be amended on a project specific basis to reflect the final land provisions in clause 13.]***

### (**Operational Phase Licence**): Subject to clause 28.1(c), prior to the Operational Commencement Date, the State must grant or procure the grant of a non-exclusive licence to Project Co to use and occupy and permit the Subcontractors to use and occupy the Operational Phase Area:

#### for the purposes of:

##### performing the Services;

##### undertaking any Development Activities required to be undertaken to achieve Final Acceptance;

##### undertaking any work in respect of any Returned Works Outstanding Items not required to be completed by Final Acceptance; and

##### performing any other obligations Project Co is required to perform under this Deed during the Operational Phase; and

#### in accordance with the requirements of this Deed and the Site Access and Tenure Schedule,

#### (**Operational Phase Licence**).

### (**Terms of Operational Phase Licence**): The Operational Phase Licence granted under clause 28.1(a) must be:

#### for a term which will:

##### commence on the Operational Commencement Date; and

##### end on the Expiry Date; and

#### substantially in the form and on the same terms and conditions as the Operational Phase Licence set out in the Site Access and Tenure Schedule.

### (**Delivery of Operational Phase Licence**): Not later than 20 Business Days prior to the expected Date of Commercial Acceptance, Project Co must:

#### prepare and deliver to the State for review in accordance with the Review Procedures 3 counterparts of the Operational Phase Licence which:

##### must be on substantially the same terms and conditions as the Operational Phase Licence set out in the Site Access and Tenure Schedule and include, as an annexure, the Operational Phase Area Plan for the Operational Phase Area which:

###### is prepared and certified by a licensed surveyor;

###### sets out the location of the Operational Phase Area (limited as to height and depth);

###### encompasses that land reasonably necessary (limited as to height and depth) for Project Co to comply with its obligations under this Deed and the Operational Phase Licence; and

###### identifies the location and purpose of any easements reasonably necessary for Project Co to have, in order for Project Co to perform its obligations under this Deed, and the proposed Operational Phase Licence; and

##### are:

###### executed by Project Co; and

###### complete, except for those matters that the State is authorised to complete under clause 28.1(d); and

#### submit a certificate to the State, signed by a licensed surveyor, which certifies that the Works as constructed, which will form the Maintained Assets, are wholly located within the areas identified for the Operational Phase Area.

### (**Authority to complete**): Project Co authorises the State to complete the Operational Phase Licence by inserting:

#### the commencement date of the Operational Phase Licence, which will be the Operational Commencement Date; and

#### any other particulars necessary to complete the Operational Phase Licence.

### (**Execution**): The State must complete the counterparts of the Operational Phase Licence delivered by Project Co, execute each counterpart and return one of the completed and executed counterparts to Project Co.

### (**Licence to have effect from Date of Commercial Acceptance**): The Operational Phase Licence will come into force and effect on and from the Operational Commencement Date.

### (**Whether executed**): Whether or not the Operational Phase Licence has been executed by both parties by the Date of Commercial Acceptance, each party must comply with the Operational Phase Licence on and from the Operational Commencement Date as if the Operational Phase Licence had been fully completed and executed.

### (**Other access**): Except for:

#### the State's obligation to grant or procure the grant of the Operational Phase Licence under clause 28.1(a); and

#### the obligations imposed on the State in the Operational Phase Licence,

### Project Co is responsible for gaining access to and from the Operational Phase Site and to and from any land outside the Operational Phase Area, to which access is required to carry out the Services.

### (**Permitted Use**): Project Co must not use or permit the use of the Operational Phase Area for any purpose other than as permitted for the Operational Phase either under this Deed or the Operational Phase Licence.

## Delivery of the Services

1. Without limiting clause 5.1, Project Co must perform the Services so that the Maintained Assets are in a condition which satisfies the relevant FFP Warranty.

## Innovation and continuous improvement

### (**Project Efficiency Review**): Every 5 years after the Operational Commencement Date (each a **Project Review Date**), Project Co and the State must conduct a review in order to ensure that the Services and the Project Assets are providing a suitable and cost effective solution for the State (**Project Efficiency Review**).

### (**Project Improvement Report**): As part of the Project Efficiency Review, Project Co must produce a report which must:

#### identify any activities undertaken by Project Co to improve the effectiveness of the Services, and any further opportunities for improvement of the Project through Modifications, changes in respect of the role of the State and behaviour or usage changes by either party; and

#### include as a minimum:

##### a trend analysis of performance of the Services against the standards set out in this Deed or required by Best Industry Practices from the Operational Commencement Date to the Project Review Date;

##### areas of performance of the Services that can be improved, and steps taken by Project Co to address performance issues;

##### where the performance trend analysis identifies a deteriorating trend in performance, repeat failures, or significant failures, an action plan to identify how these failures are to be improved;

##### opportunities for reducing Services costs; and

##### a financial summary identifying the cost impact of all the efficiency improvement opportunities identified and any cost savings that can be achieved,

(the **Project Improvement Report**) and submit the relevant Project Improvement Report for review by the State in accordance with the Review Procedures no less than 30 days prior to the relevant Project Review Date.

### (**Appointment of independent technical advisor**): The State may appoint an independent technical advisor to carry out an independent review and produce an independent report which addresses any of the requirements of the Project Improvement Report as part of a Project Efficiency Review.

### (**Project Co must co-operate**): Project Co must co-operate fully with any independent technical advisor appointed by the State to conduct a Project Efficiency Review and provide access to systems, copies of reports and any relevant data to enable the independent technical advisor to complete their report.

### (**Costs**): The costs of the independent technical advisor will be borne by the State, unless the State has engaged the independent technical advisor to prepare the independent report in accordance with clause 28.3(c) because Project Co has failed to provide a Project Improvement Report in accordance with the requirements of clauses 28.3(a) or 28.3(b), in which case the costs of the independent technical advisor will be borne by Project Co as a debt due and payable by Project Co to the State.

### (**Meeting**): As part of the Project Efficiency Review the parties will hold one or more meetings after:

#### submission of the Project Improvement Report by Project Co under clause 28.3(b); and

#### receipt of any report prepared by the independent technical advisor under clause 28.3(c),

* 1. and both parties will present their view of the effectiveness of the Project and improvements that can be made.

### (**Implementation**): Without limiting clause 5.2(a)(iv) or clause 35, the State may, at any time, issue to Project Co a Modification Request under clause 35.1, or a Modification Order under clause 35.11, or exercise its rights in relation to an Augmentation in relation to any improvements identified in accordance with this clause, in which case the relevant procedures in clause 35 will apply.

### (**Not required to defer Planned Lifecycle Activities**): In order to comply with its obligations under this clause 28.3, Project Co is not required to defer any Planned Lifecycle Activities under clause 28.4(a).

## Deferral of Planned Lifecycle Activities

### (**Proposal**): Subject to clause 28.4(c) and clause 28.4(d), if Project Co proposes to defer any Planned Lifecycle Activities, it must amend the Asset Management Plan to identify:

#### the details of each proposed deferral;

#### the period of time of deferral;

#### whether such deferral would entitle the State to reject the Asset Management Plan under clause 28.4(c); and

#### how Project Co will continue to satisfy the FFP Warranty for the period of the deferral,

* 1. and submit the amended Asset Management Plan to the State for review in accordance with the Review Procedures.

### (**State may reject**): The State may reject any Asset Management Plan submitted under clause 28.4(a):

#### in accordance with the Review Procedures;

#### for the reasons set out in clause 28.4(c); or

#### if the State is of the view, acting reasonably, that such deferral would result in a breach of clause 28.4(d).

### (**Reasons for rejection**): The State may reject any Asset Management Plan submitted for review in accordance with clause 28.4(a) if Project Co's proposed deferral of Planned Lifecycle Activities would, if approved, result in the relevant Planned Lifecycle Activities being deferred by a period (measured in Operating Years) equal to or greater than 30% of the period of the relevant replacement or refurbishment cycle as shown in:

#### the Asset Management Plan current as at Commercial Acceptance; or

#### if the item the subject of the Planned Lifecycle Activities was not included in the Asset Management Plan current as at Commercial Acceptance or has since been replaced or refurbished, the Asset Management Plan in which the relevant item and the replacement cycle for the relevant item was last shown prior to the proposed amendment to the Asset Management Plan in accordance with clause 28.4(a).

* 1. ***[Note: Application of the 30% rule may be restricted to only visible assets on a project specific basis.]***

### (**Project Co must not defer**): Project Co must not defer, or propose to defer any Planned Lifecycle Activities:

#### if Project Co will no longer be able to satisfy the FFP Warranty as a result of such deferral; or

#### during the 5 years prior to the Final Expiry Date, without the consent of the State Representative.

## Obsolescence

1. ***[Note: To be considered on a project specific basis whether obsolescence obligations should only apply to larger assets.]***

### (**Obsolescence**): If a part of a Maintained Asset becomes, or will become, Obsolete during the Term or is likely to become Obsolete within [## years] after the Final Expiry Date, Project Co must either:

#### (**replacement**): replace that part of the Maintained Asset with a replacement part which:

##### is not Obsolete;

##### meets all relevant requirements of this Deed and does not prevent any other part of the Maintained Assets from meeting the relevant requirements of this Deed;

##### is at least of the same standard, functionality and reliability and has the same residual life as that part of the Maintained Asset it is replacing; and

##### has the same or a better standard, functionality and reliability relative to the market at the time of replacement, as that part of the Maintained Asset it is replacing had at the time that it was incorporated into the Maintained Asset; or

#### (**deferral**): submit a plan to the State for review in accordance with the Review Procedures, which sets out the measures that will be undertaken to ensure that:

##### Project Co will be able to continue to meet its obligations under this Deed without replacing the Obsolete part of the Maintained Asset;

##### the Obsolete part of the Maintained Asset will be supported:

###### if the Obsolete part of the Maintained Asset is due to be replaced prior to the Final Expiry Date in accordance with the then current Asset Management Plan, until it is replaced in accordance with the then current Asset Management Plan; or

###### if the Obsolete part of the Maintained Asset is not due to be replaced prior to the Final Expiry Date in accordance with the then current Asset Management Plan, until [## years] after the Final Expiry Date; and

##### the State is not adversely affected by the relevant Obsolescence, including that the State does not incur any additional cost or expense or material inconvenience as a result of the Obsolescence for the period that the Obsolete part of the Maintained Asset is required to be supported in accordance with clause 28.5(a)(ii)B,

* + 1. (**Obsolescence Plan**).

### (**Update Obsolescence Plan**): Project Co must update the Obsolescence Plan where it is necessary for Project Co to change the Obsolescence Plan to meet the requirements set out in clause 28.5(a)(ii) and, otherwise annually, and submit the updated Obsolescence Plan to the State for review in accordance with the Review Procedures.

### (**Project Co must continue to comply with obligations**): If at any time Project Co is no longer able to comply with an Obsolescence Plan or the State rejects an Obsolescence Plan in accordance with the Review Procedures on the basis that Project Co cannot continue to meet its obligations under this Deed without replacing the Obsolete part of the Maintained Asset, Project Co must replace the Obsolete part of the Maintained Asset in accordance with clause 28.5(a)(i).

## Warranted Life

### (**Warranted Life**): For each Warranted Asset, Project Co must obtain and maintain a warranty that is on the best available commercial terms, including (as a minimum) for any relevant Warranted Life specified in the PSDR, and that is capable of assignment to the State or its nominee from the manufacturer or supplier, that:

#### the relevant Warranted Asset; or

#### if the relevant Warranted Asset is replaced during the Operational Phase, that replaced Warranted Asset,

* 1. will be Fit For Purpose by reference to the purposes, functions, uses and requirements set out in clause 5.5 (without any major maintenance works), for that part of its Warranted Life that continues beyond the relevant Date of Returned Works Acceptance or the Expiry Date (as applicable), provided that the relevant Warranted Asset is operated and maintained after the relevant Date of Returned Works Acceptance or the Expiry Date (as applicable):

#### in accordance with Best Operational Practices;

#### such that any damage to all or part of the relevant Warranted Asset occurring after the relevant Date of Returned Works Acceptance or the Expiry Date (as applicable) is promptly rectified in accordance with Best Industry Practices;

#### in relation to a Maintained Asset, in accordance with the Asset Management Plan; and

#### in accordance with Law and all applicable Standards current at the time,

* 1. (each a **Warranted Life Warranty**).

### (**Maintain in force**): Without limiting clause 47.4(c), Project Co must ensure that each Warranted Life Warranty remains in force for the period of the relevant Warranted Asset's Warranted Life.

### (**Date of obtaining**): Project Co must obtain each Warranted Life Warranty as soon as reasonably practicable and:

#### in respect of Warranted Assets that are Returned Assets, must provide the Warranted Life Warranty for the Returned Asset to the Returned Asset Owner prior to the expiry of the Returned Asset DLP; and

#### in respect of all other Warranted Assets, must include in the Handover Management Sub-Plan, copies of each Warranted Life Warranty and identify each of the Warranted Assets for which it has obtained or has not yet obtained a Warranted Life Warranty.

# [Not used]

# [Not used]

# [Not used]

# Intervening Events

## Intervening Events entitling Change Notice

### (**Notification**): If Project Co becomes aware of an Intervening Event or any other matter that has occurred during the Operational Phase, which has prevented or will prevent its performance of the Services or other obligations under this Deed in accordance with the requirements of this Deed (which are not Development Activities), Project Co must promptly notify the State of the relevant Intervening Event or other matter and its then current effect and likely further effect.

### (**Claim for relief**): To claim relief under clause 32.2, Project Co must submit a Change Notice to the State for that Intervening Event no later than 20 Business Days after the earlier of the date on which Project Co:

#### first became aware of the fact that the Intervening Event has prevented or will prevent its performance of the Services or other obligations under this Deed (which are not Development Activities); or

#### ought reasonably to have become aware of the fact that the Intervening Event has prevented or will prevent its performance of the Services or other obligations under this Deed (which are not Development Activities),

* 1. and, for any relief it continues to seek after the initial Change Notice, must continue to update the State in respect of the Intervening Event in accordance with section 10.1 of the Change Compensation Principles.

### (**Conditions precedent**): Subject to clause 32.3, it is a condition precedent to Project Co's entitlement to relief under clause 32.2 that:

#### Project Co complies with clause 32.1(b);

#### the relevant Intervening Event occurred during the Operational Phase;

#### Project Co demonstrates that it has actually been or will be prevented from performing the Services or other obligations under this Deed (which are not Development Activities) in each case during the Operational Phase by the relevant Intervening Event; and

#### Project Co, at the time it submits the relevant Change Notice, submits to the State such other information reasonably required by the State to enable the State to determine Project Co's entitlement to relief.

## Obligations suspended and no breach

1. To the extent that the conditions precedent in clause 32.1(c) have been satisfied, then:

### (**suspension**): the relevant obligations of Project Co will be suspended, but only until the earlier of the date the Intervening Event cease to prevent Project Co from performing the Services or other obligations under this Deed (which are not Development Activities), or would have ceased to prevent Project Co from performing the Services or other obligations under this Deed (which are not Development Activities) had Project Co or any Project Co Associate not failed to do any of the things contemplated by clause 43.10(a)(ii); and

### (**no breach**): the failure to perform such suspended obligations will not be a Default, a Project Co Act or Omission, a Major Default, a Default Termination Event or a Performance Failure.

## Unilateral right

### (**Unilateral relief**): Whether or not Project Co has made, or is entitled to make, a claim for, or is entitled to, relief under clause 32.2, the State may at any time and from time to time, by notice to Project Co, unilaterally grant relief in respect of an Intervening Event or any other matter that has occurred during the Operational Phase which has prevented, or will prevent, Project Co's performance of the Services or other obligations under this Deed (which are not Development Activities) during the Operational Phase.

### (**Acknowledgements**): The parties acknowledge that:

#### without limiting clause 2.1(t) the State is not required to exercise the State's discretion under clause 32.3(a) for the benefit of Project Co;

#### other than in accordance with clause 32.3(c), Project Co will not be entitled to make any Claim against the State as a consequence of the State exercising or not exercising its power under clause 32.3(a); and

#### other than in accordance with clause 32.3(c), the exercise or non-exercise of the State's discretion under clause 32.3(a) is not capable of being the subject of a Dispute or otherwise subject to review.

### (**Right to dispute**): If:

#### the State exercises its power under clause 32.3(a) in respect of an Intervening Event for which, but for the exercise by the State of its powers under clause 32.3(a), Project Co would otherwise be entitled to relief under clause 32.2; and

#### Project Co disputes the determination made by the State under clause 32.3(a) in respect of that relief,

* 1. Project Co may refer the dispute to expert determination in accordance with clause 48.2, provided that Project Co does so within 20 Business Days after the exercise of the State's power under clause 32.3(a).

### (**Compensation**): If the State exercises its power under clause 32.3(a) in respect of a Compensable Intervening Event or a Force Majeure Event for which, but for the exercise by the State of its powers under clause 32.3(a), Project Co would otherwise be entitled to compensation in accordance with clause 32.5, Project Co will be entitled to claim compensation for the Compensable Intervening Event or Force Majeure Event in accordance with clause 32.5.

## Service Payments when there is an Intervening Event

1. To the extent that Project Co is granted relief under clause 32.2 or clause 32.3 in respect of an Intervening Event, notwithstanding that Project Co's obligations to perform the Services or other obligations under this Deed (which are not Development Activities) affected by the relevant Intervening Event are suspended in accordance with clause 32.2 or clause 32.3:

### (**State pays Service Payments for suspended Services**): subject to clause 32.4(b):

#### the State must continue to pay Project Co the Service Payment for the Services or other obligations suspended due to the Intervening Event for the period of suspension under clause 32.2 or clause 32.3;

#### the Service Payment will not be subject to Abatement in accordance with the Payment Schedule in respect of the Services that have been suspended in accordance with clause 32.2 or clause 32.3 for the period of such suspension; and

#### the State will deduct from the Service Payment the amounts of any recurrent and other costs of Project Co which are not being incurred by Project Co during the period of suspension of the relevant Services under clause 32.2 or clause 32.3; and

### (**where Abatement will apply to payments for suspended Services**): if the Intervening Event is:

#### a breach of a Direct Interface Deed by a Direct Interface Party;

#### a Force Majeure Event; or

#### an Insured Risk (other than an Insured Risk (which is not a Force Majeure Event) for which Project Co is unable to recover insurance proceeds under any Insurances as a result of a State Insurance Breach),

* 1. the Service Payment will be subject to Abatement in accordance with the Payment Schedule for the period of the suspension of the Services due to the Intervening Event under clause 32.2 or clause 32.3.

## Compensation for Compensable Intervening Events and Force Majeure Events

### To the extent that Project Co is granted relief under clause 32.2 or clause 32.3 in respect of an Intervening Event that is a Compensable Intervening Event or a Force Majeure Event and, without limiting clause 32.4(b), Project Co or the State will be entitled to claim:

### if the Intervening Event is a Compensable Intervening Event, compensation as set out in Item 6 of Table 1 of the Change Compensation Principles; or

### if the Intervening Event is a Force Majeure Event, compensation as set out in Item 7 of Table 1 of the Change Compensation Principles,

1. which will be calculated and determined in accordance with the Change Compensation Principles, except to the extent that the Compensable Intervening Event or Force Majeure Event has given rise to loss or damage to the Project Assets and clause 42.4 or clause 42.5 applies, in which case, Project Co's entitlement to claim any compensation will be as set out in clause 42.4 or clause 42.5 (as the case may be).

## Abatement not to constitute Major Default or Default Termination Event

1. Any Abatement of the Service Payment in accordance with clause 32.4(b) will not be a Default and will not be included in the calculation of any Abatement for a Major Default under paragraph (r) of the definition of "Major Default" or any Abatement for a Default Termination Event under paragraph (h) of the definition of "Default Termination Event".

## Alternative arrangements

### (**Alternative arrangements or method**): Without limiting clause 38, if an Intervening Event occurs during the Operational Phase, the State may as a consequence of and for the duration of the Intervening Event:

#### make alternative arrangements for the performance of those Services or other obligations under this Deed (which are not Development Activities) at no cost to Project Co and without the State incurring any Liability to Project Co in respect of those alternative arrangements and must use reasonable endeavours to carry out the alternative arrangements in a manner which is consistent with the State Project Documents, but taking into account the State's statutory rights and the circumstances that prompted the State to exercise its rights under this clause 32.7; or

#### direct Project Co to:

##### perform those Services or those other obligations (which are not Development Activities) by an alternative method or "work around" from that contemplated in the then current Operational Phase Plans and the PSDR to the extent that it is reasonably possible for Project Co to do so; or

##### require Project Co to perform additional Services,

* + 1. (**Work Around**).

### (**Compensation**): If the State Representative requires Project Co to perform a Work Around, this will constitute a Change Compensation Event and Project Co will be entitled to claim compensation as set out in Item 8 of Table 1 of the Change Compensation Principles, which will be calculated and determined in accordance with the Change Compensation Principles.

## Cessation of Intervening Event

1. Project Co must:

### (**notice to State**): notify the State; and

### (**recommence all obligations**): recommence performing all obligations suspended as a result of the Intervening Event,

1. immediately after it ceases to be prevented from performing those Services or other obligations under this Deed (which are not Development Activities) as a result of an Intervening Event.

## Force Majeure

1. If a Force Majeure Event prevents the State from performing all or a material part of its obligations under the State Project Documents during the Operational Phase, the obligations of the State under this Deed which are affected by the Force Majeure Event will be suspended to the extent of such prevention.

PART G - PAYMENT

# State Contribution on Commercial Acceptance, Development Phase Capital Contribution and CDPD Amount

1. ***[Note: Clause only to be included if State Contribution payable on Commercial Acceptance, the Development Phase Capital Contribution and/or the CDPD Amount is applicable to the project. This clause will need to be amended if milestone payments are included during the Development Phase. To maintain clause numbering, insert the words [Not Used] for provisions which are deleted if State Contribution, Development Phase Capital Contribution and/or CDPD Amount are not included in a project.]***

## State Contribution, Development Phase Capital Contribution and CDPD Amount

### (**Payment of the State Contribution and CDPD Amount**): The State must pay Project Co an amount equal to the State Contribution and the CDPD Amount subject to and in accordance with this clause 33.

### (**Payment of Development Phase Capital Contributions**): In exchange for Project Co progressively undertaking the Development Activities, the State agrees to pay the Development Phase Capital Contributions to Project Co subject to and in accordance with this clause 33.

### (**Effect of payment**): The payment of the State Contribution, any Development Phase Capital Contribution or the CDPD Amount does not constitute:

#### an approval by the State of the completion or acceptance of the Development Activities or Services under this Deed;

#### evidence that the Project Assets are Fit For Purpose or constitute evidence that all or any other obligations under the State Project Documents have been satisfied; or

#### any equity capital contributed to, or ownership interest in, Project Co by the State.

### (**Application of payment**): Project Co must apply or procure the application of the State Contribution and the CDPD Amount in partial repayment of the then outstanding Actual Debt and ensure that the repaid amount is not available to be redrawn at any time under the Finance Documents.

## 33.1A Conditions for payment of CDPD Amount

### (**Payment subject to conditions**): The State's obligation to pay the CDPD Amount is subject to the following conditions precedent (**CDPD Conditions**): ***[Note: The following conditions may be amended on a project specific basis.]***

#### the CDPD Period has commenced and not expired;

#### there is no subsisting Major Default or Default Termination Event;

#### no Major Default (other than a Major Default occurring under paragraph (q) of that definition) has occurred in the [6] Month period immediately prior to the CDPD Notice Date;

#### not more than one Major Default (other than a Major Default occurring under paragraph (q) of that definition) has occurred in the [18] Month period immediately prior to the CDPD Notice Date;

#### no Default Termination Event has occurred in the [12] Month period immediately prior to the CDPD Notice Date;

#### the costs of rectification of any single subsisting Defect, will not exceed $[##]; and

#### the aggregate cost of rectification of all subsisting Defects, will not exceed $[##].

### (**Defects condition**): Project Co acknowledges and agrees that, for the purposes of determining whether the CDPD Condition in clause 33.1A(a)(iv) has been achieved, Defects which are all of a similar type or which affect the same aspect or the same area of the Project or are otherwise related to each other will be regarded as a single Defect.

### (**Satisfaction of CDPD Conditions**):

#### Project Co must use its best endeavours to procure the satisfaction of the CDPD Conditions prior to expiry of the CDPD Period.

#### When Project Co considers that a CDPD Condition has been satisfied, Project Co must promptly and in any event within 10 Business Days give the State Representative:

##### a written notice stating that it considers that the CDPD Condition has been satisfied; and

##### reasonable evidence that the CDPD Condition has been satisfied.

#### When Project Co considers that all of the CDPD Conditions have been satisfied (or waived by the State), Project Co must give the State Representative:

##### a written notice stating that it considers that all of the CDPD Conditions have been satisfied (or waived by the State); and

##### the documents and information required under the CDPD Adjustment Protocol, including an updated Financial Model which has been adjusted in accordance with the CDPD Adjustment Protocol and clause 53.

#### Within 20 Business Days after receiving a notice and an updated Financial Model under clause 33.1A(c)(iii), the State Representative will give Project Co:

##### written notice that the State Representative agrees that all of the CDPD Conditions have been satisfied (or waived by the State) (**CDPD Satisfaction Notice**); or

##### written notice that the State Representative does not agree that all of the CDPD Conditions have been satisfied (or waived by the State) and the reasons for the State Representative's determination.

#### If the State Representative gives a notice under clause 33.1A(c)(iv)B, Project Co must continue to use its best endeavours to procure the satisfaction of the outstanding CDPD Conditions and this clause 33.1A(c) will re-apply.

#### If the State Representative does not give Project Co a written notice in accordance with clause 33.1A(c)(iv)A or 33.1A(c)(iv)B, the State Representative will be deemed to have given Project Co a written notice under clause 33.1A(c)(iv)B.

#### A breach of clause 33.1A(c)(i) by Project Co will not, of itself, be a Major Default or a Default Termination Event.

### (**CDPD Defects Assessor**):

#### For the purposes of the CDPD Conditions in clause 33.1A(a)(iv) and 33.1A(a)(vii), if the State Representative:

##### gives Project Co a notice in accordance with clause 33.1A(c)(iv)B; and

##### does not agree with either Project Co's assessment of the cost of rectifying subsisting Defects or and whether or not any one or more Defects constitute a single Defect for the purposes of clause 33.1A(b),

#### the State Representative may refer the assessment to an independent expert (**CDPD Defects Assessor**):

##### to be appointed jointly by the State and Project Co following agreement with Project Co as to the identity of the CDPD Defects Assessor; or

##### failing agreement within 10 Business Days of a notice in writing from the State identifying the proposed independent expert, to be appointed by the State following nomination of the independent expert by the President of Engineers Australia.

#### The CDPD Defects Assessor will inspect and assess the subsisting Defects on the Project and notify the State and Project Co in writing of its assessment of the costs of rectifying the subsisting Defects on the Project and whether or not any one or more Defects constitute a single Defect for the purposes of clause 33.1A.

#### The amount (if any) assessed by the CDPD Defects Assessor under clause 33.1A(d)(ii) will be deemed to be the cost of rectifying the subsisting Defects for the purposes of the CDPD Conditions in clause 33.1A(a)(vi) and 33.1A(a)(vii).

#### Project Co must, at its cost, co-operate with the CDPD Defects Assessor and provide the CDPD Defects Assessor with any reasonable assistance required by the CDPD Defects Assessor.

#### The State Representative must use its reasonable endeavours to procure that the CDPD Defects Assessor minimises any disruption caused to the Project Activities by the assessment.

#### The State will be responsible for the costs incurred by the CDPD Defects Assessor.

#### An assessment by the CDPD Defects Assessor:

##### is limited to the assessment of the costs of rectifying the subsisting Defects on the Project and whether or not any one or more Defects constitute a single Defect for the purposes of clause 33.1A(b), and does not extend to the existence of Defects generally or Project Co's compliance with its obligations under this Deed; or

##### will not prejudice any rights or powers of the State under this Deed or otherwise according to Law (including in relation to Defects).

### (**Waiver of CDPD Conditions**):

#### The State may waive one or more of the CDPD Conditions (with or without conditions) in its absolute discretion by giving written notice to Project Co.

#### Any waiver by the State of a CDPD Condition does not constitute a waiver by the State of any of its rights, powers or discretions in respect of any subsisting breach of this Deed, Major Default, Default Termination Event or Defect (as may be relevant).

### (**Adjustments to the Financial Model**): On the CDPD Payment Date, Project Co will provide to the State an updated Financial Model from the version provided under clause 33.1A(c)(iii) which has been adjusted in accordance with the CDPD Adjustment Protocol and clause 53.

## 33.1B Conditions for payment of Development Phase Capital Contribution

### (**Development Phase Capital Contribution commencement**): The State's obligation to make any payment under clause 33.2A is subject to clause 33.2A(c) and will only commence from the date on which:

#### the Facility Agent has confirmed to the State that an amount equal to [100%] of Equity Funding agreed to be contributed in accordance with the Equity Documents:

##### has been deposited in the Construction Proceeds Account, utilising Equity Funding contributed in accordance with the Equity Documents; or

##### is (subject to any express conditions in the [Equity Subscription Agreement]) unconditionally committed to be provided under the [Equity Subscription Agreement] and is supported by Performance Bonds, unless the State otherwise consents,

##### or a combination of the two; and

#### the Facility Agent has confirmed to the State that an amount equal to or greater than [50%] of the Construction Facility Commitment (as at Financial Close) (disregarding any amounts used to fund deferred Equity Funding requirements under clause 33.1B(a)(i)B has been drawn down and Correctly Applied (or will have been drawn down and Correctly Applied following application of the proceeds of the drawdown under the Construction Facility for that Month).

### (**Other Development Phase Capital Contribution conditions**): The State will only be obliged to make a payment under clause 33.2A(c) if:

#### the Facility Agent has confirmed that all previous payments under clause 33.2A(c) (if any), have been or will be Correctly Applied on or before the relevant Development Phase Capital Contribution Payment Date;

#### the Facility Agent has confirmed that all previous amounts withdrawn from the [Construction Proceeds Account] have been or will be Correctly Applied on or before the relevant Development Phase Capital Contribution Payment Date;

#### no breach by Project Co or the Security Trustee (as applicable) of clause 11.1 of the Finance Direct Deed is subsisting and the conditions to withdrawal from the [Construction Proceeds Account] for any withdrawal to be made on the relevant Development Phase Capital Contribution Payment Date are also satisfied;

#### Project Co has submitted a valid Development Phase Capital Contribution Notice in accordance with clause 33.2A(a); and

#### the aggregate of the Development Phase Capital Contribution Actual Amount specified in the relevant Development Phase Capital Contribution Notice and each Development Phase Capital Contribution previously made will be no greater than the aggregate Development Phase Capital Contribution Forecast Amount set out in the Development Phase Capital Contribution Schedule up to and including the relevant payment date specified in the Development Phase Capital Contribution Schedule.

## State Contribution Notice and CDPD Amount Notice and payment

### (**Notice**): Within 2 Business Days after the date on which:

#### in the case of the State Contribution, the Certificate of Commercial Acceptance is issued; or

#### in the case of the CDPD Amount, the CDPD Satisfaction Notice is issued,

### Project Co must deliver a notice, in the form of a valid Tax Invoice, to the State for the State Contribution or CDPD Amount (as applicable) to be paid (**State Contribution Notice** or **CDPD Amount Notice** (as applicable)). Project Co must ensure that each of the State Contribution Notice and CDPD Amount Notice identifies the relevant bank account the name of Project Co into which the State Contribution or CDPD Amount (as applicable) is to be paid.

### (**Payment**): The State must pay to Project Co: [***Note: subject to review of the Finance Documents***]

#### the State Contribution within 20 Business Days after receipt by the State of the State Contribution Notice which has been correctly given under clause 33.2(a); and

#### the CDPD Amount on the CDPD Payment Date,

#### and that amount must be used by Project Co only for the purpose of repaying any Actual Debt.

### (**Set-off**): The State may not set-off any amount due and payable to the State under a State Project Document against the State Contribution, the Development Phase Capital Contribution Actual Amount or the CDPD Amount.

## 33.2A Development Phase Capital Contribution Notice and payment

***[Note: This provision has been drafted on the basis that the payments of the Development Phase Capital Contributions will be paid as and when, and in the amount required, and draw downs are based on a fixed schedule (so that Payments of the Development Phase Capital Contributions will correspond to withdrawals from the Construction Proceeds Account). To the extent that this is not the case, these provisions will need to be updated.]***

### (**Development Phase Capital Contribution Notice**): Subject to clause 33.1B, in respect of a proposed payment of a Development Phase Capital Contribution, Project Co must give the State a notice (**Development Phase Capital Contribution Notice**), in the form of a valid Tax Invoice and otherwise in a form reasonably satisfactory to the State, stating the proposed Development Phase Capital Contribution Actual Amount to be paid and the proposed Development Phase Capital Contribution Payment Date, together with the following:

#### in relation to each Construction Facility, a copy of the last Drawdown Notice (as defined in the [Syndicated Facilities Agreement]) given to the Facility Agent in respect of a draw down under the Construction Facility;

#### confirmation of the aggregate amount drawn down under the Construction Facility and withdrawn from the [Construction Proceeds Account] up to the date of the current Development Phase Capital Contribution Notice;

#### a copy of the [Withdrawal Notice] for payment of [Construction Costs] (as each of these terms are defined in the [Syndicated Facilities Agreement]) given to the [Facility Agent] in respect of the withdrawal from the Construction Proceeds Account, together with confirmation:

##### of the amount of the withdrawal requested from the Construction Proceeds Account on that date (**Certified Withdrawal Amount**); and

##### that the Certified Withdrawal Amount is no greater than the Certified Payment Claim for that Month plus any other DPCC Project Costs due and payable;

#### all documentary evidence relating to the Certified Payment Claim to be paid using the amount withdrawn from the Construction Proceeds Account as described in clause 33.2A(a)(iii);

#### all documentary evidence relating to the satisfaction of the Cost to Complete Test (as defined in the [Syndicated Facilities Agreement]), and a copy of all other certifications provided by the Financiers' Certifier, as required under the [Syndicated Facilities Agreement] as a condition precedent to the withdrawal from the Construction Proceeds Account as described in clause 33.2A(a)(iii);

#### if requested by the State, documentary evidence relating to amounts previously withdrawn from the Construction Proceeds Account to pay DPCC Project Costs (other than Certified Payment Claims in respect of which the State has already received documentary evidence under clause 33.2A(a)(iv)) to enable the State to verify compliance with clause 33.2A(d); and

#### documentary evidence of any relevant confirmations given by the Facility Agent required under this clause 33.

### (**Limit on withdrawals**): Project Co must not give the State a Development Phase Capital Contribution Notice more than once each Month.

### (**Payment**): Subject to clause 33.1B and compliance by Project Co with clause 11.1 of the Finance Direct Deed, the State must pay the Development Phase Capital Contribution Actual Amount specified in the relevant Development Phase Capital Contribution Notice into the Construction Proceeds Account on or before the Development Phase Capital Contribution Payment Date.

### (**Application of Development Phase Capital Contributions**): Project Co must ensure that all amounts withdrawn from the Construction Proceeds Account, are only applied to pay:

#### Project Costs, excluding:

##### the funding of any debt service reserve account earlier or in a greater amount than as is reflected in the Financial Model;

##### principal, interest, prepayment and other fees, charges or hedge break costs under the Finance Documents other than as provided for in the Financial Model; and

##### Distributions,

##### (**DPCC Project Costs**); or

#### GST related to DPCC Project Costs.

## Late and over payments of State Contribution, Development Phase Capital Contribution and CDPD Amount

### (**Interest**): If the State fails to pay an amount of the State Contribution, Development Phase Capital Contribution or the CDPD Amount which is due and payable within the time required under clause 33.2(b), the State must pay interest on the unpaid amount:

#### calculated from the date on which payment was due and payable until the date on which payment is made;

#### calculated daily at the overdue rate then applicable under the Finance Documents.

### (**Sole remedy**): The amount of interest specified in clause 33.3(a) will be Project Co's sole entitlement in respect of the failure by the State to pay all or part of the State Contribution, Development Phase Capital Contribution or the CDPD Amount when due and payable, including interest or damages for loss of use of, or the cost of borrowing, money.

### (**Refund**): If the State pays the whole or any part of the State Contribution, Development Phase Capital Contribution or the CDPD Amount to Project Co and it is subsequently agreed or determined for any reason that the State has paid Project Co a greater amount than Project Co was entitled to receive, Project Co must immediately refund that payment (or such part as constitutes an overpayment) as a debt due and payable to the State, together with interest:

#### calculated on the amount of the overpayment from the date on which the overpayment was paid until the date on which the overpayment is refunded; and

#### calculated daily at the Overdue Rate.

# Payments and Abatements

## Service Payments and other payments

### (**Payment for Services**): In consideration of Project Co providing the Services, the State must pay Project Co the service payments:

#### Monthly in arrears; and

#### calculated in accordance with the Payment Schedule,

* 1. until the Expiry Date, from the end of the first Month of the Operational Phase,
  2. (**Service Payment**).

### (**Other payments**): In addition to the Service Payment, the State must pay any other payment that is due and payable to Project Co, and Project Co must pay any payment that is due and payable to the State, at the time specified in this Deed or the relevant State Project Documents for the particular payment.

### (**Time for payment**): If no time is specified for the payment of an amount that is due and payable under clause 34.1(b), the payment will be made:

#### in the case of a payment to Project Co:

##### up to the Date of Commercial Acceptance, within 20 Business Days after a demand is made for payment of the amount; and

##### at any time after the Date of Commercial Acceptance, at the time the next Service Payment is made by the State to Project Co after the Liability is incurred (unless the next Service Payment is within [5] Business Days after the Liability is incurred, in which case the relevant payment will be made at the time of the Service Payment immediately following that Service Payment); and

#### in the case of a payment to the State, within 20 Business Days after a demand being made by the State for payment of the relevant amount.

## Abatements

### (**Payment Schedule applies**): The Service Payments may be Abated by the State to the extent and in the manner described in the Payment Schedule to reflect the agreed principle that the State must only pay for the quantum, quality and availability of the Services actually provided.

### (**Not to affect other rights**): Subject to clauses 34.2(c) and 34.2(e), adjustment of the Service Payments in accordance with the Payment Schedule under clause 34.2(a) will be the only financial liability that Project Co will have to the State for a Performance Failure.

### (**No limit**): Clause 34.2(b) does not limit or affect:

#### Project Co's Liability under clause 27.6(c) for the rectification or acceptance of Defects;

#### the State's rights under this Deed or any other State Project Document in respect of the event that caused or contributed to the Performance Failure (as opposed to the Performance Failure itself);

#### any other right or remedy of the State under this Deed or any other State Project Document or at Law (other than for monetary compensation for a Performance Failure);

#### the State's rights under clauses 42, 45 and 46;

#### subject to clause 38.5(a)(iv), any entitlement of the State to recover any Liabilities suffered or incurred by the State as a consequence of exercising its rights under clause 38;

#### any payment on termination of this Deed (including a Termination Payment);

#### any Liability that Project Co may have for costs, losses, damage, destruction or other amounts which are indemnified by Project Co under clause 43.1 to the extent that the State has not been fully compensated for that Liability by the adjustment under clause 34.2(a);

#### any Liability that Project Co has to the State for any Liability that the State has to a third party, to the extent that the State has not been fully compensated for that Liability by the adjustment under clause 34.2(a); or

#### any Liability that Project Co may have for a Liability (including reasonably foreseeable economic loss) suffered or incurred by the State as a result of any:

##### fraudulent, reckless, unlawful or malicious act or omission; or

##### Wilful Misconduct,

* + 1. by Project Co or any Project Co Associate to the extent that the State has not been fully compensated for that Liability by the adjustment under clause 34.2(a).

### (**Abatement**): Project Co acknowledges and agrees that:

#### it is difficult, and in some instances impossible, to calculate with precision the diminution in value the State may suffer in connection with each Performance Failure;

#### notwithstanding clause 34.2(d)(i), the application and escalation of the Abatements in accordance with the Payment Schedule associated with each Performance Failure:

##### reflects a genuine pre-estimate of, and is proportionate to, the diminution in value (including having regard to associated mitigation and other costs) to the State in connection with each Performance Failure; and

##### has been agreed to protect the legitimate interests of the State in the performance of the Services in accordance with the requirements of this Deed, which include:

* + - 1. ***[Note: General interests of the State are to be included on a project specific basis. The interests should be drafted in general terms and on a non-exhaustive basis];***

#### both the State and Project Co require a formula for calculation of the diminution in value the State may suffer in connection with each Performance Failure that is able to be readily applied without unnecessary administrative costs, delay or difficulty;

#### to the extent it is legally permitted to so agree, it will not assert in any proceedings under clauses 48 to 50 or in any court or other proceedings that the Abatements provided for in this clause 34 and the Payment Schedule are disproportionate, exorbitant, extravagant or unconscionable or a penalty or that the clause or any adjustment under the Payment Schedule in respect of an Abatement is void or unenforceable (whether in whole or in part); and

#### the State has entered into this Deed on the basis of and in reliance on the acknowledgements given by Project Co in this clause 34.2(d).

### (**Project Co acknowledgements**): Project Co acknowledges and agrees that if the Abatement of the Service Payment in accordance with clause 34.2(a) is held to be void or unenforceable, clause 34.2(b) and the Payment Schedule will not limit Project Co's Liability to the State under this Deed or otherwise at Law for any Liability suffered or incurred by the State as a consequence of or in connection with a Performance Failure.

### (**Unilateral waiver**): The State may waive any Abatement (in whole or in part) at any time and from time to time, by notice to Project Co. No waiver of an Abatement:

#### constitutes acceptance by the State of the Performance Failure giving rise to the Abatement;

#### operates as a waiver of another Performance Failure giving rise to an Abatement; or

#### prejudices any rights or powers of the State or the State Representative.

## Dispute

1. Any Dispute in respect of any calculation of the Service Payment or the calculation or application of an Abatement may be referred by either party to expert determination in accordance with clause 48.2.

## Service Payments

### (**Payment Claims**): Within 5 Business Days after the date Project Co is required to deliver the Monthly Operational Phase Performance Report for a Month during the Operational Phase, Project Co must provide to the State a Payment Claim for the Service Payment for that Month (calculated in accordance with the Payment Schedule) and, except in relation to a Floating Rate Component payable under clause 34.8, any other amounts then due and payable by the State or by Project Co under this Deed.

### (**Payment Statement**): The State must provide to Project Co a statement stating the amount payable to or by Project Co (which may be more or less than the amount set out in the Payment Claim) and the reasons for any difference from the amount in the Payment Claim (including any set-off) (**Payment Statement**), within the later of:

#### 6 Business Days after receipt by the State of a Payment Claim; and

#### 6 Business Days after receipt by the State of the relevant Monthly Operational Phase Performance Report.

### (**No Payment Claim**): If Project Co does not issue a Payment Claim or the relevant Monthly Operational Phase Performance Report, the State may still issue a Payment Statement setting out the amount payable to or by Project Co.

### (**Registered**): Each of the State and Project Co acknowledges that it (or in the case of the State, a person on behalf of the State) is registered for GST when it enters into this Deed and that each party will notify the other party if it (or the relevant person) ceases to be registered.

### (**Tax Invoice**): Without limiting Project Co's or the State's right to dispute the amount for payment stated in the Payment Statement, Project Co or the State (as applicable) will provide to the other party a Tax Invoice in connection with any supplies which are the subject of the Payment Statement for the amount stated in the Payment Statement within 2 Business Days after receipt of the Payment Statement.

### (**Project Co failure to provide Tax Invoice**): Without limiting clause 34.4(g), if Project Co or the State fails to provide a Tax Invoice in the time required, the State Representative or the Project Co Representative (as the case may be) may prepare the Tax Invoice on behalf of Project Co or the State (as applicable) and provide that Tax Invoice to Project Co or the State (as applicable).

### (**Timing of payment**): Subject to clause 34.7, payment of the amount stated to be payable to or by Project Co in the Payment Statement must be made by the State to Project Co or by Project Co to the State (as the case may be) within 10 Business Days after receipt of the Tax Invoice provided under clauses 34.4(e) or 34.4(f).

### (**Payment not evidence of proper performance**): The payment of Service Payments by the State to Project Co and the issuing of any Payment Statement is not evidence that the Project Activities have been carried out by Project Co in accordance with the State Project Documents, or an admission of liability, and is only to be taken as payment on account.

### (**Correction of previous Payment Statement**): The State may, in any Payment Statement, correct any error in any previous Payment Statement issued by the State.

## Interest

### (**Interest**): Subject to clause 33.3(a), 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 46, the amount specified in clause 34.5(a) will be a party's sole entitlement in respect of the other party's failure to pay an amount due and payable, including interest or damages for loss of use of, or the cost of borrowing, amounts.

## Refund

1. If:

### (**payment**): the State pays Project Co, or Project Co pays the State, any amount under clause 34.4(g) 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 34.5 on that amount.

## Set-off

### (**State's payments**): Subject to clause 33.2(c), the State may deduct from any amounts due and payable by the State or any State Associate to Project Co under any of the State Project Documents or otherwise at Law:

#### any amount due and payable by any Group Member to the State; and

#### the amount of any Claim that the State may have against any Group Member.

### (**Project Co's payments**): Project Co must make all payments to the State free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless Project Co is compelled by Law to make such a deduction or withholding.

### (**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.

## Floating Rate Component

### (**Floating Rate Component**): The Floating Rate Component will be payable with effect from the first Interest Period specified in the Floating Rate Component Schedule (as defined in section [##] of the Payment Schedule). Within 5 Business Days after each Floating Rate Component being able to be calculated, Project Co must provide a notice to the State setting out the amount of the Floating Rate Component for the Interest Period to which the Floating Rate Component relates.

### (**Invoice**): Within 5 Business Days after receipt of such notice, either:

#### the State must provide a Floating Rate Component Invoice to Project Co (if the Floating Rate Component is negative); or

#### Project Co must provide a Floating Rate Component Invoice to the State (if the Floating Rate Component is positive),

* 1. for the amount of the Floating Rate Component.

### (**Timing of payment**): Project Co or the State (as the case may be) must pay the amount of a Floating Rate Component Invoice on or before the last day of the relevant Interest Period.

PART H - CHANGE IN CIRCUMSTANCES

# Modifications

## Modification Request by the State

### (**Modification Request**): Without limiting its rights under clause 35.10, the State may, at any time, issue to Project Co, a notice entitled "Modification Request" for a Modification which must include details of:

#### the proposed Modification which the State is considering;

#### the State's preferred funding, if any is required, for the proposed Modification in accordance with the Change Compensation Principles; and

#### any specific information that the State requires Project Co to include in its Change Notice or that may be relevant to the preparation of the Change Notice,

* 1. (**Modification Request**).

### (**No obligation to proceed**): The State will not be obliged to proceed with any Modification proposed in a Modification Request.

## Modification Proposal

### (**Change Notice**): Subject to clause 35.2(b), as a condition precedent to its entitlement to compensation, Project Co must submit a Change Notice to the State entitled "Modification Proposal" in accordance with the Change Compensation Principles for:

#### a Modification the subject of a Modification Request issued under clause 35.1, within 20 Business Days after the receipt of the Modification Request, unless the State withdraws that Modification Request prior to the expiry of the time period within which Project Co must submit a Change Notice under this clause 35.2(a), in which case Project Co will not be entitled to make any Claim in respect of the Modification;

#### a State Approval Event, within 20 Business Days after it becomes aware of, or ought reasonably to have become aware of, the State Approval Event occurring;

#### a Contamination Compensation Event, within 20 Business Days after a notice under clause 11.6(b) in respect of the Contamination Compensation Event;

#### a Compensable Change in Mandatory Requirements within 20 Business Days:

##### after issuing a notice under clause 36.1(a) in respect of the Compensable Change in Mandatory Requirements; or

##### where clause 36.1(b) applies, after the State directs Project Co to comply with the Change in Policy;

#### any loss or damage to Project Assets where clause 42.4(a) or clause 42.4(b) applies, within 20 Business Days after receipt of the State's direction to repair or reinstate under clause 42.2(b)(iii); or

#### any loss or damage to the Project Assets where clause 42.5(b)(ii) applies, within 20 Business Days after receipt of the State's direction to repair or reinstate under clause 42.2(b)(iv),

* 1. or such longer period determined by the State in accordance with clause 35.2(b).

### (**Extension**): If the size and complexity of the proposed Modification and the information to be included in the Modification Proposal, is such that it is not reasonably practicable for Project Co to prepare the Modification Proposal within the period referred to in clause 35.2(a) or clause 35.11(b), the State must, on the request of Project Co, extend the date for submitting the Modification Proposal by a reasonable period of time.

## Modification Proposal Quote

### (**Payment for Modification Proposal**): If:

#### Project Co is entitled to prepare a Modification Proposal in accordance with this Deed; and

#### Project Co or a Key Subcontractor is required to engage a third party consultant (other than an employee of Project Co or a Key Subcontractor or any other Consortium Member or any of their Related Body Corporates) to provide professional services in respect of the preparation of the Modification Proposal,

this will be a Change Compensation Event and subject to its compliance with clause 35.3, Project Co will be entitled to claim compensation for the preparation of the Modification Proposal:

#### as agreed by the State under clause 35.3(c)(i); or

#### if not agreed by the State under clause 35.3(c)(i), as determined in accordance with Item 9 of Table 1 of the Change Compensation Principles, which will be calculated and determined in accordance with the Change Compensation Principles.

### (**Modification Proposal Quote**): At the same time as Project Co submits a Change Notice for the Change Compensation Event referred to in clause 35.3(a) (**Modification Proposal Quote**), Project Co must submit details of the relevant third party consultants Project Co or a Key Subcontractor intends to engage in accordance with clause 35.3(a)(ii).

### (**State response**): Within 10 Business Days after receipt of Project Co's Modification Proposal Quote, the State must issue its Change Response in which the State may:

#### agree to the amount proposed by Project Co in its Modification Proposal Quote in which case Project Co must proceed with the preparation of the Modification Proposal; or

#### not agree with the amount proposed by Project Co in its Modification Proposal Quote in which case the State must either:

##### direct Project Co to proceed with the preparation of the Modification Proposal and include the Consultant Costs payable for the preparation of the Modification Proposal in its Change Response, as calculated and determined in accordance with Item 9 of Table 1 of the Change Compensation Principles; or

##### unless the Modification Proposal is one in respect of which the State is required to issue a Modification Order in accordance with clause 35.6, inform Project Co that it does not wish to proceed with the Modification.

### (**Timing of payment for Modification Proposal**): If the State:

#### determines not to proceed with a Modification in accordance with clause 35.5(c)(iii) the State will pay Project Co the Consultant Costs for the preparation of the Modification Proposal agreed or determined in accordance with clause 35.3(a), as an amount due and payable; or

#### issues a Modification Order in response to the Modification Proposal the State will pay Project Co the Consultant Costs for the preparation of the Modification Proposal as part of the payment for the Modification subject to the limitation set out in section 7.2(q) of the Change Compensation Principles.

## Meeting

1. Within [10] Business Days after the State’s receipt of Project Co's Modification Proposal, the State and Project Co must meet to discuss the Modification Proposal and may agree:

### (**agreement and issue of a Change Response**): Project Co's or the State's entitlement in respect of the relevant Modification, in which case the State must issue a Change Response in accordance with that agreement and otherwise in accordance with clause 35.5 and the Change Compensation Principles;

### (**alternative process may apply**): an alternative process for determining Project Co's or the State's entitlement in respect of the Modification;

### (**changes to Modification Proposal**): any changes that are to be made to the Modification Proposal;

### (**further information**): the process for Project Co to provide any further information in respect of the Modification Proposal; or

### (**other matters**): anything else relevant to the Modification Proposal or Modification.

## Change Response

### (**State response to Modification Proposal**): Subject to clauses 35.4 and 35.5(b), once Project Co has provided the State with the Modification Proposal in accordance with clause 35.2 or clause 35.11(b)(ii):

#### Project Co must promptly provide the State with any further information the State notifies Project Co that it reasonably requires to assess the Modification Proposal; and

#### the State must issue a Change Response to the Modification Proposal in accordance with the Change Compensation Principles within 20 Business Days after the later of the receipt of the Modification Proposal by the State and the provision to the State of any further information reasonably required by the State to assess the Modification Proposal.

### (**Extension to response time**): The period of time in which the State is required to issue a Change Response to a Modification Proposal will be extended by such period as the State reasonably requires and notifies to Project Co having regard to the nature of the relevant Modification, the content and quality of the Change Notice, and the time within which any further information was provided in respect of the Modification Proposal.

### (**Content of Change Response**): Subject to clause 35.6, in the Change Response, the State must advise Project Co that the State either:

#### accepts the Modification Proposal, in which case the Change Response must be entitled "Modification Order" and Project Co must comply with the Modification Order and will be entitled to the remedies and entitlements set out in the Modification Proposal on the terms set out in the Modification Proposal;

#### does not accept the Modification Proposal on the basis set out in section 11.1(d) of the Change Compensation Principles in which case the State can either:

##### direct Project Co to amend and resubmit the Modification Proposal in accordance with clause 35.2; or

##### issue a Change Response entitled "Modification Order" and determine the terms of the Modification and the amount payable for the Modification in accordance with this clause 35, in which case Project Co must proceed with the Modification in accordance with the Modification Order and, if it disputes the Change Response, it may refer the dispute for expert determination in accordance with section 11.4 of the Change Compensation Principles; or

#### does not accept the Modification Proposal because the State does not wish to proceed with the proposed Modification in which case the Modification Request will be deemed to be withdrawn.

### (**Varies Deed**): A Modification Order provided by the State under clause 35.5(c)(i) or 35.5(c)(ii)B has the effect of varying this Deed to the extent provided in the relevant Modification Order with effect from the date of receipt by Project Co of that Modification Order or such other date specified in that Modification Order.

### (**Project Co not to proceed**): Subject to clause 35.6 and its rights to make a claim in respect of a Modification Proposal as set out in clause 35.5(c)(ii)B, Project Co will have no entitlement to make any Claim in connection with a Modification unless a Change Response entitled "Modification Order" requiring Project Co to proceed with the Modification has been issued by the State in accordance with the Change Compensation Principles.

## Mandatory Modification Order

1. Provided Project Co has issued the required Modification Proposal in accordance with this Deed, the State must issue a Modification Order under clause 35.5(c)(i) or clause 35.5(c)(ii)B and cannot refuse to proceed with the Modification under clause 35.5(c)(iii) for:

### (**State Approval Event**): a State Approval Event; or

### (**other circumstances**): the following Modifications:

#### a Compensable Change in Mandatory Requirements;

#### any Modification the subject of a Modification Proposal issued under clause 42.4(a);

#### any Modification the subject of a Modification Proposal issued under clause 42.5(b); or

#### a Contamination Compensation Event the subject of a Contamination Notice as described in clause 11.7(a).

## Compensation

### (**Change Compensation Event**): Subject to clause 35.7(b), where a Modification is a State Initiated Modification this will be a Change Compensation Event and, without limiting clause 35.8(g), Project Co or the State (by way of Savings) will be entitled to claim compensation as set out in Item 10 of Table 1 of the Change Compensation Principles which will be calculated and determined in accordance with the Change Compensation Principles.

### (**Calculation**): Where the Modification is:

#### a Compensable Change in Mandatory Requirements which is a General Change in Law (Development Phase), Project Co or the State's entitlement to compensation will be in accordance with Item 13A of Table 1 of the Change Compensation Principles, which will be calculated and determined in accordance with the Change Compensation Principles;

#### a Compensable Change in Mandatory Requirements which is a General Change in Law (Operational Phase), Project Co or the State's entitlement to compensation will be in accordance with Item 14 of Table 1 of the Change Compensation Principles, which will be calculated and determined in accordance with the Change Compensation Principles;

#### for the repair or reinstatement of loss or damage to the Project Assets, Project Co's or the State's entitlement to compensation will be limited in accordance with clause 42.4; or

#### [not used].

## Extension of time for Modification

### (**Extension of time**): Subject to clause 26.14 and clauses 35.8(d) to 35.8(f), the parties acknowledge and agree that, where Project Co will be delayed from carrying out the Development Activities by a Modification or deemed Modification in a manner which will delay the achievement of Acceptance, Project Co will be entitled to an extension of time to the Date for Acceptance for the period of the delay.

### (**Right to agree or determine**): Any Modification for which Project Co is entitled to an extension of time under clause 35.8(a):

#### may be agreed by the State and Project Co prior to the State issuing a Modification Order; or

#### subject to clause 35.10, must otherwise be determined by the Independent Reviewer in accordance with clause 35.8(c)(ii).

### (**Failure to agree**): If the State and Project Co do not agree on the applicable extension of time under clause 35.8(b), then:

#### the State may issue a Modification Order in accordance with clause 35.5(c)(ii)B, for the non-time related aspects of the relevant claim, in which case Project Co must proceed with the Modification in accordance with the Modification Order;

#### the State or Project Co may have the Independent Reviewer determine any extension to the relevant Date for Acceptance to which Project Co is entitled as a consequence of the Modification Order; and

#### the State will issue a further Modification Order including the extension of time (if any) determined by the Independent Reviewer under clause 35.8(c)(ii) and any compensation determined by the Independent Reviewer under clause 35.8(g).

### (**Conditions precedent to extensions of time**): It is a condition precedent to Project Co's entitlement to an extension of time for a Modification or an event which is deemed to be a Modification under this Deed for which Project Co is entitled or required to submit a Modification Proposal that:

#### Project Co has submitted a Modification Proposal in accordance with the relevant timeframe specified in this Deed which includes the claim for an extension of time;

#### Project Co will be delayed from carrying out the Development Activities by the relevant Modification or deemed Modification in a manner which will delay the achievement of Acceptance;

#### the relevant Modification or deemed Modification will cause activities on the critical path contained in the then current Development Phase Program to be delayed; and

#### Project Co, at the time it submits the relevant Modification Proposal, submits an updated Development Phase Program to the State and the Independent Reviewer which:

##### complies with all the relevant requirements of this Deed;

##### takes into account the impact of the relevant Modification or deemed Modification; and

##### contains a level of detail which is sufficient to enable the State or the Independent Reviewer (as applicable) to determine Project Co’s entitlement to an extension of time (where applicable).

### (**Independent Reviewer**): The Independent Reviewer will determine whether the requirements of this clause 35.8 have been satisfied unless otherwise agreed by the State and Project Co.

### (**Updated Development Phase Program**): If the Independent Reviewer determines that the updated Development Phase Program submitted in accordance with clause 35.8(d)(iv) does not comply with the requirements of that clause, the Independent Reviewer must notify Project Co of that determination together with detailed reasons for the non-compliance, within 5 Business Days after receipt of the relevant Modification Proposal and Project Co will be entitled to update the Development Phase Program in accordance with clauses 26.8(d) to 26.8(g) as if it was an updated Development Phase Program submitted under clause 26.8(a)(iii).

### (**Compensation for extension of time**): Subject to clauses 26.14 and 35.8(h), to the extent that:

#### the parties have agreed; or

#### the Independent Reviewer has determined,

* 1. an extension of time to the Date for Acceptance for a Modification in accordance with this clause 35.8, in addition to any amounts payable in accordance with clause 35.7, Project Co will be entitled to claim compensation as set out in Item 11 of Table 1 of the Change Compensation Principles for that extension of time, which will be calculated and determined by the Independent Reviewer in accordance with the Change Compensation Principles.

### (**Delay Compensation limited**): Where the Modification is for the repair or reinstatement of loss or damage to the Project Assets, Project Co's entitlement to compensation will be limited in accordance with clause 42.4 or 42.5.

## Omission by State

### (**Scope**): Subject to clause 35.9(d), the parties acknowledge and agree that a Modification may decrease, omit, delete or remove any of the Project Activities and that the State may be entitled to make a Claim for compensation in accordance with the Change Compensation Principles for any such Modification.

### (**State Associate to perform**): The parties acknowledge and agree that the State may itself or may engage any State Associate or Interface Party to undertake any decreased, omitted, deleted or removed Project Activities.

### (**Coordination with Project Activities**): Project Co must:

#### permit the State, a State Associate or Interface Party to carry out any decreased, omitted, deleted or removed Project Activities;

#### co-operate with the State, any State Associate and any Interface Party in carrying out any decreased, omitted, deleted or removed Project Activities; and

#### co-ordinate and interface the remaining Project Activities with the work carried out or to be carried out by the State, any State Associate or any Interface Party in performing any decreased, omitted, deleted or removed Project Activities.

### (**Limits on omission by State**): Subject to clause 35.9(e), notwithstanding anything else in this Deed, the State must not instruct a Modification (whether by issuing a Modification Request or a Change Response entitled "Modification Order", or by some other method) which decreases, omits, deletes or removes all, or substantially all, of the Development Activities or the Services.

### [Not used.]

## Unilateral Modification Order

### (**Modification Order**): Notwithstanding any other term of this Deed, whether or not:

#### the State has issued a Modification Request under clause 35.1;

#### Project Co has issued a Modification Proposal under clause 35.2; or

#### the parties have reached agreement on any disputed matters in the Modification Proposal in accordance with this clause 35, the Change Compensation Principles, or otherwise,

* 1. the State may at any time direct Project Co to implement a Modification by issuing a Modification Order in the form of a Change Response in accordance with the Change Compensation Principles.

### (**Extension of time**): In circumstances where the State has issued a Modification Order and Project Co has not issued a Modification Proposal prior to the Modification Order, the State may, where it considers that Project Co is entitled to an extension of time for the Modification in accordance with clause 35.8(a) and without limiting the parties' rights under clause 35.8(b)(i), determine and calculate the extension of time to which Project Co is entitled and the amount of compensation payable to Project Co as set out in Item 11 of Table 1 of the Change Compensation Principles, which will be calculated and determined in accordance with the Change Compensation Principles and include any such determination in the Modification Order.

### (**Dispute**): If Project Co disputes that the extension of time or compensation determined by the State under clause 35.10(b) has been correctly determined in accordance with this Deed:

#### Project Co must proceed with the Modification in accordance with the Modification Order but may submit a Change Notice to the State and the Independent Reviewer in accordance with the Change Compensation Principles; and

#### the Independent Reviewer will determine any extension to the relevant Date for Acceptance as a consequence of the Modification Order and the amount of compensation payable to Project Co as set out in Item 11 of Table 1 of the Change Compensation Principles, which will be calculated and determined in accordance with the Change Compensation Principles.

### (**Compensation for extension of time**): Subject to clauses 26.14 and 35.8(h), Project Co will be entitled to compensation as set out in Item 11 of Table 1 of the Change Compensation Principles for that extension of time, which will be calculated and determined in accordance with the Change Compensation Principles.

## Directions giving rise to Modification

### (**Direction**): In this clause 35.11, "direction" means any direction, approval, consent, requirement, determination, request, claim, notice, agreement, demand or the like.

### (**State direction**): If Project Co considers that a direction by the State constitutes or involves a Modification and the State has not given that direction by way of a Modification Order, and Project Co intends to make a Claim that the direction is a Modification, Project Co must:

#### within 10 Business Days after receiving the direction and before commencing work on the subject matter of the direction, give written notice to the State that it considers the direction constitutes or involves a Modification; and

#### within 10 Business Days after providing the notice under clause 35.11(b)(i) and before commencing work on the subject matter of the direction, give the State a Modification Proposal in accordance with the requirements set out in clause 35.2, as if that direction by the State was a Modification Request issued under clause 35.1.

### (**Confirmation**): If, within 10 Business Days after the State receives a Modification Proposal in accordance with clause 35.11(b)(ii):

#### the State does not:

##### issue a Change Response which is a "Modification Order" in respect of the relevant direction in accordance with clause 35.5;

##### withdraw the direction; or

##### inform Project Co that, in the State's view, the direction does not constitute or involve a Modification,

#### the direction will be deemed to be withdrawn and Project Co must not comply with the direction; or

#### the State:

##### issues a Change Response which is a "Modification Order" in respect of the relevant direction in accordance with clause 35.5(c)(i), Project Co must comply with the Modification Order in accordance with clause 35.5(c)(i);

##### withdraws the direction, Project Co must not comply with the direction; or

##### informs Project Co that, in the State's view, the direction does not constitute or involve a Modification, Project Co must comply with the direction but may refer the matter to expert determination in accordance with clause 48.2.

### (**Conditions for Project Co claim**): Project Co is not entitled to make any Claim in respect of a direction that may constitute or involve a Modification unless it has given a Modification Proposal under clause 35.11(b)(ii) within the period identified in that clause.

## Modifications proposed by Project Co

### (**Project Co may propose a Modification**): Project Co may request the State to direct a Modification by submitting a Change Notice to the State entitled "Project Co Modification Proposal" in accordance with the Change Compensation Principles (**Project Co Modification Proposal**).

### (**State may approve or reject**): Upon receipt of a Project Co Modification Proposal, the State may, but is under no obligation to, issue a Modification Order requiring Project Co to proceed with the Modification proposed by Project Co under clause 35.12(a).

### (**Project Co to bear risks and costs**): Unless otherwise agreed in writing by the State, Project Co will:

#### bear all risks and costs associated with a Modification proposed by Project Co; and

#### not be entitled to make any Claim against the State in any way in connection with, a Modification proposed by Project Co,

* 1. including if the State issues a Modification Order requiring Project Co to implement the Modification in accordance with the Project Co Modification Proposal.

### (**Sharing of Savings**): If the State issues a Modification Order requiring Project Co to proceed with the Modification proposed by Project Co under clause 35.12(a) and the Modification will give rise to any Savings, this will be a Change Compensation Event and the State will be entitled to a share of the Savings (determined in accordance with the Change Compensation Principles) in a percentage of the amount calculated as set out in Item 12 of Table 1 of the Change Compensation Principles, which will be calculated and determined in accordance with the Change Compensation Principles.

## Minor Modifications

### (**Purposes**): The parties agree that the purposes of this clause 35.13 are to:

#### better facilitate and more efficiently give effect to Minor Modifications; and

#### ease the administrative burden on Project Co and the State in the implementation of Minor Modifications,

* 1. and Project Co must seek to give effect to the purpose stated in this clause 35.13(a) in complying with its obligations under this clause 35.13.

### (**Minor Modification Proposal**): Neither the State or Project Co is required to submit a Change Notice in respect of a Minor Modification, but without limiting the State's rights under clause 35.10, if Project Co or the State want to propose a Modification which is a Minor Modification they must do so by issuing a notice entitled "Minor Modification Proposal" in which case clauses 35.1 to 35.12 will not apply to the Minor Modification unless the State gives notice under clause 35.13(j).

### (**Notification of** **amount payable**): Project Co must provide the State with notice of the amount payable to Project Co or the State for any proposed Minor Modification no later than 3 Business Days after a Minor Modification Proposal is provided to either party.

### (**Calculation of** **amount payable**): The amount payable to Project Co or the State for any proposed Minor Modification must, subject to clause 35.13(h), be calculated and determined in accordance with Item 13 of Table 1 of the Change Compensation Principles, and Project Co must provide notice of such amount to the State.

### (**Accumulation**): Project Co and the State may agree to accumulate Minor Modifications on a Monthly basis (or such other period as is agreed by the parties) by recording the proposed Minor Modifications by agreement on a register and either the State or Project Co (as the case may be) submitting a Minor Modification Proposal for all Minor Modifications on that register at the end of each Month (or such other period as is agreed by the parties) and prior to their implementation.

### (**Notice**): Neither the State nor Project Co is required to submit a Change Response in respect of a Minor Modification Proposal but within 7 Business Days after receipt of a Minor Modification Proposal from Project Co or the State (as the case may be), provided that the State has received from Project Co details of the amount payable to Project Co or the State for the proposed Minor Modification calculated in accordance with clause 35.13(d) and provided within the timeframe set out in clause 35.13(c), the State must provide Project Co with a notice which:

#### accepts the Minor Modification Proposal;

#### rejects the Minor Modification Proposal; or

#### sets out reasonable amendments to the Minor Modification Proposal.

### (**Terms**): The State and Project Co will implement the Minor Modification on the terms:

#### of the Minor Modification Proposal if a Minor Modification Proposal is accepted under clause 35.13(f)(i); or

#### agreed between the State and Project Co, as recorded in an amended Minor Modification Proposal if the State seeks to amend a Minor Modification Proposal under clause 35.13(f)(iii).

### (**No claims**): The parties acknowledge and agree that, as Minor Modifications are intended to be simple to administer, Project Co will not be entitled to make any Claim for:

#### an extension of time to a Date for Acceptance or additional recurrent costs that may be incurred in performing the Services, as a consequence of a Minor Modification;

#### the cost of preparing a Minor Modification Proposal;

#### the payment of any Margin for the Minor Modifications; or

#### any impact the Minor Modification may have on the FFP Warranty or any other warranties given by Project Co or any Project Co Associate under any State Project Document.

### (**Failure to agree**): If the State and Project Co fail to agree in accordance with clause 35.13(g)(ii), in respect of the Minor Modification Proposal, the State may:

#### issue a Modification Order under clause 35.10; or

#### issue a Modification Request under clause 35.1,

* 1. in order to implement the Minor Modification as a Modification or Project Co may issue a Project Co Modification Proposal in respect of the Minor Modification.

### (**State direction**): Without limiting the State Representative's and the Project Co Representative's right to agree changes to the Minor Modification process, if the State considers that any aspect of the Minor Modification process is not meeting the purposes set out in clause 35.13(a), the State may, by notice to Project Co, suspend the Minor Modification process set out in this clause 35.13. If the State issues a notice to Project Co suspending the Minor Modification process, all Minor Modifications thereafter will be managed in accordance with the process set out in clause 35 (other than this clause 35.13).

### (**Recommence Minor Modification process**): Following a suspension of the Minor Modification process under clause 35.13(j), the State may, by notice to Project Co, recommence the Minor Modification process set out in this clause 35.13.

## Pre-Agreed Modifications

1. ***[Note: To be considered and schedulised on a project specific basis.]***

## Augmentation Process

### (**Augmentation Process**): The parties agree that the process set out in the Augmentation Process Schedule outlines how Augmentations can be implemented in accordance with this Deed.

### (**Compliance**): The parties agree to comply with the requirements set out in the Augmentation Process Schedule if:

#### the State proposes an Augmentation; or

#### Project Co proposes a change which the State determines is an Augmentation,

* 1. under this Deed.

## Disputes

1. If either party disputes a determination of the Independent Reviewer under this clause 35, either party may refer the matter to expert determination in accordance with clause 48.2, provided that the party disputing the Independent Reviewer's determination gives a notice to the other party within 10 Business Days after the determination.

# Change in Law and Change in Policy

## Change in Law and Change in Policy

### (**Notification**): Project Co must submit to the State a notice within 10 Business Days after becoming aware of any actual or likely Change in Law or Change in Policy which may have an impact on the Project, the Project Activities or the State Project Documents and identify:

#### whether it is or will be a Change in Law or a Change in Policy;

#### if it is or will be a Change in Law, whether it is a Project Specific Change in Law or a General Change in Law;

#### 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 Project Co 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 Project Co 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 Project Activities and in the case of a Change in EPA Standard, whether the Change in EPA Standard has a material adverse effect on the Project Activities; and

##### on the Project Activities of not adopting any Change in Policy (if Project Co 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 Project Co's notice under clause 36.1(a) is a consequence of a Change in Policy occurring after the date of this Deed and Project Co is not obliged to comply with that Change in Policy as a matter of Law or in accordance with an EPA Statutory Instrument, the State must, within 20 Business Days after the date of the notice referred to in clause 36.1(a), direct Project Co as to whether or not Project Co is required to comply with the Change in Policy.

### (**State may request**): If the State considers that a Change in Law or Change in Policy has occurred and Project Co has not provided notice under clause 36.1(a), the State may direct Project Co to submit a notice under clause 36.1(a) in respect of that Change in Law or Change in Policy.

### (**Project Co to comply**): Project Co must comply with a Change in Policy, unless the State directs Project Co 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 State directs Project Co to comply with a Change in Policy in accordance with clause 36.1(b), the State may subsequently direct Project Co not to comply with such Change in Policy at any time.

## Compensable Change in Mandatory Requirements

### (**Compensable Change in Mandatory Requirements**): If a Compensable Change in Mandatory Requirements occurs, it will be deemed to be a Modification and:

#### Project Co may submit a Modification Proposal in accordance with clause 35.2(a)(iv); and

#### Project Co's entitlements will be determined in accordance with clause 35.

### (**Conditions for Project Co Claim**): Project Co is not entitled to make any Claim against the State in respect of any Compensable Change in Mandatory Requirements (including its impact) unless it has given notice in accordance with clauses 36.1(a) and 35.2(a)(iv).

# 36A. Pandemics

## 36A.1 Initial Pandemic Management Plan

Project Co warrants that:

### (**Mitigation measures**): the Initial Pandemic Management Plan includes all mitigation measures that Project Co 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 Project Co under this Deed, the Financial Model, Service Payments and the Development Phase Program contain sufficient allowances for the assumption by Project Co of all risk in relation to the impact of COVID-19 on the performance of the Project 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 Project Co 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 Compensation Events,

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

## 36A.2 No Claims

Except as stated in clauses 26, 40 or 41, neither Project Co nor any Project Co Associate will be entitled to make, and the State will not be liable upon, any Claim arising out of or in connection with the impact of any Pandemic.

## 36A.3 Pandemic Obligations

### (**Project Co obligations**): Project Co must:

#### without limiting clause 9.2, upon request, provide the State 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 Compensation Events for the period during which the Pandemic Change in Law and Pandemic Compensation Events remain in force or effect and are relevant to the Project Activities;

#### proactively monitor the potential impacts of any Pandemics and all relevant Pandemic Changes in Law and Pandemic Compensation Events on the Project Activities; and

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

##### as set out in the updated Project Plans and otherwise consistent with Best Industry Practices;

##### sequencing the Project 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 Compensation Events on the Project Activities; and

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

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

## 36A.4 Moratorium on Claims

### (**No Claim**):Notwithstanding any other clause of this Deed, Project Co will not be entitled to make any Claim under clauses 26 or 36 arising out of or in connection with any:

#### Pandemic Compensation Event; or

#### Pandemic Change in Law,

#### that occurs on or before the date which is [##] weeks after Financial Close (**Pandemic Impact Date**), provided that Project Co will be entitled to make a Claim on or after the Pandemic Impact Date in respect of a Pandemic Compensation 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 Compensation Event or Pandemic Change in Law that occurred prior to the Pandemic Impact Date but that is continuing thereafter:

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

#### Project Co 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**): Project Co will not be entitled to Claim compensation from the State for a Relief Event which is a Pandemic Change in Law or a Pandemic Compensation Event to the extent that the loss for which compensation is claimed is covered by the proceeds of any monetary entitlements which Project Co or any relevant Project Co Associate has received or is entitled to recover pursuant to any Legislation with respect to the relevant Pandemic.

## 36A.5 Pandemic Change in Law

If a Pandemic Change in Law occurs:

### (**Amended Pandemic Management Plan**): Project Co must provide an amended Pandemic Management Plan detailing any proposed changes to Project Co's Pandemic Management Plan arising from the Pandemic Change in Law including details of the steps that Project Co 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 Project Co to comply with the Pandemic Change in Law;

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

#### can be reduced and still enable Project Co to remain compliant with Legislation,

### Project Co or the State will be entitled to compensation or the Savings (as the case may be), calculated in accordance with the Change Compensation Principles.

# Refinancing

## Consent to Refinancing

### (**State consent**): Project Co must not enter into or implement any Refinancing without the consent of the State, which (subject to clause 37.1(c)):

#### must not be unreasonably withheld or delayed; and

#### in any case, must be given or withheld within 20 Business Days after receipt by the State of the information provided by Project Co under clause 37.2(a)(ii).

### (**State may withhold consent**): It will be reasonable for the State to withhold such consent if (without limitation):

#### an effect of the Refinancing would be an increase or adverse change in the profile of the risks or liabilities (including contingent liabilities) of the State under any State Project Document, without adequate compensation to the State;

#### the terms and conditions of the proposed Refinancing are not on arm's length commercial terms or are not in accordance with market practice at the time;

#### the terms and conditions of the proposed Refinancing (taken as a whole) are materially more onerous or disadvantageous to a Project Entity than the terms and conditions under the existing Finance Documents and the State considers that entering into the proposed Refinancing will adversely impact on a Project Entity's ability to perform its obligations under the Project Documents;

#### the indebtedness assumed in accordance with the proposed Refinancing will not be used solely for the Project;

#### the matters referred to in clause 37.4 have not been agreed or otherwise determined; or

#### in connection with the proposed Refinancing, Project Co has failed to comply with this clause 37.

### (**Change in timing**): If Project Co requests a change in the timing or manner of payment of the CDPD Amount, the State may give, withhold or delay its consent to such a request.

## Details of Refinancing

### (**Provision of details**): Project Co must:

#### at least 60 Business Days prior to any proposed Refinancing (or such shorter period of no less than 35 Business Days as Project Co reasonably requests if the proposed Refinancing is in response to any actual or potential event of default under any Finance Document), consult with the State to outline the proposed refinancing strategy and alert the State to any changes that may have a material impact on the ability of Project Co to meet its obligations under the Project Documents;

#### promptly (and at least 30 Business Days prior to the proposed Refinancing) provide the State with full details of any proposed Refinancing consistent with the requirements of clause 53, including:

##### a copy of the proposed financial model relating to it;

##### the basis for the assumptions used in the proposed financial model;

##### a comparison with any refinancing assumed within the Financial Model;

##### a draft certificate in terms acceptable to the State from the auditors of such financial model;

##### details of any revised Base Case Floating Rate Debt, Base Case Floating Rate Interest Payment or Base Case Interest Rate for the purposes of the Payment Schedule; and

##### a copy of any draft document proposed to be entered into in connection with such Refinancing; and

#### at least 2 Business Days prior to the proposed Refinancing, provide the State with final execution versions of each document proposed to be entered into in connection with the Refinancing.

### (**Material changes**): The proposed financial model provided under clause 37.2(a)(ii):

#### must show, amongst other things:

##### the details of material changes to Project Co's obligations to its Financiers;

##### projected Distributions; and

##### any anticipated Refinancing Gain; and

#### may include adjustments to any relevant assumptions necessary to reflect the committed financing terms of the proposed Refinancing. Any assumptions relating to the period beyond the term of the proposed Refinancing must be the same as those set out in the Financial Model immediately prior to the proposed Refinancing.

### (**State's unrestricted rights**): Project Co agrees that the State, whether before, during or at any time after any Refinancing, will have unrestricted rights of audit of any financial model and documentation, including formulae and calculations used in connection with the Refinancing.

## Refinancing documents

### (**Consent**): Project Co must not execute or amend any document in connection with a Refinancing (including by amending, restating or replacing any Finance Document) without the State's consent (such consent not to be unreasonably withheld or delayed if the relevant document is on substantially the same terms as provided to the State under clause 37.2(a)(iii) and does not give rise to any grounds to withhold consent under clause 37.1(b)).

### (**Documents to be delivered to State**): Project Co must, within 5 Business Days after the execution of any document in connection with a Refinancing (including by amending, restating or replacing any Finance Document), deliver to the State a certified true copy of that document. For the avoidance of doubt, where any such document is signed electronically, this obligation may be satisfied by Project Co by printing out a copy of the document signed electronically and certifying a copy of that document.

### (**Execution of Refinancing documents**): Without limiting any rights of the State,

#### Project Co must not (and must procure any other Project Entity not to) execute any Refinancing until:

##### any new Beneficiaries, Financiers or Finance Parties have, or have agreed that on the date of the Refinancing that they will, become Beneficiaries, Financiers and Finance Parties (as applicable); and

##### any existing Beneficiaries, Financiers and Finance Parties (as applicable), who will cease to be Beneficiaries, Financiers and Finance Parties (as applicable) as a consequence of the Refinancing have ceased, or have agreed to cease, being Beneficiaries, Financiers and Finance Parties (as applicable); and

#### as part of the documents provided pursuant to each of clauses 37.2(a)(ii)F, 37.2(a)(iii) and 37.3(b), Project Co must provide to the State evidence which demonstrates each of the above in this clause 37.3(c) That evidence must demonstrate that:

##### the relevant new Beneficiaries, Financiers or Finance Parties are bound by the Finance Direct Deed; and

##### those Beneficiaries, Financiers or Finance Parties which are ceasing to be Beneficiaries, Financiers or Finance Parties have no further rights against the State under the Finance Direct Deed,

##### in each case, on and from the date of the Refinancing.

## Calculation and Sharing of Refinancing Gains

### (**Refinancing Gain calculation**): A Refinancing Gain arises where a Refinancing Event results in A - B being greater than zero, where A and B are defined as:

A = the present value of the Distributions projected (using the Financial Model updated to reflect only the terms of the proposed Refinancing and in no other respect) at the proposed date of, and after executing, the Refinancing Event, discounted using the Equity IRR as set out or determined in the Financial Close Financial Model; and

B = the present value of the Distributions projected (using the Financial Model) immediately prior to the Refinancing Event (without taking into account the effect of the proposed Refinancing Event), discounted using the Equity IRR as set out or determined in the Financial Close Financial Model,

* 1. (**Refinancing Gain**).

### (**State's entitlement to Refinancing Gains**): The State is entitled to:

#### 100% of any Refinancing Gain arising from a change in the manner or timing of payment of the CDPD Amount; and

#### 50% of the benefit of any Refinancing Gain arising from any other Refinancing Event but only to the extent that after payment of such amount to the State under this clause 37.4, the Equity IRR over the Term as reflected in the Financial Model (taking into account the proposed Refinancing Event and all previous Refinancing Events but for the avoidance of doubt, not taking into account adjustments to take account of actual Project revenues and costs) would be at or above the Equity IRR over the Term as reflected in the Financial Close Financial Model (without taking into account the proposed Refinancing Event or any previous Refinancing Event)***,***

* 1. (**State Share of Refinancing Gain**).

### (**State's election on Refinancing Gain**): The State may, after taking into account the nature and timing of the Refinancing Gain, elect to receive the State Share of Refinancing Gain as:

#### a direct payment (but only to the extent a Project Entity receives its Refinancing Gain as a direct payment or to the extent that a Project Entity receives a lump sum payment or is able to pay all or part of the Refinancing Gain to another party as a lump sum payment as a result of the Refinancing (for example, upon a release of funds from a reserve account));

#### a reduction in the Service Payment; or

#### a combination of the above.

### (**Negotiate in good faith**): The State and Project Co must negotiate in good faith to agree the manner and timing of payments of the State Share of the Refinancing Gain on the basis that the State is to be paid the State Share of Refinancing Gain not later than when a Project Entity receives its share of the Refinancing Gain and subject to the State's rights under clause 37.4(c).

### (**Information**): Project Co must provide the State with all information concerning the Refinancing, projected Distributions and the Project that the State may require to calculate the Refinancing Gain and the State Share of Refinancing Gain.

## Costs Relating to a Refinancing

### (**Project Co to pay State's reasonable costs**): Project Co must reimburse the State its costs (including legal and financial advisers' fees) reasonably incurred in relation to considering or consenting to a Refinancing.

### (**Estimate of costs**): For the purposes of calculating any Refinancing Gain under this clause 37, Project Co may include in the Financial Model as a cost associated with the Refinancing an estimate of those costs of the State referred to in clause 37.5(a) to which the State has agreed.

# Suspension and Step-In by the State

## State right to suspend

### (**Suspension**): The State:

#### may direct Project Co to suspend, and after a suspension has been directed, to recommence, the carrying out of all or any part of the Project Activities; and

#### is not required to exercise its power under clause 38.1(a) for the benefit of Project Co.

### (**Result of suspension**):

#### Except to the extent the circumstances leading to the suspension under clause 38.1(a):

##### are caused or contributed to by a Project Co Act or Omission; or

##### are, or are caused by, a Force Majeure Event,

* + 1. a direction to suspend all or any part of the Project Activities by the State under clause 38.1(a) will be:

##### in relation to any Development Activities, a Compensable Extension Event; and

##### in relation to any Services or other obligations under this Deed (which are not Development Activities) in each case during the Operational Phase, an Intervening Event.

#### To the extent the circumstances leading to the suspension are a Force Majeure Event, a direction to suspend the Project Activities (while that Force Majeure Event or its effects are subsisting) by the State under clause 38.1(a)(i) will be a Force Majeure Event.

### (**Lift suspension**): If a suspension is due to a Project Co Act or Omission or Force Majeure Event, the State must lift the suspension once the Project Co Act or Omission (and its effects) or, the Force Majeure Event (and its effects), no longer prevents:

* + 1. Project Co from carrying out all or a material part of the Project Activities; or
    2. the State from carrying out all or a material part of its obligations,
  1. in accordance with the State Project Documents.

### (**Limitation**): A suspension under this clause 38.1 must not extend for more than 180 consecutive days. If a suspension exceeds a period of 180 consecutive days the State must either:

#### lift the suspension; or

#### terminate this Deed in accordance with clause 38.1(e).

### (**Termination**): If the State elects to terminate under clause 38.1(d)(ii) and the suspension under this clause 38.1, is caused by:

#### a breach of a Project Document by Project Co or any Project Co Associate or a fraudulent, negligent, reckless, unlawful or malicious act or omission of Project Co or any Project Co Associates, the State must issue a notice to terminate this Deed under clause 46.4(a);

#### a Force Majeure Event or a Project Co Act or Omission which is not captured by clause 38.1(e)(i), and at the end of 180 consecutive day period referred to in clause 38.1(d) the effects of the Force Majeure Event are still subsisting, a Force Majeure Termination Event will be deemed to have occurred and the State must issue a notice to terminate this Deed under clause 46.3; or

#### any other event, the State must issue a notice to terminate this Deed for convenience under clause 46.2.

### (**Major Defaults**): Nothing in this clause 38.1 limits or otherwise prevents:

#### the State from exercising its rights under clause 45 in respect of a Major Default or Default Termination Event; and/or

#### Project Co's rights to attempt to Cure or overcome a Major Default under clause 45.

## State right of step-in

### (**State rights**): If:

#### subject to clause 38.2(b), a Major Default occurs;

#### a State Cure Notice has been issued by the D&C Contractor or the Services Contractor in accordance with the D&C Contractor Direct Deed or the Services Contractor Direct Deed (as the case may be);

#### a Default Termination Event occurs;

#### an Emergency occurs;

#### the State is entitled by Law to act to discharge a statutory power or duty; or

#### any Project Activities are suspended following the occurrence of an Intervening Event,

(each a **Step-In Event**), the State may elect to do (or have its nominee do) any or all of the following:

#### assume total or partial management and control of the whole or any part of the Site, Project Assets or the Project Activities;

#### access those parts of the Site and the Project Assets to which Project Co has access or is entitled to occupy; and

#### take such other steps as are necessary in the reasonable opinion of the State for it to carry out any Project Activities and minimise the effect of the relevant Step-In Event.

### (**Restricted exercise of rights**): Other than when it is exercising its rights in accordance with clauses 38.2(a)(ii) to 38.2(a)(vi) notwithstanding a Major Default has occurred, the State must not exercise its rights under clause 38.2(a) on the occurrence of a Major Default for so long as Project Co is complying with its obligations under clauses 45.4 and 45.5 in respect of that Major Default.

## Notice

1. The State may exercise its rights under clause 38.2(a) without prior notice to Project Co but the State must, if it is reasonably practicable to do so, give prior notice and in any event must, as soon as practicable, provide notice to Project Co that it is exercising those rights.

## Suspension of Project Co's rights and obligations

### (**Extent of suspension**): During the exercise of the State's rights under clause 38.2, Project Co's rights and obligations under the State Project Documents are suspended to the extent necessary to permit the State to exercise its rights under clause 38.2.

### (**No limitation**): Except to the extent that Project Co's obligations are suspended under clause 38.4(a), the exercise by the State of its rights under clause 38.2 (or the cessation of such exercise) will not affect any other right of the State under the State Project Documents or at Law.

## Consequences of step-in by the State

### (**Step-in caused by Project Co**): Subject to clause 38.5(c), if the State has exercised its rights under clause 38.2 as a consequence of any Step-In Event contemplated by:

#### clauses 38.2(a)(i), 38.2(a)(ii) or 38.2(a)(iii); or

#### clauses 38.2(a)(iv), 38.2(a)(v) or 38.2(a)(vi) and that Step-In Event is the result of a Project Co Act or Omission,

* 1. then:

#### if the State exercises its rights during the Operational Phase, the Service Payment will be subject to Abatement in accordance with the Payment Schedule to the extent the Services are not being provided in accordance with this Deed; and

#### if the State exercises its rights at any time during the Term, any Liability suffered or incurred by the State or any State Associate in connection with the exercise by the State of those rights (provided that during the Operational Phase, the Liability is in excess of the Service Payments that are Abated under clause 38.5(a)(iii)), will be a debt due and payable by Project Co to the State, except to the extent that the State's Liability is suffered or incurred as a consequence of a breach of the State Project Documents by the State or any State Associate.

### (**Step-in not caused by Project Co**): If the State has exercised its rights under clause 38.2 other than for the reasons set out in clause 38.5(a) or clause 38.5(c), the exercise by the State of those rights will be:

#### in relation to any Development Activities, a Compensable Extension Event; and

#### in relation to any Services or other obligations under this Deed (which are not Development Activities) in each case during the Operational Phase, an Intervening Event.

### (**Force Majeure Event**): Where the State has exercised its rights under clause 38.2 as a consequence of any Step-In Event contemplated by clause 38.2(a)(iv), clause 38.2(a)(v) or clause 38.2(a)(vi) and that Step-In Event is the result of a Force Majeure Event, the exercise by the State of those rights will be a Force Majeure Event.

## Project Co to assist the State

1. Project Co must:

### (**access to be granted**): grant such access rights as are necessary and take all action that is necessarily required by the State to assist the State in exercising its rights under clause 38.2;

### (**sufficient resources**): provide sufficient resources, including personnel, to assist the State in exercising its rights under clause 38.2; and

### (**not hinder**): not do anything to hinder, disrupt or prevent the State in exercising its rights under clause 38.2.

## State obligations during step-in

1. When exercising its rights under clause 38.2, the State must use (or must procure that its nominee uses) its reasonable endeavours to carry out the relevant Project Activities in a manner which is consistent with the State Project Documents, but taking into account the State's statutory rights and the circumstances that prompted the State to exercise its rights under clause 38.2.

## Limits on State obligations during step-in

1. Project Co acknowledges and agrees that the State is not obliged to exercise its rights under clause 38.2 and, if it exercises its rights under clause 38.2 is not obliged to Cure any breach, or to overcome or mitigate the event (or any of the consequences of the event) that gave rise to the exercise of the State's rights under clause 38.2.

## Cessation of suspension or step-in rights

### (**State may cease**):The State may, at any time, cease to exercise its rights under this clause 38 upon giving [5] Business Days' notice to Project Co.

### (**State must cease**): Subject to clause 38.9(a), the State must cease to exercise its rights under clause 38.1 or clause 38.2 as the case may be, if the State has exercised its rights as a consequence of any Step-In Event under:

#### clauses 38.2(a)(i) or 38.2(a)(iii) and the Major Default or Default Termination Event (as the case may be) has been Cured;

#### clause 38.2(a)(ii) and the D&C Contractor or the Services Contractor (as the case may be) notifies the State that the default under the relevant Subcontract has been Cured; or

#### clauses 38.2(a)(iv), 38.2(a)(v) or 38.2(a)(vi) and the relevant event has ceased and its consequences have been Cured in the reasonable opinion of the State.

### (**Project Co to recommence**): If the State ceases to exercise its rights under clause 38.1 or clause 38.2 in accordance with this clause 38.9, Project Co must immediately recommence performing any obligations suspended due to the exercise by the State of those rights and the State must give reasonable assistance to Project Co to ensure that the transition is effected as smoothly as possible.

# Probity Investigations and Probity Events

## Probity Investigation

***[Note: To be amended on a project specific basis depending on nature of asset. For example, there may be a higher requirement for Prisons.]***

### (**Requirement for Probity Investigation**): Project Co agrees that the State may conduct or require Project Co to conduct an investigation into the character, integrity or honesty of:

#### a Relevant Person, a Group Member or a Consortium Member or any person who is proposed to become a Relevant Person, a Group Member or a Consortium Member;

#### a Subcontractor in respect of whom a Probity Event has occurred; or

#### a Subcontractor or a proposed Subcontractor including when notified of their proposed appointment in accordance with clause 9.2,

* 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**): Project Co must procure all relevant consents from people who will be the subject of the Probity Investigation.

### (**No appointment of Relevant Person without consent**): Project Co must not appoint a person to a position of Relevant Person unless the State has given its approval to the appointment (including following a Probity Investigation if required by the State).

### (**Relevant Person**): For the purpose only of clause 39.1(c), a reference to "Relevant Person" will be deemed to exclude paragraph (b)(ii) of the definition of Relevant Person (except in relation to a Subcontractor to whom that paragraph applies in respect of whom the State has required a Probity Investigation).

## Probity Event

### (**Notice**): Project Co must give notice to the State immediately upon becoming aware that a Probity Event has occurred or is likely to occur. The notice must, at a minimum, describe the Probity Event, when the Probity Event occurred or is likely to occur and the circumstances giving rise to the Probity Event.

### (**Meeting**): Within 10 Business Days after receipt of a notice under clause 39.2(a) or either party becoming aware of a Probity Event (including by way of a Probity Investigation undertaken in accordance with clause 39.1):

#### the State and Project Co must meet and attempt to agree a course of action to Cure or otherwise address the Probity Event (including conducting a Probity Investigation) and the timeframe in which that will occur; and

#### Project Co must comply with any agreement made under clause 39.2(b)(i) (if any) including in accordance with any timeframe agreed.

### (**Failure to agree**): If the State and Project Co fail to agree to a course of action under clause 39.2(b)(i), Project Co must take any action as required by the State to Cure 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 State.

### (**Failure by Project Co to act**): A failure by Project Co to take any action agreed in accordance with clause 39.2(b)(i) or determined in accordance with clause 39.2(c) is a Major Default.

## State costs of Probity Investigation and Probity Events

### (**State costs**): Subject to clause 39.3(b), Project Co must bear all costs incurred by the State in connection with a Probity Event or Probity Investigation.

### (**Project Co not liable**): Project Co will not be liable for the State's costs of any further Probity Investigations required by the State if an initial Probity Investigation has already been undertaken in respect of the same person.

# Commercial Opportunities

### (**Project Co's revenue**): Without limiting clause 51.4(a), Project Co may only derive revenue or other returns from:

#### Service Payments, State Contributions, Development Phase Capital Contributions, the CDPD Amount and any other amounts expressly provided for under the State Project Documents;

#### interest or other returns on amounts held by or on behalf of Project Co under this Deed or any other Project Document; and

#### other activities which are approved by the State where such approval may be subject to any conditions the State thinks fit, including a State determined share of net revenues.

### (**Obligations in relation to Project Co Associates**): Project Co must ensure that, after the date of this Deed, no Project Co Associate (excluding consultants and advisers) derives revenue or other returns in connection with the Project Assets other than revenue or returns derived:

#### directly or indirectly from payments made by Project Co; or

#### under arm's length commercial arrangements approved by the State.

1. ***[Note: To be drafted on a project specific basis. To maintain clause numbering, to be [Not Used] if no Commercial Opportunities are contemplated on a project.]***

# Structured Financing

1. ***[Note: To be used on a project specific basis where a securitised licence structure or other financing structure is contemplated. To maintain clause numbering, to be [Not Used] if no securitised licence lease or other financing structure is contemplated on a project.]***

PART I - RISK, INDEMNITIES AND INSURANCE

# Damage

## Risk of loss or damage to Project Assets

1. Unless otherwise expressly provided in this Deed, Project Co bears the risk of loss or damage to the Project Assets during the Term.
2. ***[Note: On a project specific basis, consider whether any exclusions are required, for example, equipment which is not maintained by Project Co. In this case, this may be excluded on a specific basis during the Operational Phase (unless loss or damage is caused by Project Co or any Project Co Associates).]***

## Notification of damage

### (**Notification of loss or damage**): Project Co must:

#### promptly notify the State of any loss or damage to the Project Assets of which it becomes aware (other than damage that is Minor Damage), including details of the nature and extent of such loss or damage; and

#### subject to allowing reasonable time for inspection by insurers, take immediate steps to clear any debris, make the Project Area and the Project Assets safe and do any other things necessary to ensure that Project Co complies with its obligations under clauses 44.3(d) and 44.3(e).

### (**Loss or damage election**): If the loss or damage:

#### is loss or damage to all, or substantially all, of the Project Assets (**Major Loss or Damage**), within 60 Business Days after such Major Loss or Damage (or such other period as reasonably required by the State having regard to the degree of loss or damage and the nature and extent of any repair or reinstatement required); or

#### is not:

##### Major Loss or Damage; or

##### Minor Damage,

* + 1. within 30 Business Days after such loss or damage,
  1. the State must notify Project Co that:

#### it requires Project Co to repair or reinstate the relevant Project Assets the subject of the loss or damage and whether it requires Project Co to repair or reinstate the Project Assets to:

##### the requirements of this Deed for the lost or damaged Project Assets; or

##### different design specifications and standards to those referred to in clause 42.2(b)(iii)A; or

#### it does not require Project Co to repair or reinstate the Project Assets the subject of the loss or damage, in which case clause 42.5 will apply.

### (**Minor Damage**): Project Co must promptly repair any Minor Damage.

## Repairing and reinstating

### (**Project Co to repair or reinstate**): If Project Co is required to repair or reinstate the Project Assets after loss or damage in accordance with clause 42.2, other than if this is due to Minor Damage, Project Co must promptly consult with the State and:

#### subject to clause 42.3(b), submit a plan to the State for the repair or reinstatement of the Project Assets for review in accordance with the Review Procedures (the **Repair and Reinstate Plan**);

#### promptly repair or reinstate the Project Assets in accordance with the requirements of this Deed and the Repair and Reinstate Plan;

#### ensure that the repaired or reinstated Project Assets comply with the requirements of this Deed;

#### ensure, if possible, there is minimal disruption to the use of the Project Assets;

#### to the greatest extent possible, continue to comply with its obligations under the Project Documents; and

#### other than if the repair or reinstatement is in respect of Minor Damage, keep the State fully informed of the progress of the repair or reinstating of the Project Assets.

### (**Different specification**): If the State requires all or any part of the Project Assets to be repaired or reinstated to different specifications or standards to the required design specifications and standards of the lost or damaged Project Assets (as at the date on which the loss or damage occurred) in accordance with clause 42.2(b)(iii)B, the State must issue a Modification Request for that part of the Project Assets to be repaired or reinstated to the different specifications or standards and any change to the Service Requirements or Services as a consequence of the repair or reinstatement to the different specifications or standards.

### (**Modification Proposal not accepted**): Where the State issues a Modification Request to Project Co in accordance with clause 42.3(b) and the State subsequently elects not to proceed with the Modification in accordance with clauses 35.5(c), when making the election not to proceed the State must elect to either:

#### require Project Co to repair or reinstate the Project Assets to the requirements of this Deed, in which case clause 42.3(a) and clause 42.4 will apply; or

#### require Project Co not to repair or reinstate the Project Assets, in which case clause 42.5 will apply.

### (**Performance Failure**): Where the loss or damage to the Project Assets is or gives rise to a Performance Failure or will do so if Project Co does not take the action it is required to undertake in accordance with the Services Specification, nothing in this clause 42.3 or clause 42.4 limits Project Co's obligations or liabilities as set out in the Services Specification, including any obligation to respond to or repair the loss or damage and reinstate the Project Assets in accordance with a specified period of time as set out in the Services Specification and any liability for Abatement as a consequence of a Performance Failure.

1. ***[Note: Project Teams should ensure that the repair and rectification requirements in the PSDR for reactive maintenance are consistent with the approach in clause 42.2 and clause 42.3. See Guidance Notes for further detail.]***

## Cost and risk of repairing or reinstating

1. Subject to clauses 42.5 and 42.7 and any liability of the State for payment of any insurance excess or deductibles which is set out in clause 44.12(b), Project Co bears the risk and cost of the repairing or reinstating of all loss or damage to the Project Assets unless:

### (**Day 1 Uninsurable Risk, Uninsurable Risk or State Insurance Breach**): the loss or damage to the Project Assets was caused by a Day 1 Uninsurable Risk or an Uninsurable Risk or to the extent that Project Co is unable to recover the cost of repairing or reinstating the Project Assets under any of the Insurances under which Project Co would have otherwise been entitled to recover, as a result of a State Insurance Breach, in which case:

#### the repair or reinstatement of the Project Assets and the impact of this (if any) on the Project Activities will constitute a Modification in respect of which Project Co may issue a Modification Proposal in accordance with clause 35.2(a)(v) and Project Co's or the State's entitlements will be determined in accordance with clause 35 as if the relevant loss or damage was a State Initiated Modification; and

#### the State must also indemnify Project Co for all other Liabilities incurred by Project Co as a consequence of the loss or damage to the extent that they are not covered by the Change Compensation Principles,

* 1. provided that the amount payable by the State under this clause 42.4(a), together with the cost of preparing any Modification Proposal referred to in clause 42.4(a)(i), must not exceed the amount that is equal to the aggregate of:

#### where the loss or damage is caused by a Day 1 Uninsurable Risk or an Uninsurable Risk only, the insurance proceeds that would have been payable under the relevant Insurances had the event been insurable under those Insurances or had the Insurances responded; and

#### if clause 42.4(b) also applies, any amount payable by the State to Project Co under clause 42.4(b),

##### less the aggregate of:

#### any component of the insurance proceeds that would have been payable under the relevant Insurances (had the event been insurable under those Insurances or had the Insurances responded), which is attributable to the loss of equity return to the providers of the Equity Funding or loss of profit to a Group Member; and

#### if clause 42.4(b) also applies, any amount payable by Project Co to the State under clause 42.4(b); or

### (**State Initiated Modification for different design specification**): the State issues a Modification Order in accordance with clause 35.5(c)(i) for the repair or reinstatement in respect of a Modification Request issued by the State in accordance with clause 42.3(b), in which case, Project Co's or the State's entitlement for that part of the Project Asset that is required to be repaired or reinstated to the different design specifications or standards will be the difference between:

#### the cost of repair or reinstatement to the different design specifications or standards (taking into account any Savings to Project Co as a result of not repairing or rebuilding to the then current specifications and standards); and

#### the cost of repair or reinstatement to the requirements of this Deed,

* 1. and such amount and any change to the Service Requirements or Services as a consequence of the repair or reinstatement to the different design specifications or standards will be calculated and determined in accordance with clause 35 and the Change Compensation Principles as if the relevant loss or damage was a State Initiated Modification.

## Consequences of not repairing or reinstating

### (**Termination if Major Loss or Damage**): If the loss or damage is Major Loss or Damage and the State notifies Project Co not to repair or reinstate the Project Assets under clause 42.2(b)(iv) in respect of that Major Loss or Damage and the Major Loss or Damage was caused by:

#### a:

##### Major Default;

##### breach of a Project Document by Project Co or any Project Co Associate; or

##### a Day 1 Uninsurable Risk or an Uninsurable Risk, which was caused by a Major Default or a Project Co Act or Omission,

##### this will be deemed to be a Default Termination Event and the State must issue a notice to terminate this Deed under clause 46.4(a);

#### a Project Co Act or Omission which is not captured by clause 42.5(a)(i), a Force Majeure Event or an Uninsurable Risk, (which is not caused by a Major Default or a Project Co Act or Omission), the State must issue a notice to terminate this Deed under clause 46.3 as if for a Force Majeure Termination Event; or

#### any other event, the State must issue a notice to terminate this Deed for convenience under clause 46.2.

### (**Deemed State Initiated Modification**): If the loss or damage is not Major Loss or Damage or Minor Damage and the State notifies Project Co under clause 42.2(b)(iv) that it does not require Project Co to repair or reinstate any part of the Project Assets the subject of any loss or damage, the State must either:

#### omit that part of the Project Assets from the Project as a Modification in accordance with clause 35; or

#### take such other action as it sees fit, and to the extent that such action gives rise to a Modification, subject to clause 42.4, Project Co may issue a Modification Proposal in accordance with clause 35.2(a)(vi) and Project Co's and the State's entitlements will be determined in accordance with clause 35 and the Change Compensation Principles as if the relevant act or omission was a State Initiated Modification.

## Damage to third party property

### (**Project Co interference**): Other than in accordance with its rights or obligations under this Deed, Project Co must not interfere with, obstruct, damage or destroy any property on, under, over, in or in the vicinity of the Project Area.

### (**Project Co to rectify and compensate**): Subject to the terms of any Direct Interface Deed, if Project Co or any Project Co Associate interferes with, obstructs, damages or destroys any property (other than the Project Assets) on, under, over, in or in the vicinity of the Project Area other than in accordance with its obligations under this Deed, Project Co must:

#### 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 State may have to compensate the affected person.

## Minor damage

1. If any loss or damage to the Project Assets for which the State would otherwise be liable to pay Project Co in accordance with clause 42.4(a) is of such a minor nature (when considered item by item and in aggregate) that it can be remedied by Project Co:

### (**usual resources**): through the use of its site-based resources during normal working hours; and

### (**no adverse effect**): without adversely affecting the ability of Project Co to carry out the Project Activities,

1. then Project Co must bear the cost of rectifying such loss or damage notwithstanding clause 42.4(a).

# Indemnities and limits of liabilities

## General indemnity

1. Project Co indemnifies the State, each State Associate and each Interface Party (other than any Direct Interface Party) from and against any Claim or Liability suffered or incurred by the State, the State Associate or the Interface Party (other than a Direct Interface Party), 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 Project Assets or other property belonging to the State, a State Associate or a third party (other than the cost of repairing or reinstating the Project Assets, which is addressed in clause 42); or

### (**injury, illness or death**): any injury to, illness or death of, any person,

1. in connection with any act or omission of Project Co or any Project Co Associate in connection with the Project.

## Indemnity for Project Co breach

1. Subject to clauses 26.3(a), 34.2(b) and 34.5(b), Project Co indemnifies the State and each State Associate from and against any Claim or Liability suffered or incurred by the State or any State Associate, respectively, in connection with any breach by Project Co or any Project Co Associate of any State Project Document.
2. ***[Note: Sole remedy clauses to be checked on a project specific basis.]***

## Project Information indemnity and release

### (**Project Information**): Project Co indemnifies the State, each State Associate and each Interface Party (other than any Direct Interface Party) from and against any Claim or Liability suffered or incurred by the State, any State Associate or any Interface Party (other than a Direct Interface Party), respectively, in connection with the provision of, or the purported reliance upon, or use of, the Project Information by Project Co, a Project Co Associate or any other person to whom the Project Information is disclosed by Project Co, a Project Co Associate or any person on Project Co's or a Project Co Associate's behalf.

### (**Failure to provide information**): Save where the State, a State Associate or an Interface Party (other than any Direct Interface Party), has an express obligation under a State Project Document to provide or procure the provision of information, data or material relating to the Project to Project Co or a Project Co Associate, Project Co:

#### releases the State, the State Associates and each such Interface Party from any Claim made by Project Co; and

#### indemnifies the State, each State Associate and each such Interface Party from and against any Claim made by any Project Co Associate,

* 1. in connection with any failure by the State, the State Associate or the Interface Party to make available to Project Co any information, data or material relating to the Project.

## Utility and Contamination indemnities

### (**Utility indemnity**): Project Co indemnifies the State and each State 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 Project Co Act or Omission.

### (**Contamination indemnity**): Project Co indemnifies the State and each State 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 Project Co or any Project Co Associate; or

#### where the Contamination is not caused or contributed to by Project Co or any Project Co Associate, but is emanating or migrating from the Project Area and Project Co or a Project Co Associate has caused or contributed to such Contamination emanating or migrating from the Project Area,

* 1. whether or not Project Co is obliged to Remediate that Contamination in accordance with clause 11.6(d).

## Intellectual Property and Moral Rights indemnity

### (**Definitions**): For the purposes of this clause 43.5:

#### those indemnified are the State, each State Associate and any third party duly authorised or licensed by the State to exercise any Intellectual Property Rights assigned, granted or licensed to the State under this Deed, any State Associate or any such third party (each an **Indemnified IP Person**); and

#### unless otherwise expressly defined, expressions used in this clause 43.5 have the meanings given to them in the Intellectual Property Schedule.

### (**Indemnity**): Project Co 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 Project Co or a Project Co Associate in the course of, or incidental to, performing any obligations under the Project Documents other than to the extent such Intellectual Property Rights or Moral Rights (as applicable) comprise the State IP; and

##### by an Indemnified IP Person using, exercising or enjoying:

###### the Project Co Material, the Project Assets or the Returned Works as delivered by or on behalf of Project Co to the State or as amended or changed from time to time (but not to the extent that any Claim or Liability arises from any amendment or change made by the State, or third parties engaged by the State, which is not as directed or approved by Project Co during the Term) in connection with this Deed; or

###### 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 the Intellectual Property Schedule; 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 Project Activities being unavailable as a result of or in connection with Project Co not fulfilling its obligations under section 2.12 of the Intellectual Property Schedule, to obtain the licenses referred to in section 2.12 of the Intellectual Property Schedule.

### (**Moral Rights indemnity**): Project Co indemnifies each Indemnified IP Person against all Claims which arise in connection with an infringement of Moral Rights resulting from the use, operation or modification of the Project Activities or the Project Assets.

## Limits on Project Co Liability to indemnify

1. Project Co's Liability to indemnify the State, each State Associate, each Interface Party (other than any Direct Interface Party) and each other Indemnified IP Person under the State Project Documents will be reduced to the extent that any such Liability is caused or contributed to by:

### (**breach**): any breach by the State of any State Project Document;

### (**certain** **acts or omissions**): any fraudulent, negligent, reckless, unlawful or malicious act or omission of:

#### the State, any State Associate or an Interface Party (other than any Direct Interface Party); or

#### in respect of the indemnity provided by Project Co under clause 43.5 only, any other Indemnified IP Person;

### (**events**): without limiting clause 43.6(a) or clause 43.6(b), any:

#### Extension Event that occurs during the Development Phase; or

#### Intervening Event that occurs during the Operational Phase;

### (**compliance with directions**): Project Co complying strictly with a direction from the State or the State Representative (except to the extent that the direction is a direction to comply with a State Project Document, is permitted under a State Project Document or was given as a result of a Project Co Act or Omission), provided that prior to complying with the direction:

#### Project Co notified the State or the State Representative (as the case may be) that, in its opinion, compliance with the direction will directly result in a Liability that would otherwise be the subject of an indemnity by Project Co to the State, any State Associate or any Interface Party (other than any Direct Interface Party); and

#### notwithstanding having received the notification referred to in clause 43.6(d)(i), the State or the State Representative (as the case may be) confirms that Project Co should comply or continue to comply with the direction; or

### (**mitigation**): a failure by the State, any State Associate, any Interface Party (other than any Direct Interface Party) 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 Project Co or any Project Co Associate is entitled to recover the amount for which they are liable to indemnify the State, any State Associate, any Interface Party (other than any Direct Interface Party) 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 43.7(c) and clause 43.7(d), if a Claim is made by a third party against the State, any State Associate, or any Interface Party (other than any Direct Interface Party) (or in respect of the indemnity provided by Project Co under clause 43.5 only, any other Indemnified IP Person) in respect of which and to the extent for which Project Co is required to indemnify the State, the State Associates, the Interface Party (other than any Direct Interface Party) or other Indemnified IP Person (as applicable) under this Deed, the State must or must procure that the relevant State Associate, Interface Party or other Indemnified IP Person (as applicable), as soon as reasonably practicable:

#### notifies Project Co of the alleged Claim;

#### subject to clause 43.7(c), gives Project Co the option to conduct the defence of the Claim; and

#### provides Project Co (at Project Co's expense) with reasonable assistance in negotiating, defending or otherwise taking action or proceedings in respect of that Claim, if Project Co chooses to do so.

### (**Settling Claims**): The State must not and must procure that any relevant State Associate, Interface Party (other than any Direct Interface Party) or other Indemnified IP Person (as applicable) does not settle a Claim:

#### of the type referred to in clause 43.7(a) without Project Co’s involvement in and agreement to (acting reasonably) any such settlement; and

#### managed by the State under clauses 43.7(c) or 43.7(d), without giving Project Co prior notice and consulting with Project Co in good faith before agreeing to any compromise or settlement of such a Claim.

### (**Urgent proceedings**): If:

#### interlocutory proceedings are commenced against the State, any State Associate, any Interface Party (other than any Direct Interface Party) or any other Indemnified IP Person (as applicable) on an urgent basis; and

#### the State reasonably considers that there is insufficient time to notify Project Co and for Project Co to notify its requirements under clause 43.7(a)(ii) or to commence the defence of such proceedings on behalf of the State, State Associate, Interface Party (other than any Direct Interface Party) or other Indemnified IP Person (as applicable),

* 1. then:

#### unless the State and Project Co otherwise agree, the State, State Associate, Interface Party (other than any Direct Interface Party) or other Indemnified IP Person (as applicable) will initially defend such proceedings; and

#### as soon as reasonably practicable after commencement of the proceedings, the State must, or must procure that the State Associate, Interface Party (other than any Direct Interface Party) or other Indemnified IP Person (as applicable), gives Project Co the option to conduct the defence of such proceedings, and if Project Co chooses to do so, clause 43.7(a)(iii) will then apply.

### (**Other matters**): Clause 43.7(a) does not apply to any Claim which:

#### the State considers should be conducted by the State, a State Associate, an Interface Party 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 Project Activities,

* 1. and the State, to the extent reasonably practicable, consults and procures that any relevant State Associate, Interface Party or other Indemnified IP Person (as applicable) consults in good faith with Project Co with respect to such Claim.

### (**Management of Claims by Project Co**): In respect of a Claim managed by Project Co under clause 43.7(a), Project Co must:

#### use reasonable endeavours to give the State prior notice before agreeing to any compromise or settlement of such a Claim; and

#### consult in good faith with the State prior to agreeing to any such compromise or settlement.

## Continuing obligation

### (**Indemnity continues**): Each indemnity in the State 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 State 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 State Project Documents.

## Responsibilities as if owner

1. Project Co acknowledges and agrees that it has responsibilities to third parties in connection with persons, property and other aspects of the Project under the other provisions of this Deed which may be the same as it would have if it held the freehold title to the Project Area.

## Limitation on State Liability to Project Co for Relief Events

### (**Failure to mitigate**): Notwithstanding any other provision of this Deed, the State's Liability to Project Co in connection with any Relief Event will be reduced to the extent that:

#### the Relief Event or the consequences of the Relief Event are caused or contributed to by a Project Co Act or Omission; or

#### Project Co, or any Project Co Associate, fails to take all reasonable steps which a prudent, competent and experienced contractor in the circumstances of Project Co or the relevant Project Co Associate exercising Best Industry Practices would have taken to mitigate, minimise or avoid the effects, consequences or duration of the Relief Event.

### (**Insurance**): Other than payment of any excess or deductible for which the State is liable in accordance with clause 44.12(b), Project Co will not be entitled to Claim compensation from the State for a Relief Event to the extent that the loss for which compensation is claimed is required to be covered by the Insurances as part of an Insured Risk, unless Project Co has demonstrated that the compensation is not covered by the proceeds of such Insurance due to a State Insurance Breach.

## Indirect or Consequential Loss

### (**No Liability of the State**): Subject only to clause 43.11(b), but otherwise despite anything to the contrary in this Deed, neither the State nor any State Associate has any Liability to Project Co or any Project Co Associate for any Indirect or Consequential Loss suffered or incurred by Project Co or any Project Co Associate as a result of any breach of a State Project Document by the State or any State Associate.

### (**Exceptions to no State Liability**): The exclusion of Liability of the State and any State Associate under clause 43.11(a) does not apply to:

#### 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 State Project Document,

* + 1. on the part of the State or any State 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 or Day 1 Uninsurable Risk for which the State Project Documents require the State to indemnify Project Co pursuant to this Deed;

#### Liability which the State, each State Associate and each 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 State Insurance Breach; or

#### any amounts payable under and calculated in accordance with:

##### clause 33.3(a), 34.5 or 34.6;

##### the Change Compensation Principles;

##### the Payment Schedule; or

##### the Termination Payments Schedule.

### (**No Liability of Project Co**): Subject to clause 43.11(d), but otherwise despite anything to the contrary in this Deed, neither Project Co nor any Project Co Associate has any Liability to the State or any State Associate (or in respect of the indemnity provided by Project Co under clause 43.5 only, any other Indemnified IP Person) or to any Interface Party (other than any Direct Interface Party) for any Indirect or Consequential Loss.

### (**Exceptions to no Project Co Liability**): The exclusion of Liability of Project Co and any Project Co Associate under clause 43.11(c) does not apply to:

#### the extent that the parties cannot limit or exclude any Liability at Law;

#### the extent to which Project Co or a Project Co 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 Project Co 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 Project Co or any Project Co 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 any reduction of any Service Payment as a consequence of the application of the Payment Schedule in accordance with this Deed;

#### Liability expressly imposed on Project Co or any Project Co Associate under any of the Project Documents to pay the State any of the following amounts:

##### any State Share of Refinancing Gain under clause 37.4;

##### any interest under clause 34.5;

##### any amount expressly payable by Project Co to the State each State Associate or an Interface Party under clause 43.1(a) in respect of property belonging to a State 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 43.8(c));

##### any amounts payable under clauses 34.6, 37.5 or 52.8;

##### any amounts payable under and calculated in accordance with:

###### the Payment Schedule;

###### the Change Compensation Principles; or

###### the Termination Payments Schedule;

#### Liability imposed on Project Co under clause 35.12 or in accordance with the Change Compensation Principles to pay or allow the State any share of Savings;

#### Liability in connection with abandonment of the whole or a substantial part of the Development Activities or Services by Project Co or any Project Co Associate; and

#### Liability of the State to [##]. ***[Note: This item may be used if there are any specific third party liabilities (that are in addition to those set out at clause 43.11(d)(v)), including economic loss, that the State may have as a consequence of Project Co's breaches of this Deed. See Guidance Notes for further detail as to when this may be used.]***

## Benefits held on trust

### (**Benefit of indemnities**): The State holds on trust for each State Associate, each Interface Party (other than any Direct Interface Party) and each other Indemnified IP Person, the benefit of:

#### each indemnity, release, limitation of Liability and exclusion of Liability given by Project Co under this Deed in favour of the relevant State Associate, Interface Party or 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 State, a State Associate, any Interface Party (other than any Direct Interface Party) or any other Indemnified IP Person.

### (**Project Co acknowledgement**): Project Co acknowledges the existence of such trusts and consents to the State exercising rights in relation to, or otherwise enforcing such indemnities, releases, limitations and rights on behalf of the State Associates, any Interface Party (other than any Direct Interface Party) and each other Indemnified IP Person.

### (**Amendment**): The parties agree that the State does not require the consent of any State Associate, any Interface Party or any other Indemnified IP Person to amend or waive any provision of any State Project Document.

# Insurance

## Development Phase Insurances

1. Project Co must procure and maintain, or cause to be procured and maintained, for the duration of the Development Phase and for any extended period of cover applicable to a Development Phase Insurance as detailed in the Insurance Schedule:

### (**Development Phase Insurances**): the Development Phase 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 Development Activities.

1. ***[Note: Insurance Schedule to require Construction All Risks Insurance to be held until Final Acceptance.]***

## Operational Phase Insurances

1. Without limiting its obligations under clause 44.7, from the Operational Commencement Date, and for any extended period of cover applicable to an Operational Phase Insurance as detailed in the Insurance Schedule, Project Co must procure and maintain, or cause to be procured and maintained:

### (**Operational Phase Insurances**): the Operational Phase Insurances; and

### (**additional insurances**): any additional insurances which a prudent operator and services provider would procure and maintain when carrying out activities of a similar nature to the Services.

## General insurance requirements

1. Project Co 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 State copies of receipts for payment of premiums if and when requested by the State;

### (**no alteration**): not alter, extend, discontinue or cancel any Insurance, or allow any Insurance to lapse, if this would result in the relevant Insurance not meeting the requirements of this Deed, without the State's approval;

### (**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 State recovery**): do everything reasonably required by the State or a State Associate to whom the benefit of such Insurance may extend, to enable the State or a State Associate (as the case may be) to claim, pursue and recover money due under that Insurance.

## Terms of Insurances

1. Project Co 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 State, such acceptance not to be unreasonably withheld; and

#### to the extent applicable, are to the effect that the relevant insurer:

##### does not require the State, any State Associate, any relevant Interface Party or any Indemnified IP Person to exhaust the indemnities given by Project Co or any Project Co Associate to them under any State Project Document, before the insurer will consider, accept or pay proceeds in respect of any claim under the Insurance;

##### 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 contract of insurance had been entered into with each of the Insureds, without increasing the overall limit of indemnity under the relevant Insurance; and

##### 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 Project Assets will be made during the period of insurance, except under the circumstances and to the extent permitted by the *Insurance Contracts Act* *1984* (Cth) or other applicable Law and with not less than 20 Business Days' prior notice to the State and Project Co;

### (**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 State's written approval.

## Insurances primary

### (**Enforceability of rights under indemnities**): The State is not obliged to make a claim or institute proceedings against any insurer under the Insurances before enforcing any of its rights or remedies under the indemnities given or referred to in this Deed or generally.

### (**Project Co's obligations not affected**): Project Co is not relieved from and remains fully responsible for its obligations under this Deed regardless of whether the Insurances 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. Project Co must:

### (**notification**): promptly notify the State 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 State informed of subsequent developments concerning the occurrence notified under clause 44.6(a);

### (**pursue claims**): subject to clause 44.6(d), diligently pursue any claim which it has under any Insurance which has arisen in connection with the Project and ensure that any Project Co Associate which has any such claim does likewise; and

### (**State consent**): not compromise, settle, prosecute or enforce any claim of the type referred to under clause 44.6(a) under any Insurances without the State's written consent (which must not be unreasonably withheld or delayed).

## Operational Phase Insurances

### (**Copies of Operational Phase Insurances**): No less than 30 Business Days prior to:

#### the Operational Commencement Date; and

#### the date on which any Operational Phase Insurance is due to be renewed during the Operational Phase (as detailed in the Insurance Schedule),

* 1. Project Co must, if it is able to do so, provide the State with copies of the proposed Operational Phase Insurances for the State to review in accordance with the Review Procedures.

### (**Project Co to make terms available**): If Project Co is unable to provide copies of the Operational Phase Insurances to the State under clause 44.7(a), it must:

#### make the terms of such Insurances available to the Victorian Managed Insurance Authority, the State's insurance broker and the State's lawyers to review confidentially on behalf of the State, in accordance with the Review Procedures; and

#### provide the evidence in respect of such Insurances as required under clause 44.8.

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

#### the terms and requirements specified in this Deed for the Operational Phase Insurances are a reflection of the insurance market at Financial Close;

#### if, prior to Commercial Acceptance or throughout the Operational Phase, either party reasonably considers that the terms or requirements relating to an Operational Phase Insurance set out in the Insurance Schedule no longer represent the terms or requirements of such insurance that an operator of assets similar to the Project Assets or services provider providing services similar to the Services, in each case exercising Best Industry Practices, would procure and maintain, then that party may send a written notice to the other party advising it of the same and then the State and Project Co (both acting reasonably) must promptly confer in good faith with a view to reaching agreement on the replacement terms or requirements (as applicable); and

#### if the parties do not reach agreement on any replacement terms or requirements under clause 44.7(c)(ii), within 5 Business Days after the date on which a written notice was first given under that clause, either party may refer the matter to expert determination in accordance with clause 48.2.

## Evidence of Insurances

1. As often as reasonably requested by the State, Project Co must give the State evidence satisfactory to the State that the Insurances have been procured and continue to be maintained in accordance with this Deed, including:

### (**policies**): copies of each Insurance policy, or if Project Co is unable to provide a copy of an Insurance policy, Project Co must make such Insurance policy available to the Victorian Managed Insurance Authority. the State's insurance broker and the State's lawyers to review confidentially on behalf of the State, 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 State may reasonably require,

1. to enable the State to satisfy itself that Project Co is complying with all of the insurance requirements of the Project under this Deed.

## State may effect Insurances

### (**State may effect Insurances**): The State may procure or maintain the relevant Insurances and pay the relevant premiums in connection with such Insurances:

#### if Project Co fails to provide evidence satisfactory to the State (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 44.8;

#### in the event of any default by Project Co or a Project Co Associate in procuring or maintaining Insurances in accordance with this clause 44; or

#### if any Insurance that Project Co is obliged to effect and maintain under this Deed is terminated and Project Co has failed to effect and maintain replacement Insurance for that Insurance under this Deed on or before the date of that termination.

### (**Costs to be recoverable from Project Co**): Without limiting any other remedies of the State under this Deed or at Law, the costs reasonably incurred by the State in taking such action as may reasonably be necessary in accordance with this clause 44.9 will be a debt due and payable by Project Co to the State.

## Insurance Proceeds Account

### (**Establish account**): Project Co must:

#### establish the Insurance Proceeds Account on or before Financial Close;

#### maintain that account in the joint names of Project Co and the State with a financial institution nominated by Project Co and approved by the State (such approval not to be unreasonably withheld or delayed) or with a financial institution that is a party to, or whose trustee or agent is a party to, the Finance Direct Deed;

#### give details of that account to the State on or before Financial Close;

#### notify the financial institution referred to in clause 44.10(a)(ii) of the charge over the Insurance Proceeds Account in accordance with the State Security and procure acknowledgement of the notice from the financial institution and provide a copy of that to the State in each case on or before Financial Close; and

#### procure the agreement of the financial institution referred to in clause 44.10(a)(ii) not to exercise any right of set-off or counterclaim in relation to the Insurance Proceeds Account on or before Financial Close.

### (**Deposit insurance proceeds**): All insurance proceeds received from insurers by Project Co or the State under the Contract Works Insurance (other than proceeds of the delay in start-up section of the policy), the Industrial Special Risks Insurance (other than proceeds of the business interruption section of the policy) and the Marine Transit Insurance (other than proceeds of the delay in start-up section of the policy) must be deposited by the recipient into the Insurance Proceeds Account.

### (**Application of amounts**): Subject to clause 44.10(e), amounts in the Insurance Proceeds Account may only be applied towards the repair or reinstatement of the Project Assets or as part of any Termination Payment.

### (**Records**): If amounts in the Insurance Proceeds Account are used for repair or reinstatement of the Project Assets, Project Co must give the State records of expenditure from the Insurance Proceeds Account within 20 Business Days after such expenditure.

### (**Surplus funds**): Any funds remaining in the Insurance Proceeds Account after application in connection with repair or reinstatement of the Project Assets will, subject to any right of set-off the State may have against Project Co under the State Project Documents, be payable to Project Co.

## Proportionate liability

### (**Reduce or exclude insurance cover**): Subject to clause 44.11(b), Project Co must ensure that no Insurance reduces or excludes the insurance cover in connection with liabilities governed by Part IVAA of the *Wrongs Act 1958* (Vic) or any corresponding Legislation of another Australian jurisdiction, by reason of the manner in which that Legislation operates or does not operate, as the case may be, in light of any of the provisions of this Deed and the obligations undertaken by Project Co in connection with it.

### (**Non-specific Project Insurance**): To the extent that the relevant Insurance is not specific to the Project, Project Co is only required to use its reasonable endeavours to procure Insurance on the terms referred to in clause 44.11(a).

## Liability for deductibles and excesses

### (**Project Co liability**): Subject to clause 44.12(b), Project Co must pay or bear all amounts by way of deductibles and excesses which apply to a claim made under any Insurances.

### (**State liability**): The State must pay all amounts by way of deductibles and excesses which apply to a claim made under any Insurances where the event that is insured in respect of which the claim is made on the Insurances is:

#### a Compensable Extension Event or a Compensable Intervening Event;

#### to the extent not covered by clause 44.12(b)(i), caused by a breach of a State Project Document by the State or a State Associate; or

#### to the extent not covered by clause 44.12(b)(i) or clause 44.12(b)(ii), death, personal injury or loss of or damage to property (including the Project Assets), to the extent that the Liability of Project Co or any Project Co Associate is a consequence of a fraudulent, reckless, unlawful, negligent or malicious act or omission of the State or any State Associate.

## Uninsurable Risks

### (**Risk likely to become Uninsurable Risk**): If any risk becomes or is likely to become an Uninsurable Risk, then:

#### Project Co must notify the State within 5 Business Days after becoming aware that the risk has become or is likely during the Term to become an Uninsurable Risk;

#### the State must meet with Project Co within 5 Business Days after receipt of Project Co's notice to discuss the risk, including whether in fact the risk is an Uninsurable Risk; and

#### if, within 5 Business Days after receipt of Project Co's notice, the parties have not reached agreement on whether the risk is an Uninsurable Risk, either party may refer the matter to expert determination in accordance with clause 48.2.

### (**Parties to discuss management of an Uninsurable Risk**): If the parties agree that a risk is an Uninsurable Risk (or in the absence of agreement, it is determined under clause 49 that a risk is an Uninsurable Risk), the parties must meet further to discuss the means by which the risk should be managed.

### (**Uninsurable Risk**): If any risk is agreed or determined to be an Uninsurable Risk in accordance with clause 44.13(a) or clause 49, unless the parties agree otherwise in accordance with clause 44.13(b), within 10 Business Days of either party notifying the other of the further meeting required in accordance with clause 44.13(b), each Service Payment will be adjusted by deducting the amount (if any) corresponding to the proportion of the total insurance premium (inclusive of brokerage and all taxes, levies and other statutory charges) for any Insurance that was payable by Project Co for the insurance of that risk before it became an Uninsurable Risk (as demonstrated by Project Co to the State's satisfaction (acting reasonably)).

### (**No longer an Uninsurable Risk**): If the risk ceases to be an Uninsurable Risk and Project Co takes out insurance to cover the risk in accordance with clause 44.14, then the Service Payment will be increased by the amount corresponding to the proportion of the total insurance premium (inclusive of brokerage and all taxes, levies and other statutory charges) payable for insuring the risk, provided however that the increase must not include any increase to the insurance premium to the extent the increase has been caused or contributed to by Project Co or any Project Co Associates (as demonstrated by Project Co to the State's satisfaction (acting reasonably)).

## Review of insurance markets

### (**Review and testing of market**): Subject to clause 44.14(d), Project Co must review and test the insurance market vigilantly (and during the Operational Phase, no less than once every 12 Months) to ascertain whether a Day 1 Uninsurable Risk or Uninsurable Risk has become an Insurable Risk, and determine whether, and if so what, insurance terms as to premium, deductible and coverage are available in connection with that risk from Reputable Insurers.

### (**Project Co to effect Insurance**): If upon such review it is found that a Day 1 Uninsurable Risk or an Uninsurable Risk is an Insurable Risk, then Project Co:

#### must promptly notify the State of that risk and include details of insurance terms as to premium, deductible and coverage which Project Co has determined are available in connection with that risk from Reputable Insurers;

#### and the State must meet to discuss the effect of that Day 1 Uninsurable Risk or Uninsurable Risk being an Insurable Risk; and

#### unless the State requires otherwise, must procure the relevant Insurance in connection with that risk in accordance with the other provisions of this clause 44 and the Insurance Schedule.

### (**Insurance premiums**): Unless the State and Project Co agree otherwise within 10 Business Days after the State receives Project Co’s notice under clause 44.14(b)(i), of the Insurable Risk then:

#### during the period from Financial Close to the Operational Commencement Date, the State must pay Project Co:

##### if the risk is not insurable under an existing Insurance, an amount equal to the premium that is payable by Project Co for insurance of such a risk (when incepted and at each renewal date); or

##### if the risk is insurable under an existing Insurance, an amount equal to the increase in the premium of the existing Insurance that is required to cover insurance of such a risk,

* + 1. within 10 Business Days after Project Co providing evidence to the State’s reasonable satisfaction that it has procured such insurance or amendment to the existing insurance and the amount of the additional or increased premium (as applicable); and

#### after the Operational Commencement Date, the Service Payment will be increased to reflect the additional or increased premium (as applicable) payable by Project Co for insurance to cover the risk.

### (**Terrorist incidents**): If a Day 1 Uninsurable Risk is a terrorist act occurring on the Project Area then, unless the Insurance in question is one under which coverage is provided for a declared terrorist incident by operation of the *Terrorism Insurance Act 2003* (Cth)), Project Co will not be required to review and test the insurance market under clause 44.14(a) in respect of that risk, unless expressly requested by the State to do so.

## Benchmarking of Insurance Component of Service Payment

### (**Consultation**): Six Months prior to each Insurance Review Date, Project Co must consult with the State in relation to the amount of each sub-limit for the Industrial Special Risks Insurance referred to in Part B, section (a) of the Insurance Schedule and the State and Project Co must attempt to agree on a revised amount of each sub-limit prior to Project Co obtaining quotations in accordance with clause 44.15(b).

### (**Quotations**): Three Months prior to each Insurance Review Date, Project Co must obtain separate quotations from three, where possible and otherwise at least two Reputable Insurers for annual total premium costs (including separate identification of the fee component payable to the insurance broker) of obtaining the Industrial Special Risks Insurance and [Public and Products Liability Insurance] required by the Insurance Schedule for the remainder of the Operational Phase (**Benchmarked Insurances**). ***[Note: Name of relevant public liability insurance to be inserted on a project specific basis.]***

### (**Selection of quotation**): The State must select one quotation for each Benchmarked Insurance from the quotations obtained by Project Co in accordance with clause 44.15(a), which quotation will form the basis of the benchmarking of the Insurance Component for the upcoming Insurance Review Date (**Future** **Insurance Component**).

### (**Adjustment**): On each Insurance Review Date, if the Future Insurance Component of the Benchmarked Insurances is greater or less than the Insurance Component (CPI Indexed) of the Service Payment current at that time (**Existing Insurance Component**), the Existing Insurance Component will be adjusted accordingly, save that in undertaking any such adjustment, any increase in the cost of obtaining the Benchmarked Insurance which is directly attributable to Project Co's or any of Project Co Associates' performance of the Services will be disregarded.

PART J - DEFAULT, TERMINATION AND END OF TERM OBLIGATIONS

# 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 45, be deemed to be capable of Cure notwithstanding that they may not, as a matter of fact, be capable of remedy or cure:

### [not used];

### (**late Commercial Acceptance**): paragraph (b) (late Commercial Acceptance);

### (**late Final Acceptance**): paragraph (c) (late Final Acceptance);

### (**Local Jobs First Requirements**): paragraph (p) (Default not Cured), in respect of a breach of the Local Jobs First Requirements or the LIDP;

### (**Social Procurement Framework**): paragraph (p) Default not Cured), in respect of a breach of the Social Procurement Commitments, the Social Procurement Commitment Schedule or a failure by Project Co to meet the Social Procurement Target; and

### (**Fair Jobs Code**): paragraph (p) (Default not Cured), in respect of a breach of section 3 (*Fair Jobs Code*) of Schedule 21 *(Relevant State Policies Schedule)*.

## Notice of Default

### (**Default Notice**): If the State considers that a Default has occurred, the State Representative may give Project Co a notice in writing:

#### stating that a Default has occurred;

#### identifying and providing details of the Default; and

#### requiring Project Co to Cure the Default where it is capable of Cure, or comply with any reasonable requirements of the State where the Default is not capable of Cure, within 20 Business Days (or such longer period as is stated in the notice) of Project Co receiving that notice,

* 1. (a **Default Notice**).

### (**Default will become Major Default**): If Project Co:

#### fails to Cure the Default; or

#### if the Default is not capable of Cure, fails to comply with the reasonable requirements of the State,

* 1. in accordance with the Default Notice, the Default will become a Major Default.

## Notice of Major Default

### (**Project Co's obligations**): Project Co must:

#### promptly notify the State 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 Project Co notifies the State of a Major Default under clause 45.3(a) or if the State considers that a Major Default has occurred, the State may give Project Co a notice:

#### 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 Project Co must Cure the Major Default (which, subject to clause 45.4(h), must allow for a reasonable period of time to Cure the Major Default in the circumstances);

##### is deemed capable of Cure under clause 45.1, stating any reasonable requirements of the State to overcome the consequences of the Major Default (which will include the applicable requirements under clause 45.4(b)) and a date by which Project Co must comply with those requirements (which, subject to clause 45.4(h), must allow for a reasonable period of time to comply with the State's requirements in the circumstances);

##### is not capable of Cure, stating any reasonable requirements of the State to overcome the consequences of, or compensate the State for, the Major Default and a date by which Project Co must comply with those requirements (which, subject to clause 45.4(h), must allow for a reasonable period of time to comply with the State's requirements in the circumstances); or

##### is not capable of Cure and the State has formed the view (acting reasonably) that there are no reasonable requirements that can be met by Project Co to overcome the consequences of, or compensate the State for, that Major Default, stating that to be the case along with its reasons for forming that view,

* 1. (a **Major Default Notice**).

### (**Unreasonable requirements**): If Project Co, acting in good faith, disputes the Major Default Notice, it must promptly notify the State including the reasons why.

### (**State to act in good faith**): The State must, in good faith, consider Project Co's notice under clause 45.3(c) and must:

#### make any changes to the Major Default Notice that it considers reasonable as a consequence of Project Co's notice (if any); and

#### notify Project Co of any such changes.

### (**Major Default not capable of Cure**): If:

#### the State issues a notice in accordance with clause 45.3(b)(iii)D, that there are no reasonable requirements that can be met by Project Co to overcome the consequences of, or compensate the State for, a Major Default not capable of Cure, and this is disputed by Project Co in accordance with clause 45.3(c); and

#### having considered Project Co's notice issued under clause 45.3(c), and subject to clause 45.3(f), the State maintains the view (acting in good faith) that there are no reasonable requirements that can be met by Project Co to overcome the consequences of, or compensate the State for, that Major Default,

* 1. the State must notify Project Co of this determination and the Major Default will be a Default Termination Event.

### (**Notify Project Co and the Independent Reviewer**): Prior to issuing a notice under clause 45.3(e), the State must:

#### notify Project Co and the Independent Reviewer (if an Independent Reviewer is engaged on the Project at that time) that it proposes to form a view under clause 45.3(e), and in the case of:

##### Project Co, advise Project Co that it may submit to the State; and

##### the Independent Reviewer, require the Independent Reviewer to submit to the State,

* + 1. any comments or other information within 10 Business Days after the date of the notice under this clause 45.3(f)(i) (or such later date as determined by the State (acting reasonably)), which Project Co or the Independent Reviewer (as the case may be) considers may be relevant to the State forming or not forming a view in accordance with clause 45.3(e); and

#### consider any comments or other information submitted by Project Co and the Independent Reviewer under clause 45.3(f)(i).

### (**Project Co not satisfied**): If Project Co is not satisfied with:

#### the changes (if any) made by the State under clause 45.3(d); or

#### the State's determination under clause 45.3(e),

* 1. Project Co may refer the matter to expert determination in accordance with clause 48.2.

## Project Co to provide Cure Program and comply with Major Default Notice

### (**Cure Program**): Subject to clause 45.4(c), if the State gives a Major Default Notice to Project Co, then notwithstanding its rights under clauses 45.3(c) to 45.3(g), within 10 Business Days after receipt of the Major Default Notice, Project Co must:

#### if the Major Default is capable of Cure, unless the relevant Major Default is a failure to pay amounts, give the State a program to Cure the Major Default;

#### in the case of a Major Default that is deemed capable of Cure under clause 45.1, give the State a program to comply with any reasonable requirements of the State (which may include a plan to replace the Subcontractor causing the Major Default); and

#### if the Major Default is not capable of Cure, and the State has not issued a notice under clause 45.3(e), give the State a program to comply with any reasonable requirements of the State (which may include a plan to replace the Subcontractor causing the Major Default),

* 1. (in each case, a **Cure Program**) that complies with the terms of the Major Default Notice and clause 45.4(b) for review by the State in accordance with the Review Procedures.

### (**Content of Cure Program**): Any Cure Program provided to the State under clause 45.4(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;

#### confirmation that all notification requirements in the Finance Documents as a result of the Major Default have been complied with by Project Co; 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 Project Co to achieve Commercial Acceptance by the Date for Commercial Acceptance and Project Co has provided a Remediation Plan in accordance with clause 26.4(d)(ii) or an Amended Remediation Plan in accordance with clause 26.4(i), which has a date by which Commercial Acceptance will be achieved which is after the Date for Commercial Acceptance, Project Co may submit that Remediation Plan or Amended Remediation Plan (as applicable) as the Cure Program for the Major Default for review in accordance with the Review Procedures to satisfy the requirements of clause 45.4(b).

### (**Comply**): Notwithstanding the fact that it may have exercised its rights under clauses 45.3(c) to 45.3(g), Project Co must comply with the Major Default Notice and any Cure Program provided under clause 45.4(a) or clause 45.4(c) as reviewed by the State Representative in accordance with the Review Procedures.

### (**Extension of Major Default Notice**): Subject to clause 45.4(g) and clause 45.4(h), if Project Co 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 State,

* 1. Project Co may request that the State extend the Cure Program and the time stated in the Major Default Notice will be extended by such period as the State determines is required (acting reasonably) to enable Project Co to either Cure the Major Default or comply with any reasonable requirements of the State.

### (**Request for further information**): The State may request, and Project Co must provide, any further information reasonably required by the State in respect of Project Co's Cure of the Major Default or compliance with the reasonable requirements of the State to enable the State to determine the required extension under clause 45.4(e) (if any).

### (**Limitation**): Unless otherwise agreed by the State, Project Co is only entitled to one extension under clause 45.4(e) in connection with the same Major Default.

### (**Maximum Cure period**): Subject to the Finance Direct Deed and clause 45.5(a), the maximum period of time which Project Co may be given to Cure a Major Default (or comply with the reasonable requirements of the State where the Major Default is not capable of Cure), including any extension granted under clause 45.4(e), will be: ***[Note: Project teams may wish to consider a maximum cure period in the Development Phase for Major Defaults other than failure to achieve Commercial Acceptance by the Date for Commercial Acceptance (ie para (b) in the definition of Major Default).]***

#### if the applicable Major Default occurs during the Development Phase, [#] Months in the aggregate from the date of the applicable Major Default Notice; or

#### if the applicable Major Default occurs during the Operational Phase, [#] Months in the aggregate from the date of the applicable Major Default Notice.

* 1. ***[Note: Volume 1A of the RFP sets out the maximum cure permitted by the State under the State Project Documents, including the Finance Direct Deed. It is for the Financiers, Project Co and Key Subcontractors to determine the exclusive cure period that each party has for curing a Major Default within the periods specified in Volume 1A of the RFP. The Project Deed will set out the maximum cure period permitted for Project Co to cure a Major Default under the Project Deed.]***

## Extension of Cure Program for Extension Event or Intervening Event

### (**Impact of Extension Event or Intervening Event**): To the extent that Project Co is prevented from carrying out its obligations in accordance with a Cure Program as a direct result of an Extension Event or Intervening Event, then, subject to clause 45.5(b), the State must extend the periods identified in clause 45.4(h) and the time set out in the Major Default Notice:

#### to reflect the period Project Co is prevented from carrying out its obligations in accordance with the Cure Program as a consequence of that Extension Event or Intervening Event; or

#### without limiting clause 42, in respect of loss or damage caused by that Extension Event or Intervening Event for the period from the commencement of that loss or damage until the earlier of the date the necessary repairs or reinstatement have been completed or ought reasonably to have been completed had Project Co complied with its obligations under this Deed,

* 1. provided that:

#### Project Co is entitled to be granted:

##### an extension of time under clause 26.9 or clause 26.10; or

##### relief under clause 32.2 or clause 32.3,

* + 1. (as applicable) for the relevant Extension Event or Intervening Event; and

#### Project Co demonstrates to the State's satisfaction (acting reasonably) that Project Co has diligently pursued and, to the extent reasonably possible, continues to diligently pursue the Cure Program in accordance with clause 45.4(d).

### (**Limitation on extension**): Project Co will not be entitled to an extension to the periods identified in clause 45.4(h) and the time set out in the Major Default Notice for an Extension Event or Intervening Event beyond the period of any extension of time or relief from performance that Project Co is granted for that Extension Event or Intervening Event under clause 26.9, clause 26.10, clause 32.2 or clause 32.3 (as applicable).

## Default Termination Event

1. Subject to the Finance Direct Deed, if any Default Termination Event occurs, the State may, without limiting any rights or remedies it has under any State Project Document or at Law (other than rights of termination), elect to:

### (**terminate**): terminate this Deed under clause 46.4 at any time after the occurrence of a Default Termination Event; or

### (**Cure**): exercise its rights under clause 38.2 to Cure or attempt to Cure the Default Termination Event.

## Effect of Curing

1. If a Major Default or Default Termination Event occurs and is Cured by any person, any right to terminate this Deed in respect of that Major Default or Default Termination Event (as the case may be) not exercised prior to it being Cured may not thereafter be exercised.

# Termination

## Sole basis

### (**Sole basis**): Clauses 3 and 45 and this clause 46 set out the sole bases at Law or otherwise upon which the State is entitled to terminate, rescind or accept a repudiation of this Deed.

### (**No right to terminate**): Project Co acknowledges and agrees that, other than its right to terminate this Deed for a Force Majeure Termination Event in accordance with clause 46.3(a), Project Co has no right to, and will not, terminate any State Project Document notwithstanding any other provision of this Deed or any other State Project Document or any rights Project Co would have at Law or otherwise (including for repudiation) but for this clause 46.1(b).

## Termination for convenience

### (**Termination for convenience notice**): The State may:

#### at any time, for its convenience, and for any reason, terminate this Deed by giving Project Co not less than 60 Business Days' notice; and

#### 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 46.2(a).

## Termination for Force Majeure

### (**Force Majeure Termination Event notice**): Subject to clause 46.3(c), if a Force Majeure Termination Event occurs (or is deemed to have occurred) and its effects are then subsisting or clause 42.5(a)(ii) applies, then either party may terminate this Deed by giving notice to the other party.

### (**Date of termination**): Termination of this Deed for a Force Majeure Termination Event will take effect upon the date specified in the notice given under clause 46.3(a) or clause 42.5(a)(ii) (as applicable).

### (**Restrictions on termination**): Project Co must not terminate this Deed under clause 46.3(a):

#### during the period Project Co is entitled to recover (or would have been entitled to recover but for an Insurance Failure Event) under the:

##### delayed start-up or advanced loss of profits sections of the Contract Works Insurance or the Marine Transit Insurance;

##### advance loss of profits Insurance; or

##### the business interruption section of the Industrial Special Risks Insurance,

* + 1. for the relevant Force Majeure Termination Event; or

#### if it has not complied with its obligations under clauses 26.5 or 32.1(a) in respect of the relevant Force Majeure Event (as applicable).

## Termination for Default Termination Event

### (**Termination for Default Termination Event**): Subject to the Finance Direct Deed, if a Default Termination Event occurs, the State may terminate this Deed by giving notice to Project Co.

### (**Date of** **termination**): Termination of this Deed for a Default Termination Event will take effect upon the date specified in the notice given under clause 46.4(a).

## Termination and payments

1. Upon termination under this clause 46, the State's future obligations under the State Project Documents to pay any Service Payment, any State Contribution, any Development Phase Capital Contribution, any CDPD Amount and any Floating Rate Component will cease.

## Payment on termination

### (**Termination Payment**): Subject to clause 46.6(c):

#### if the Termination Payment is a positive amount, the State must pay to Project Co; and

#### if the Termination Payment is a negative amount, Project Co must pay to the State the absolute value of,

* 1. in accordance with clause 46.6(b) and as a debt due and payable, the relevant Termination Payment, being:

#### for termination of this Deed for convenience under clause 46.2, the Termination Payment calculated under section 5 of the Termination Payments Schedule;

#### for termination of this Deed under clause 46.3, the Termination Payment set out in section 6 of the Termination Payments Schedule; or

#### for termination of this Deed under clause 46.4, the Termination Payment calculated under section 3 or section 4 of the Termination Payments Schedule (as applicable).

### (**Timing**): Subject to clause 46.6(c), the relevant party must make the Termination Payment on the date (if any) specified in the Termination Payments Schedule for that Termination Payment, or if no such date is specified, no later than 20 Business Days after the later of:

#### the Expiry Date;

#### the date on which the amount of the relevant Termination Payment is agreed by the State and Project Co or, failing agreement, is determined by an independent expert in accordance with the Termination Payments Schedule or clause 49 (as applicable); and

#### in the case of a Default Termination Payment (as defined in the Termination Payments Schedule), the Compensation Date.

### (**Project Co obligations**): The State's obligation to make a Termination Payment to Project Co under clause 46.6(a) is subject to Project Co having delivered up the vacated Project Area and the Project Assets to the State and met the requirements in clause 47.2(a)(v), clause 47.2(a)(vi), clause 47.2(d) and clause 47.4.

### (**State's rights**): If the State is not satisfied that Project Co has satisfied its obligations under clause 46.6(c), and otherwise met all other obligations that Project Co is required to meet to the State at the Expiry Date under this Deed, Project Co will be Liable to the State for the amount that is reasonably necessary to cover the State's expected costs of performing (or procuring others to perform) those obligations as a debt due and payable by Project Co to the State.

### (**Final Refurbishment Works**): Without limiting the parties' rights and liabilities under clause 47, clause 46.6(d) does not apply in respect of the State's rights and Project Co's liabilities in respect of Final Refurbishment Works.

## Novation of liabilities to the State

### (**State's election**): If this Deed is terminated and Project Co has any Actual Debt outstanding, the State may elect to assume some or all of that Actual Debt (and/or the Hedge Amounts (in each case at the State's discretion) that would otherwise have been payable to or by Project Co, and to the extent the State so elects:

#### Project Co must do all things required by the State to enable the State to assume some or all of the Actual Debt and/or Hedge Amounts (as applicable); and

#### the amount of the Termination Payment which the State would otherwise be obliged to pay will be reduced by:

##### the amount of any Liability for Actual Debt and Hedge Amounts assumed by the State; and

##### the amount of any costs of terminating the Finance Documents which would otherwise have been taken into account in determining the Termination Payment, but which are not incurred by reason of the State assuming some or all of the Actual Debt and/or Hedge Amount.

### (**Finance Documents**): Project Co must ensure that it is permitted, in accordance with the terms of the Finance Documents, to comply with its obligations pursuant to this clause 46.7 and clause 9.4 of the Finance Direct Deed.

## Waiver

1. If this Deed is terminated then, subject to clause 46.6:

### (**waiver of rights to Claim**): Project Co waives any right it might otherwise have to make any Claim against the State or any State Associate 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 State and each State Associate will have no further Liability to Project Co or any Project Co Associate:

#### by reason, or as a result, of the termination or the circumstances relating to the termination; or

#### otherwise in connection with the Project, other than any Liability that is agreed or determined in accordance with this Deed with respect to any Claim that:

##### has been made by Project Co 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.

# Expiry obligations

## Right to appoint Project Successor

1. Project Co acknowledges that the State may, on or before the Final Expiry Date, invite and engage any person (including Project Co) to perform all or any part of the Project Activities for the period commencing after the Final Expiry Date (the **Project** **Successor**).

## Assistance in securing continuity prior to the Expiry Date

### (**Project Co to ensure delivery**): Subject to clause 47.2(b), Project Co must, for the period commencing 2 years prior to the Final Expiry Date, do all things reasonably required by the State to ensure the smooth and orderly transfer of responsibility for delivering the Project to the State or any Project Successor, including:

#### (**meetings**): meeting with the State, any State Associate, any Project Successor and such other persons notified by the State to discuss delivery of the Project after the Expiry Date on reasonable notice by the State;

#### (**access**): providing to the State, any State Associate, any Project Successor and such other persons notified by the State, access to its operations and Project Co Associates for the purpose of familiarisation with the Project Activities, the Project Assets and the Project Area;

#### (**information**): providing sufficient information to the State, any State Associate, any Project Successor and such other persons notified by the State to determine the condition of the Project Assets and the Project Area and the status of the Final Refurbishment Works, at the time;

#### (**resources**): providing sufficient resources, including personnel to facilitate the transfer of the Project to the State and any Project Successor;

#### (**procurement of novations**): 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 State is a counterparty),

* + 1. as the State may nominate, which are material to the performance of the Project Activities, to the State or any Project Successor on the Expiry Date.

#### (**Intellectual Property Rights**): granting or procuring the grant to the State, any State Associate or any Project Successor of a licence or sub-licence to such Intellectual Property Rights as will enable the State or any Project Successor to deliver the Project to the standards specified in this Deed after the Expiry Date; and

#### (**delivery of Project**):doing all other acts and things reasonably required to enable the State (or any Project Successor) to be in a position to deliver the Project after the Expiry Date to the standards specified in this Deed, with minimum disruption.

### (**Timing**): If the Expiry Date is prior to the Final Expiry Date, Project Co must meet the requirements under clause 47.2(a) from the time that Project Co receives notice of the Expiry Date until the Expiry Date, unless the State Representative, acting reasonably, determines such requirements cannot be met due to the limited notice period Project Co has received of the Expiry Date, in which case, Project Co must meet such requirements as soon as practicable after the Expiry Date.

### (**Transition person**): Without limiting its other obligations under this clause 47.2, for not less than:

#### 6 Months before the Expiry Date; or

#### if Project Co is given less than 6 Months' notice of the Expiry Date, the relevant notice period,

* 1. Project Co must:

#### provide a dedicated person, with appropriate expertise and experience, to manage the transition out and handover of the Project; and

#### train personnel nominated by the State in all aspects of the operation, maintenance and repair of the Project Assets to an appropriate level of competency that will allow those personnel to operate, maintain and repair the Project Assets to the standards required of Project Co under this Deed from the relevant Expiry Date (having regard to the period prior to the Expiry Date).

### (**Asset Information System**): No later than 12 Months prior to the Expiry Date or such other shorter period reasonably required by the State if the Expiry Date occurs earlier than the Final Expiry Date, Project Co must commence transfer of the Asset Information System to the State.

## Handover Condition

1. By the Expiry Date, Project Co must:

### (**Project Assets**): have handed over to the State or any Project Successor, the Project Assets and the Project Area (including all rights, title and interest in them to the extent not already transferred to the State), free from any Security Interest created by or on behalf of Project Co and if Handover of the Project Assets is to occur:

#### prior to the Date of Commercial Acceptance, in the condition that the Project Assets and the Project Area would be in if Project Co had complied with all of its obligations in connection with the Project in accordance with the requirements of this Deed having regard to the time and circumstances of the termination; or

#### on or after the Date of Commercial Acceptance, the condition that the Project Assets and the Project Area would be in:

##### if Project Co had complied with all of its obligations in connection with the Project under, or reasonably inferred from, this Deed at the time of Handover and having regard to the time and circumstances of the termination; and

##### such that if any Project Asset or any part of a Project Asset is a Warranted Asset or otherwise has a residual life specified in the PSDR, that Project Asset or the relevant part of the Project Asset will be Fit For Purpose by reference to the purposes, functions, uses and requirements referred to in clauses 5.5(a) and 5.5(b) (without any major maintenance or refurbishment works) for its Warranted Life or specified residual life (as applicable) that continues beyond the Expiry Date, provided that the Project Asset or relevant part of the Project Asset is operated and maintained after the Expiry Date:

###### in accordance with Best Operational Practices;

###### such that any damage to the relevant Project Asset or component of the relevant Project Asset occurring after the Expiry Date (as applicable) is promptly rectified in accordance with Best Industry Practices;

###### in accordance with the Asset Management Plan; and

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

### (**Returned Assets**): for any Returned Asset or any part of a Returned Asset that is a Warranted Asset, ensure that Returned Asset or the relevant part of the Returned Asset is Fit For Purpose by reference to the purposes, functions, uses and requirements referred to in clauses 5.5(c)(i) or 5.5(d)(i) as applicable (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 Acceptance for that Returned Asset:

#### in accordance with Best Operational Practices;

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

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

1. (the **Handover Condition**).
2. ***[Note: Handover Condition definition to be considered on a project specific basis.]***

## Other Handover obligations

1. Project Co must:

### (**Handover Management Sub-Plan**): deliver to the State everything that is required under the Handover Management Sub-Plan;

### (**transfer of rights, title and interest**): transfer (or procure the transfer) to the State or its nominee all rights, title and interest, in and to:

#### the Project Assets and the additional plant, machinery and equipment of Project Co and the Key Subcontractors and Significant Subcontractors (if the relevant Key Subcontractors and Significant Subcontractors are not engaged to carry out similar activities to the Project Activities after the Expiry Date); and

#### the Moveable Assets in accordance with clause 18.2,

### to allow the State or any Project Successor to operate, maintain and repair the Project Assets after the Expiry Date to the standards required of Project Co under this Deed;

### (**assignment of warranties and guarantees**): procure that all warranties and guarantees in respect of the Project Assets and Returned Assets (including the Warranted Life Warranties) and Services undertaken in respect of the Project Assets that remain in force at the Expiry Date are assigned to the State or its nominee free from any Security Interest;

### (**delivery of information**): update (as applicable) and deliver to the State or its nominee all Project Co Material not previously delivered to the State;

### (**payment of insurance proceeds**): deposit in the Insurance Proceeds Account any insurance proceeds Project Co has received from any Insurances for the repair, reinstatement or replacement of the Project Assets to the extent not already repaired, reinstated or replaced, and assign to the State any rights available to Project Co under the Insurances in respect of the repair, reinstatement and replacement of the Project Assets;

### (**operations management and control systems**): provide to the State all software, hardware, equipment, materials and documentation necessary or desirable in order for the State or the Project Successor to fully operate and maintain the Maintained Assets and otherwise perform the Services, if the Expiry Date occurs:

#### prior to the Date of Commercial Acceptance, to the extent reasonably practicable taking into account the progress of the Works as at the Expiry Date; or

#### on or after the Date of Commercial Acceptance, so that the State or any Project Successor can fully operate and maintain the Maintained Assets and otherwise perform the Services; and

### (**transfer of approvals**): do all acts and things necessary to enable the State or any Project Successor to have transferred to it, or to obtain, all existing Approvals necessary to continue to carry out the activities similar to the Project Activities after the Expiry Date,

1. by the Expiry Date or if the Expiry Date is prior to the Final Expiry Date, and the State Representative, acting reasonably, determines such requirements cannot be met by the Expiry Date, as soon as practicable after the Expiry Date.

## Appointment of Handover Reviewer

### (**Handover Reviewer**): No later than 6 Months before the earliest Condition Review Date (or where clause 47.6(a)(ii) applies, within such shorter period as is reasonably required by the State), Project Co and the State must meet to determine the identity of a person with suitable expertise and experience to be appointed by them to perform the tasks identified in clause 47.6 (**Handover Reviewer**).

### (**State Representative to appoint**): If Project Co and the State Representative do not agree on the appointment of the Handover Reviewer on or before the date which is 3 Months before the earliest Condition Review Date (or where clause 47.6(a)(ii) applies, within such shorter period as is reasonably required by the State), the Handover Reviewer will be appointed using the process set out in clause 49.1 for the appointment of an expert (as if the review of the Project Assets were a Dispute).

### (**Terms of engagement**): The Handover Reviewer will be appointed on similar terms to the Independent Reviewer Deed of Appointment, taking into account any changes required to reflect the different role and the effluxion of time since the engagement of the Independent Reviewer.

### (**Costs**): Subject to clause 47.5(e), the State and Project Co must each pay to the Handover Reviewer, 50% of the costs and expenses of the Handover Reviewer in accordance with the relevant deed of appointment entered into in accordance with clause 47.5(c).

### (**Alternative split**): To the extent that the Handover Reviewer considers that the parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Handover Reviewer which differs from the proportion stated in clause 47.5(d), the party determined by the Handover Reviewer to have to pay a greater proportion of the Handover Reviewer's costs and expenses must pay such higher proportion.

## Handover Reviewer Role

### (**Joint inspection**): Project Co, the State and the Handover Reviewer appointed under clause 47.5(a) or clause 47.5(b) (as applicable) must carry out joint inspections of the Project Assets:

#### if the Expiry Date is the Final Expiry Date:

##### at or about 24 Months before the Final Expiry Date;

##### 12 Months before the Final Expiry Date;

##### 6 Months before the Final Expiry Date; and

##### at or about the Final Expiry Date; or

#### if the Expiry Date is earlier than the Final Expiry Date, within such shorter period before the Expiry Date as is reasonably required by the State,

* 1. (each a **Condition Review Date**).

### (**Provision of information**): Upon the appointment of the Handover Reviewer, Project Co and the State must provide, and continue to provide, to the Handover Reviewer all information that the Handover Reviewer reasonably requires to perform the Handover Reviewer's tasks identified in this clause 47.6, including the then latest Asset Management Report and Asset Management Plan.

### (**Program to achieve proper Handover**): Following the first Condition Review Date under clause 47.6(a), the Handover Reviewer must give to the State and Project Co a report specifying:

#### where the Expiry Date is:

##### prior to the Operational Commencement Date, the details of the work required to be carried out to meet the Handover Condition and a program for undertaking such works (**Final Refurbishment Works (Development Phase)**); or

##### after the Operational Commencement Date, the details of the work required to be carried out to meet the Handover Condition and a program for undertaking such works including any Planned Lifecycle Activities (**Final Refurbishment Works (Operational Phase)**); and

#### an itemised estimate of the total costs of carrying out the Final Refurbishment Works,

* 1. (**Outstanding Matters Report**).

### (**Update of Outstanding Matters Report**): The Handover Reviewer must give to the State and Project Co an updated Outstanding Matters Report after each Condition Review Date subsequent to the first one (if any), which includes details of:

#### the Final Refurbishment Works that have been completed to the satisfaction of the Handover Reviewer;

#### the Final Refurbishment Works (if any) still to be completed;

#### the Final Refurbishment Works (Operational Phase) which the State has relieved Project Co from carrying out in accordance with clause 47.7(a)(ii); and

#### an itemised estimate of the cost of carrying out the remaining Final Refurbishment Works at that point in time.

### (**Dispute**): If either party disputes any aspect of the Outstanding Matters Report given under clause 47.6(c) or any updated Outstanding Matters Report given under clause 47.6(d), that party may refer the dispute to expert determination in accordance with clause 48.2, provided that the party that raises the dispute gives a notice to the other party within 10 Business Days after delivery of the Outstanding Matters Report or updated Outstanding Matters Report (as the case may be).

## State election

### (**Adjustment**): Notwithstanding the terms of this clause 47, the State Representative may, by giving notice to Project Co:

#### adjust any Condition Review Date to an alternative date which may not be earlier than 24 Months before the Expiry Date;

#### relieve Project Co from, or defer, any obligation to carry out any of the Final Refurbishment Works (Operational Phase) in any Operating Year; or

#### acting reasonably, increase the number of times and frequency with which the Handover Reviewer must inspect and assess the condition of the Project Assets, assess any Final Refurbishment Works or prepare any update of the Outstanding Matters Report in accordance with clause 47.6(c) or clause 47.6(d).

### (**Effect of adjustment**): If the State Representative relieves Project Co from its obligations to carry out any of the Final Refurbishment Works (Operational Phase) under clause 47.7(a)(ii):

#### any relevant parts of this Deed and the relevant Operational Phase Plans will be varied to the extent agreed by the parties; and

#### any subsequent Service Payment will be reduced by the cost of carrying out the relevant Final Refurbishment Works (Operational Phase) as agreed by the parties,

* 1. or, if not agreed within 5 Business Days after the date on which the State Representative gives the relevant notice under clause 47.7(a)(ii), as determined by the Handover Reviewer.

## Implementing Final Refurbishment Works

### (**Implement program**): Project Co must:

#### where the Expiry Date is prior to the Operational Commencement Date, carry out and complete the Final Refurbishment Works (Development Phase); and

#### where the Expiry Date is after the Operational Commencement Date:

##### within 1 Month after the provision by the Handover Reviewer of each Outstanding Matters Report:

###### amend the relevant Operational Phase Plans to include details of the Final Refurbishment Works (Operational Phase) that Project Co is required to carry out in accordance with the then current Outstanding Matters Report (or as otherwise agreed or determined in accordance with clause 47.6(e)); and

###### submit the updated Operational Phase Plans to the State Representative and the Handover Reviewer for review in accordance with the Review Procedures; and

##### carry out and complete the Final Refurbishment Works (Operational Phase) in accordance with the updated Operational Phase Plans.

### (**State right to complete**): Upon or prior to the Expiry Date, the State may, in addition to any other remedies under this Deed or at Law, exercise its rights of step-in under clause 38.2 to carry out and complete (or engage others to carry out and complete) any Final Refurbishment Works which:

#### have not been completed by Project Co in accordance with this clause 47 and all costs incurred by the State in doing so will be a debt due and payable by Project Co to the State; or

#### the State has relieved Project Co from carrying out in accordance with clause 47.7(a)(ii).

## Security for Final Refurbishment Works (Operational Phase)

### (**Security threshold**): At any time after a Condition Review Date, if the aggregate of the remaining Service Payments is equal to or less than 120% of the estimated total cost of the remaining Final Refurbishment Works (Operational Phase) (as set out in the then current Outstanding Matters Report or as otherwise agreed or determined in accordance with clause 47.6(e)) (**Threshold Amount**), subject to clause 47.9(b), Project Co must, within 20 Business Days after the Condition Review Date, either:

#### notify the State that the State may deposit into a registered interest bearing bank account opened by the State in the State's name (**Handover Escrow Account**) each subsequent Service Payment until the balance of the Handover Escrow Account equals or exceeds the Threshold Amount (in which case the State may proceed accordingly); or

#### provide to the State a Performance Bond with a face value not less than the Threshold Amount (**Handover Bond**),

* 1. as security for the performance of the Final Refurbishment Works (Operational Phase).

### (**No right of election**): If the aggregate of the remaining Service Payments is less than the Threshold Amount and Project Co makes an election under clause 47.9(a)(i), Project Co must provide the State with a Handover Bond, within 20 Business Days after the Condition Review Date for the difference between the Threshold Amount and the aggregate of the remaining Service Payments.

### (**Project Co makes no election**): If Project Co fails to make an election under clause 47.9(a) within the time stated in that clause, Project Co will be deemed to have made the election and notified the State in accordance with clause 47.9(a)(i), and clause 47.10 will apply.

### (**Adjustment of Threshold Amount**): If the scope or estimated cost of the Final Refurbishment Works (Operational Phase) is amended in accordance with clause 47.6 or clause 47.7(a)(ii), the total estimated cost of the remaining Final Refurbishment Works (Operational Phase) and the Threshold Amount will be adjusted accordingly, except that if the State exercises its rights under clause 47.7(a)(ii) and the aggregate of the remaining Service Payments is insufficient to cover the cost of carrying out the relevant omitted Final Refurbishment Works (Operational Phase), as agreed or determined in accordance with clause 47.7(b)(ii), the Threshold Amount will not be adjusted.

## Handover Escrow Account

1. If Project Co has, or is deemed to have, made the election to establish the Handover Escrow Account under clause 47.9(a)(i):

### (**interest**): interest earnt on a credit balance in the Handover Escrow Account must be deposited into the Handover Escrow Account;

### (**statements**): Project Co is entitled, on request, to receive copies of the statements for the Handover Escrow Account;

### (**drawing on Handover Escrow Account for Project Co's benefit**): the State must draw upon the Handover Escrow Account to pay Project Co:

#### not later than 20 Business Days after the Handover Reviewer issues an updated Outstanding Matters Report in accordance with clause 47.6(d):

##### the estimated cost of the Final Refurbishment Works (Operational Phase) that have been completed to the satisfaction of the Handover Reviewer (as set out in the then current Outstanding Matters Report or as otherwise agreed or determined in accordance with clause 47.6(e)) since the last Condition Review Date, provided that after drawing such amount the balance of the Handover Escrow Account equals or exceeds the then current Threshold Amount; or

##### if all of the Final Refurbishment Works (Operational Phase) have been completed prior to the Expiry Date to the satisfaction of the Handover Reviewer (as set out in the then current Outstanding Matters Report or as otherwise agreed or determined in accordance with clause 47.6(e)), the balance of the Handover Escrow Account;

#### the estimated cost of the Final Refurbishment Works (Operational Phase) (as set out in the then current Outstanding Matters Report or as otherwise agreed or determined in accordance with clause 47.6(e)) that the State has relieved Project Co from carrying out in accordance with clause 47.7(a)(ii) (if applicable) provided that after drawing such amount the balance of the Handover Escrow Account equals or exceeds the then current Threshold Amount; and

#### if Final Refurbishment Works (Operational Phase) have not been completed to the satisfaction of the Handover Reviewer (as set out in the then current Outstanding Matters Report or as otherwise agreed or determined in accordance with clause 47.6(e)) as at the Expiry Date, the balance of the Handover Escrow Account less the then current Threshold Amount; and

### (**drawing on Handover Escrow Account for State's benefit**): the State may, in addition to any other remedies under this Deed or at Law, draw upon the Handover Escrow Account for its own benefit and use such money:

#### to fund or refund any costs incurred by it in carrying out (or engaging others to carry out) any Final Refurbishment Works (Operational Phase) in accordance with clause 47.8(b)(i); or

#### if there is any amount remaining in the Handover Escrow Account after all amounts have been drawn and paid to Project Co in accordance with clause 47.10(c).

## Handover Bond

1. If Project Co provides a Handover Bond under clause 47.9(a)(ii) or is required to provide a Handover Bond in accordance with clause 47.9(b):

### (**expiry date**): any Handover Bond, including any replacement Handover Bond, provided under clause 47.9(a)(ii), clause 47.9(b), clause 47.11(d) or clause 47.11(e), must have an expiry date no earlier than one year after the end of the Term;

### (**reduction**): Project Co may reduce the amount of the Handover Bond no more than once an Operating Year to account for any Final Refurbishment Works (Operational Phase) completed to the satisfaction of the Handover Reviewer (as set out in the then current Outstanding Matters Report or as otherwise agreed or determined in accordance with clause 47.6(e)) since Project Co last exercised its rights under this clause 47.11(b), provided that:

#### if the Handover Bond has been provided under clause 47.9(a)(ii) the remaining amount of the Handover Bond is no less than the then current Threshold Amount; or

#### if the Handover Bond has been provided under clause 47.9(b), the remaining amount of the Handover Bond and the amount in the Handover Escrow Account is no less than the then current Threshold Amount;

### (**State use of Handover Bond**): the State, in addition to any other remedies under this Deed or at Law:

#### may draw on the Handover Bond:

##### to fund or refund any costs it incurs in carrying out (or engaging others to carry out) any Final Refurbishment Works (Operational Phase) under clause 47.8(b)(i) unless, within 10 Business Days of demand by the State of the amount due and payable under clause 47.8(b)(i), that amount is paid by Project Co to the State; and

##### for the remaining amount of the Handover Bond up to the Threshold Amount, no later than 20 Business Days after the Expiry Date if all of the Final Refurbishment Works (Operational Phase) have not been completed by the Expiry Date to the satisfaction of the Handover Reviewer (as set out in the then current Outstanding Matters Report or as otherwise agreed or determined in accordance with clause 47.6(e)),

* + 1. provided that where the Handover Bond is provided under clause 47.9(b) the State first draws on the Handover Escrow Account in accordance with clauses 47.10(c)(ii) or 47.10(c)(iii);

#### must otherwise return the Handover Bond to Project Co on the earlier of 30 Business Days after:

##### the date on which the Handover Reviewer issues an updated Outstanding Matters Report in accordance with clause 47.6(d) (or as otherwise agreed or determined in accordance with clause 47.6(e)) stating that all of the Final Refurbishment Works (Operational Phase) are completed to the satisfaction of the Handover Reviewer; and

##### the Expiry Date;

### (**Return and replacement of Handover Bond**): where Project Co is entitled to reduce the Handover Bond in accordance with clause 47.11(b), subject to any right of the State to have recourse to the existing Handover Bond, the State must return the then existing Handover Bond to Project Co in exchange for the delivery to the State by Project Co of a replacement Handover Bond that complies in all respects with this Deed and is for the amount determined in accordance with clause 47.11(b); and

### (**change in circumstances**): where:

#### the issuer of a Handover Bond ceases to hold a current licence issued by the Australian Prudential Regulation Authority or have the Required Rating; or

#### the specified location within Melbourne (or such other place as approved by the State) is no longer available for demand to be given or for payment to be made under a Handover Bond,

* 1. then Project Co must promptly:

#### notify the State of that circumstance; and

#### after being requested to do so by the State (and in any event within 10 Business Days), procure the issue to the State of a replacement Handover Bond that complies in all respects with this Deed and is for the same amount as the undrawn amount of the replaced Handover Bond.

## Required Employee Details

### (**Information on Required Employees**): Not later than 30 Business Days prior to the Expiry Date or, if this Deed is terminated with less than 30 Business Days' notice, within 5 Business Days after any notice of termination is received by the relevant party, Project Co must provide to the State:

#### a list of the names of each person employed by Project Co, the Services Contractor and any other Key Subcontractor or Significant Subcontractor who is engaged to undertake the Services (each a **Required Employee**);

#### a statement setting out each Required Employee's:

##### grade/classification;

##### rate of pay;

##### date of commencement of employment; and

##### estimated accrued entitlements (including annual leave, long-service leave, sick pay, parental leave and rostered days off) as at the Expiry Date,

* + 1. which has been countersigned by the relevant Required Employee with a statement by the Required Employee that the statement is accurate or otherwise identifying the extent that the Required Employee considers that the statement is not accurate;

#### the other terms and conditions of employment for each Required Employee; and

#### each Required Employee's roster.

### (**Employment Contracts**): Project Co must ensure, and must procure that each Key Subcontractor and Significant Subcontractor ensures, that contracts of employment in relation to each Required Employee include the consent of the Required Employee for their employer to comply with clause 47.12(a)(ii).

### (**Dispute**): If a Required Employee notifies Project Co that he or she disputes any of the information contained in the statement provided to that Required Employee under clause 47.12(a)(ii), Project Co must notify the State of such dispute and the State must refer the disputed issue to an actuary for determination.

## Variation of terms and conditions of employment

1. Project Co must not, without the State's consent (which must not be unreasonably withheld or delayed), vary, or purport or promise to vary, the terms or conditions of employment (including superannuation entitlements) of any Required Employee:

### (**variation in 12 Months prior to Expiry Date**): in the 12 Months prior to the Final Expiry Date or, if the Expiry Date is not the Final Expiry Date, from the date that is the later of:

#### 12 Months prior to the Expiry Date; and

#### the date Project Co is notified of the Expiry Date,

* 1. unless:

#### it is in the ordinary course of business and, when aggregated with any other variation which takes effect during that period, represents a percentage increase in the remuneration of the Required Employee of no more than the percentage increase in the index referred to in section [##] of the Indexes Schedule over the 12 Month period ending on the Month for which that index was last published; or

#### it is a variation imposed by a determination of the Fair Work Commission or is otherwise a consequence of the operation of an enterprise agreement made under the *Fair Work Act* *2009* (Cth);

### (**variation after Expiry Date**): if all or part of the variation first takes effect after the Expiry Date;

### (**variation relates to non-financial benefit**): if the variation relates to the provision of a financial or non-financial benefit (but excluding base salary and the Required Employee’s legal entitlements) which the Required Employee will or may have a contractual right to receive after the Expiry Date; or

### (**variation restricts ability to work for Project Successor**): the variation prevents, restricts or hinders the Required Employee from working for the State or a Project Successor after the Expiry Date in any capacity or from performing any duties which are the same as or similar to the duties the Required Employee performed in the course of their employment with Project Co, any Key Subcontractor or Significant Subcontractor.

## Transfer of employees to Project Successor

### (**Employment offers**): At the Final Expiry Date, the State must use reasonable endeavours to make or procure that the Project Successor (or a contractor of the Project Successor) makes offers of employment to the Required Employees on terms which are similar to and are, on an overall basis, no less favourable than their terms of employment with Project Co (or the relevant Key Subcontractor or Significant Subcontractor).

### (**Project Co to assist**): Project Co must assist the State in the transfer of any employees of:

#### Project Co; or

#### any Subcontractors,

* 1. (including any Required Employees) who agree with the State to be employed by the State or its nominee after the Final Expiry Date.

### (**Payment**): Subject to clause 47.14(e), notwithstanding clause 47.14(a), Project Co will (or will ensure that the Project Successor, relevant Key Subcontractor or Significant Subcontractor will) pay to any employee who becomes entitled to any redundancy payment upon the cessation of their employment with Project Co (or the relevant Subcontractor), an amount which complies with the terms of any relevant employment agreement and applicable Laws.

### (**Details of offer**): For the purposes of this clause 47.14, any offer of employment by the State or Project Successor (or a contractor of the Project Successor) will:

#### recognise continuity of service for all service related entitlements;

#### expressly waive any qualifying period which would otherwise preclude an employee's access to Commonwealth unfair dismissal laws in place from time to time; and

#### meet any criteria as to 'acceptable alternative employment' (howsoever described) for the purposes of any exemption from the liability of Project Co (or the relevant Subcontractor) to make redundancy payments set under any applicable contract, policy or industrial agreement which applies to the employee as at the end of the Term.

### (**Termination**): This clause 47.14 does not apply if this Deed is terminated prior to the Final Expiry Date.

PART K - DISPUTE RESOLUTION

# Dispute resolution procedure

## Early identification and collaborative resolution of disputes

1. The parties agree:

### (**objectives**): to use their best endeavours to adhere to behaviours promoted to:

#### facilitate the avoidance of Disputes; and

#### where a Dispute does arise between the parties, achieve the expeditious, efficient and cost effective resolution of that Dispute;

### (**achievement of objectives**): that the achievement of these objectives is best achieved by:

#### notifying each other of Disputes as soon as they arise, so as to promote the resolution of such Disputes within the shortest possible timeframe;

#### ensuring that all claims and defences are made in good faith, both regarding liability and quantum;

#### 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

### (**engagement**): that their engagement at each stage of the dispute resolution procedure required by clause 48 is to be based on the principle of full and timely disclosure of each party's position on an open and transparent basis.

## Procedure

Unless a State Project Document provides otherwise or the parties otherwise agree, the parties acknowledge and agree that any dispute between the State and Project Co arising in connection with:

### (**the Project**): the Project (including questions concerning a State Project Document's existence, meaning or validity); or

### (**decisions of Independent Reviewer**): any decision of the Independent Reviewer or report of the Handover Reviewer which is not final and binding on the parties,

(each a **Dispute**) must only be resolved in accordance with the following procedure:

### (**Subcontractor Claims**): first, Project Co must have met the requirements set out in clause 9.7(a) if the Dispute is in respect of a Claim to which clause 9.7 applies;

### (**Referral to the DRT**): second, the Dispute must be referred to the DRT in accordance with clause 48A, if:

#### the Dispute is referred to this clause 48.2 under any of clauses ***[Note: Select types of Disputes to be referred to the DRT ~26.4(l), 26.10(c), 26.21, 32.3(c), 35.5(c)(ii)B and (section 11.4 of the Change Compensation Principles), 35.11(c)(ii)C, 35.16, 44.7(c)(iii), 44.13(a)(iii), 45.3(g) or 47.6(e).]***;

#### ***[Note: consider if there are any other Disputes that the parties require be referred to the DRT.]***; or

#### the parties otherwise agree that the Dispute will be referred to the DRT in accordance with clause 48A;

### (**negotiation**): third, the Dispute must be the subject of negotiation as required by clause 48B;

### (**expert determination**): fourth, if the Dispute remains unresolved (in whole or in part) after the expiration of the relevant period for resolution referred to in clause 48B and either party wishes to pursue the Dispute:

#### if the Dispute is expressly referred to in a State Project Document to be a Dispute which may be referred to expert determination in accordance with clause 48.2, the Dispute must be referred to expert determination in accordance with clause 49; or

#### if clause 48.2 does not apply:

##### the parties may either agree that the Dispute will be referred to expert determination in accordance with clause 49; or

##### if the parties do not agree in accordance with clause 48.2(f)(ii)A to refer the Dispute to expert determination, either party may refer the Dispute to arbitration in accordance with clause 50.1; and

### (**arbitration**): fifth, if the Dispute has been referred to expert determination in accordance with clause 48.2 or clause 48.2(f)(ii)A, either party may subsequently refer the Dispute to arbitration in the circumstances stated in clause 50.1.

## Dispute under the Independent Reviewer Deed of Appointment

1. The parties acknowledge and agree that the parties may, by joint notice to the Independent Reviewer, consolidate proceedings or dispute processes under this Deed and under the Independent Reviewer Deed of Appointment relating to similar matters or issues.

# 48A. Dispute Resolution Team

## 48A.1 Referral to the DRT

### (**Referral to DRT**): If a Dispute arises and clause 48.2(d) applies, then a party must, if it wants to pursue the Dispute, and in the case of Project Co provided that it has satisfied the requirements referred to in clause 48.2(c) where applicable, give notice to the other party requesting that the Dispute be referred for resolution to the DRT.

### (**Contents of Notice**): A notice under clause 48A.1(a) must:

#### state that it is a notice under clause 48A.1; and

#### include or be accompanied by particulars of the matters which are the subject of the Dispute.

## 48A.2 Composition of the DRT

### (**DRT composition**): The DRT in respect of each Dispute referred to it under clause 48A.1 must comprise:

#### the State Representative and the Project Co Representative;

#### a nominated senior representative of each party with authority to resolve the particular Dispute (including on the terms notified by the other party);

#### during the Development Phase and unless the State notifies Project Co otherwise, a nominated senior representative of the D&C Contractor with authority to resolve the particular Dispute (including on the terms notified by the other party);

#### during the Operational Phase and unless the State notifies Project Co otherwise, a nominated senior representative of the Services Contractor with authority to resolve the particular Dispute (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 Dispute,

(together, the **DRT Representatives**). ***[Note: Depending on the size of the project, the parties may consider including an independent member on the DRT.]***

### (**Notice**): Each party must notify the other of its nominated representatives under clauses 48A.2(a)(ii) and 48A.2(a)(v) within 2 Business Days of the date of the referral under clause 48A.1.

## 48A.3 Main objectives of the DRT

### The main objectives of the DRT Representatives in dealing with Disputes 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 Dispute on a best for project and value for money basis;

### (**fair resolution**): promote the fair resolution of Disputes 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 DRT Representative;

### (**achievement of Project Objectives**): make and consider proposals for how to resolve the Dispute 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.

## 48A.4 Functions and responsibilities

### (**Resolution or Bespoke Resolution Procedure**): Within 20 Business Days of a referral under clause 48A.1, the relevant DRT Representatives must attempt, acting consistently with the applicable Relationship Principles, the main objectives in clause 48A.3 and on a genuinely collaborative and good faith basis, to:

#### resolve the Dispute; or

#### if they cannot resolve the Dispute, set up any procedure the DRT considers most suitable to resolve the Dispute (**Bespoke Resolution Procedure**).

### (**Agreement**): Any agreement resolving the Dispute (in whole or in part) or any Bespoke Resolution Procedure reached between the DRT Representatives will be recorded in writing, signed by or on behalf of each party and will be 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 Dispute;

##### 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 Dispute direct to expert determination in accordance with clause 49 as may be adjusted by the DRT Representatives to suit the Dispute;

##### referring the Dispute direct to arbitration in accordance with clause 50 as may be adjusted by the DRT Representatives to suit the Dispute; and

#### must specify when the Bespoke Resolution Procedure is taken to be concluded.

# 48B. Senior negotiations

### (**Notification**): If a Dispute arises (and where clause 48.2(d) applies, the Dispute remains unresolved (in whole or in part) on the DRT End Date) then a party must, if it wants to pursue the Dispute, and in the case of Project Co provided that it has satisfied the requirements referred to in clause 48.2(c) where applicable, give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers or Managing Directors (or equivalent) of the State and Project Co (**Representatives**).

### (**Contents of Notice**): A notice under clause 48B(a) must:

#### state that it is a notice under clause 48B; and

#### include or be accompanied by particulars of the matters which are the subject of the Dispute.

### (**Attempt to resolve Dispute**): If a Dispute is referred to negotiation under clause 48B(a), then:

#### the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within [10] Business Days after the date on which the notice under clause 48B(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 Dispute by the Representatives in accordance with clause 48B(c)(i), which must, unless otherwise agreed, take place within the [10] Business Days referred to in clause 48B(c)(i).

# Expert determination

## Referral and selection of expert

### (**Referral to expert determination**): If:

#### clause 48.2(d) applies and the DRT agree a Bespoke Resolution Procedure involving expert determination under this clause 49 (subject to any agreed adjustments to suit the Dispute), then the Dispute is referred to expert determination under this clause (subject to any agreed adjustments to suit the Dispute) on the date specified in the agreement under clause 48A.4(b) or if no such date is specified on the date of the agreement itself; or

#### a Dispute:

##### remains unresolved (in whole or in part) within 10 Business Days after the date on which the notice under clause 48B(a) is received or such later date as the parties may agree; and

##### either clause 48.2 applies or the parties agree to refer the Dispute to expert determination under clause 48.2(f)(ii)A,

* + 1. then if a party wants to pursue the Dispute, that party must refer the Dispute to expert determination within 20 Business Days after the date on which the notice under clause 48B(a) is received or such later date as the parties may agree.

### (bb) (**Expert appointment**): Where the DRT Representatives agree that a Bespoke Resolution Procedure is to involve expert determination, 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 a Dispute is referred to expert determination under clause 49.1(a), the State and Project Co must endeavour to agree on the expert to be appointed to determine the Dispute.

### (**Exchange of lists of 3 preferred experts**): If the State and Project Co are unable to agree on an expert to determine the Dispute within the 5 Business Day period referred to in clause 49.1(b), the State and Project Co must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 49.1(f) on or before the date which is 10 Business Days after the date on which the Dispute is referred to expert determination under clause 49.1(a).

### (**Appointment of person who appears on both lists**): If:

#### a person appears on both lists under clause 49.1(c), that person will be deemed to be the expert to determine a Dispute; or

#### more than one person appears on both lists, the person given the highest order of priority by the party that gave the notice under clause 49.1(a) will be deemed to be the expert to determine the Dispute.

### (**Appointment if no person appears on both lists**): If no person appears on both lists, the party that gave the notice under clause 49.1(a) 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 Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 49.1(c); or

#### if:

##### there is no governing body for the technical or professional discipline that is the subject of the relevant Dispute;

##### 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 Dispute,

* + 1. the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 49.1(c),
  1. within 7 Business Days after the exchange of the lists under clause 49.1(c).

### (**Appropriate skills**): It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in Dispute.

### (**No entitlement to challenge appointment**): Neither party will be entitled to challenge the appointment of an expert under this clause 49.1 on the basis that the expert does not satisfy the requirements of clause 49.1(f).

### (**No conflict of interest**): An expert agreed or determined in this clause 49.1 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 State and Project Co that they are available to be appointed as the expert in respect of the Dispute, the State and Project Co must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other terms as the expert may reasonably require.

### (**Expert not available**) If an expert agreed between the parties or otherwise deemed or determined to be appointed in respect of the Dispute under clause 49.1(b), 49.1(d) or clause 49.1(e) is not available to be appointed as the expert for that Dispute, the parties must appoint a different expert by repeating the process in clause 49.1 save that, if the parties have already exchanged a list of 3 persons in accordance with clause 49.1(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 49.1(a) 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**): Subject to clause 2.18, the determination of the expert must be in writing and will be final and binding on the State and Project Co 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 (CPI Indexed); or

##### an extension of the Date for Acceptance or rejection of an extension to the Date for Acceptance, where the period of the extension that was claimed is more than 5 Business Days; and

#### 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 49.3 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 49.4, have applied to any Dispute referred to expert determination under this clause 49.

## 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 Dispute.

### (**Engagement**): The State and Project Co 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 State and Project Co must:

### (**costs of State and Project Co**): 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 DRT**) clause 48.2(d) applies and the DRT agree a Bespoke Resolution Procedure involving arbitration under this clause 50 (subject to any agreed adjustments to suit the Dispute), then the Dispute is referred to arbitration under this clause (subject to any agreed adjustments to suit the Dispute) on the date specified in the agreement under clause 48A.4(b) or if no such date is specified on the date of the agreement itself; or

### (**no referral to expert determination**): a Dispute:

#### which has been referred to the Representatives for negotiation under clause 48B(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 48B(c)(i); and

#### is not a Dispute which the parties:

##### must refer to expert determination under clause 48.2; or

##### have agreed to refer to expert determination under clause 48.2,

* 1. either party may refer the Dispute to arbitration by notice to that effect to the other party within 30 Business Days after the date on which the notice under clause 48B(a) is received or such later date as the parties may agree; or

### (**after referral to expert determination**): a Dispute has been referred to expert determination under clause 49.1(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 Dispute 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 49.1(j) within 30 Business Days after the date on which the Dispute is referred to expert determination under clause 49.1(a), either party may refer the Dispute to arbitration by notice to that effect to the other party within 35 Business Days after the date on which the Dispute was referred to expert determination; or

#### a notice of dissatisfaction in respect of the expert's determination is given under clause 49.3, either party may refer the Dispute to arbitration 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 49.3 in which case the arbitration will be by way of hearing de novo.

## Arbitration

### (**ACICA Rules**): Arbitration in accordance with this clause 50 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) and as otherwise set out in this clause 50.

### (**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 Dispute is referred or deemed to be referred to arbitration under clause 50.1, 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 Dispute;

#### any arbitration conducted in accordance with this clause 50 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator;

#### 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 50.4(a)(i) and 50.4(a)(ii).

### (**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 dispute 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 50.4(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 50.4(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 Legislation which might, in the absence of this clause 50.5, have applied to any Dispute referred to arbitration under this clause 50.

## Extension of ambit of arbitration proceedings

### (**Extending disputes**): If:

#### a Dispute is referred to arbitration under this clause 50; and

#### there is some other Dispute 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 Dispute that has been referred to arbitration, make an order directing that the arbitration be extended so as to include the other Dispute.

### (**Arbitrator's order**): An arbitrator may make an order under clause 50.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

## Award final and binding

### (**Final and binding**): Subject to clause 2.18 and clause 50.7(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 50.

## Continue to perform

1. Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under the State 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 50 does not prevent a party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.

## 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

## State's representations and warranties

1. The State represents and warrants for the benefit of Project Co that:

### (**power to execute**): it has the power to execute, deliver and perform its obligations under the State Project Documents and all necessary action has been taken to authorise that execution, delivery and performance;

### (**validity**): each of its obligations under each State 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 State Project Document does not violate any Law to which the State is subject.

## Project Co's representations and warranties

1. Project Co represents and warrants for the benefit of the State (except as to matters notified by it to the State and accepted by the State in writing) that:

### (**power to execute and perform**): it and the Trustee 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**): the Trustee 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 subsidiaries**): it has no subsidiaries;

### (**no Tax consolidation**): it is not part of any Tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth) or GST grouping arrangement contemplated by the GST Law, except with the consent of the State;

### (**no trading**): it has not traded since its incorporation, other than for the purposes of entering into the Project Documents and has no liabilities other than those that have arisen as a consequence of entering into the Project Documents;

### (**no material change**): except as expressly disclosed to the State in such detail as the State requires (and by specific reference to this clause 51.2(j)), there has been no material change in the financial condition of Project Co or the Trust (since the later of its incorporation or settlement and the date of any prior notice) or any other Group Member, the Equity Investors, the Management Services Contractor or the Key Subcontractors (since the date of their last audited accounts) which would prejudice the ability of Project Co to perform its obligations under the Project Documents; ***[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 State is true and correct at the time it was provided to the State;

### (**material facts**): it is not aware of any material facts or circumstances that have not been disclosed to the State that may have a material adverse effect on Project Co's ability to meet its obligations under the State Project Documents;

### (**disclosure prior to this Deed**): it is not aware of any material facts or circumstances that have not been disclosed to the State as at the date of this Deed and which had they been disclosed, may have made a prudent person in the State's position, considering whether or not to enter into the State Project Documents, determine not to enter into the State Project Documents;

### (**no other security interests**): none of its assets are subject to any Security Interest other than a Permitted Security Interest;

### (**Trust status**): the Trust is duly and validly constituted and existing under the Laws of Victoria, Australia and the Trust Deed, a true and complete copy of which was provided to the State before the date of this Deed;

### (**Trustee**): the Trustee has been validly appointed as, and will remain, the sole trustee of the Trust and no action has been taken to remove it or appoint an additional trustee of the Trust;

### (**Trust not been terminated**): the Trust has not been terminated, nor has any event for the vesting of the assets of the Trust occurred;

### (**property of the Trust**): all of the assets, property and revenue required to carry on the business of Project Co is and will at all times form part of the Trust's assets and no property of the Trust has been re-settled, set aside or transferred to any other trust;

### (**commercial benefit**): it is to the commercial benefit of the Trust and the beneficiaries of the Trust that the Trustee:

#### enters into the Project Documents to which it is expressed to be a party in its own right and as trustee for the Trust; and

#### charges the property of the Trust as provided in those Project Documents;

### (**rights of indemnity and exoneration**): as trustee of the Trust, the Trustee has valid rights of indemnity and exoneration against the assets of the Trust, which rights are available for the satisfaction of all liabilities and other obligations incurred by it under the Project Documents;

### (**rights not limited**): the Trustee's rights of indemnity out of, and lien over the assets of, the Trust have not been limited, released or disposed of other than under the State Securities to which it is a party or the Finance Documents, and the Trustee has no material liability which may be set off against the right of indemnity;

### (**rights of any beneficiaries**): the rights of any beneficiaries relating to, and their interests in, the property of the Trust are subject to the prior rights and interests of:

#### the State under the State Project Documents; and

#### the Trustee in the property of the Trust to which the State may from time to time be subrogated;

### (**Trust Deed**): the Trust Deed complies with all applicable Laws; and

### (**duties as Trustee**): the Trustee has complied with its obligations and duties as Trustee under the Trust Deed and at Law and no one has alleged to it that it has not so complied.

## Repetition of representation and warranties

### (**Repeating representations and warranties**): Unless otherwise expressly stated in this Deed, each representation and warranty given by Project Co under this Deed:

#### is made on the date of this Deed; and

#### subject to clause 51.3(b), is repeated each day during the period from the date of this Deed to the Expiry Date.

### (**Limited repetition**): The warranty given by Project Co under:

#### clauses 5.5(c) and 5.5(d) in respect of each Returned Asset is given only as at the Date of Returned Works Acceptance of the relevant Returned Asset; and

#### clause 51.2(k) is not repeated after the date of this Deed.

## Restrictions on Project Co

### (**Restrictions**): Project Co must not without the State's written consent:

#### conduct any business other than the Project and the performance of its obligations and the exercise of its rights under the Project Documents;

#### acquire or hold any property or incur any liability other than for the purposes of the Project;

#### enter into contracts with, or assume or permit to subsist any liability in favour of, other Consortium Members, the Equity Investors, the Subcontractors or any Associates of any Consortium Member, Equity Investor or Subcontractor, other than as anticipated by the Project Documents;

#### engage in or become a member of any Tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth) or GST grouping arrangement contemplated by the GST Law; or

#### permit the Trustee to, and must ensure that the Trustee does not:

##### in its personal capacity hold any assets relevant to, required for or otherwise in connection with the Project;

##### hold any assets or incur any liabilities other than as relevant to, as required by or otherwise in connection with its role as trustee for the Trust; or

##### terminate the Trust or vest, or permit the vesting of, the capital of the Trust in any person.

### (**Consent**): The State must not unreasonably withhold its consent under clause 51.4(a)(iii) if the relevant transaction is on arm's length commercial terms.

## Project Co name and branding

1. Project Co must not display its or any Project Co Associates' livery, name/corporate images or brands on the Works, the Project Assets, the Project Area 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 Project Co

### (**Restrictions on Project Co**): Subject to clause 52.1(b), unless otherwise expressly permitted by this Deed, the Finance Direct Deed or the State Security, Project Co must not (and must procure any other Project Entity not to):

#### assign, sell, novate, transfer, (subject to clause 52.2) mortgage or charge, create or allow to exist any security interest over, or otherwise deal with all or any part of its interest in, or obligations or rights under any of the Project Documents, the whole or any part of the Project Area or the whole or any part of the Project Assets;

#### lease, license, transfer, sell, dispose of, part with possession of, or otherwise deal with any of the Project Documents, the whole or any part of the Project Area or the whole or any part of the Project Assets;

#### 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 52).

### (**Exceptions**): Clause 52.1(a) does not apply in respect of:

#### a Refinancing, which is to be dealt with under clause 37;

#### the syndication of indebtedness under the Finance Documents that is contemplated at Financial Close, in accordance with the Finance Documents and the Finance Direct Deed; or

#### a Share Capital Dealing, which is to be dealt with under clauses 52.4 to 52.9.

### (**Notice of intended Amendment**): If Project Co or another Project Entity requires an Amendment, it must submit to the State a request seeking the State'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; and

#### copies of any documents relevant to Project Co's request.

### (**State to advise**): The State must advise Project Co within:

#### 15 Business Days after receiving the request under clause 52.1(c) if it requires further information from Project Co or the relevant Project Entity regarding the proposed Amendment, in which case Project Co must provide the additional information sought by the State within a further period of 10 Business Days after receiving the State's request for further information; and

#### 15 Business Days after the later of receiving Project Co's request under clause 52.1(c) or the additional information requested by the State under clause 52.1(d)(i) that:

##### 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 State fails to respond for any reason within the relevant period specified under clause 52.1(d)(ii) in relation to a proposed Amendment in respect of a Project Document:

#### Project Co 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:

##### is not a State Project Document, the State will be deemed to have given its consent to such Amendment; or

##### is a State Project Document, the State will be deemed to have determined that the proposed Amendment is unacceptable, in which case the proposed Amendment will not be made.

### (**State consent**): The State must not withhold its consent to a requested Amendment in respect of a Project Document which is not a State Project Document if the requested Amendment will not have a material adverse effect on:

#### the ability of Project Co to perform and observe its respective obligations under any Project Document to which it is a party; or

#### the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document.

## Financiers' securities

1. Each Project Entity may mortgage, charge or create a security interest over, its interest under the Project Documents to secure its obligations to any Financier (or the trustee or agent for any Financier) under the Finance Documents if, and only for so long as, the Financier (or the trustee or agent for the Financier) is a party to the Finance Direct Deed.

## Initial status of ownership

1. Project Co represents and warrants that, as at Financial Close, Project Co will be indirectly and beneficially owned and Controlled as set out in the Ownership Schedule.

## Restrictions on Share Capital Dealings

1. Subject to clause 52.6:

### (**restrictions on Project Entities, the Trustee and the Trust**): Project Co must not and must ensure that each Group Member does not at any time:

#### redeem, repurchase, defease, retire or repay any share capital or units in any Project Entity, the Trustee or the Trust, or resolve to do so;

#### issue or agree to issue any share capital or units in any Project Entity, the Trustee or the Trust other than in accordance with the Equity Subscription Agreement;

#### issue or agree to issue any warrants or options over any unissued share capital or units in any Project Entity, the Trustee or the Trust; or

#### permit or suffer any change to (or transfer of) the issued share capital or units in a Project Entity, the Trustee or the Trust, which results in that Project Entity, Trustee or Trust (as applicable) ceasing to be directly and beneficially wholly owned and controlled as set out in the Ownership Schedule;

### (**restrictions on Holding Entities**): Project Co must not and must ensure that each Group Member does not allow a Holding Entity, at any time, to:

#### redeem, repurchase, defease, retire or repay any share capital or units in that Holding Entity, or resolve to do so;

#### issue or agree to issue any share capital or units in that Holding Entity other than in accordance with the Equity Subscription Agreement;

#### issue or agree to issue any warrants or options over any unissued share capital or units in a Holding Entity;

#### permit or suffer any change to (or transfer of), the issued share capital or units in that Holding Entity which changes the percentage of issued share capital or units owned (legally and/or beneficially) by any Equity Investor; or

#### permit the transfer of unitholder or shareholder loans (or other loans in the nature of Equity Funding) made to a Holding Entity from an Equity Investor to a party other than one wholly owned and controlled by that Equity Investor;

### (**no Change in Control or Change in Management**): Project Co must not at any time:

#### permit or suffer any Change in Control and must ensure that any Consortium Member does not at any time, permit or suffer any Change in Control of that Consortium Member; or

#### permit or suffer any Change in Management; or

### (**no change in trustee**): Project Co must not, and must procure that each Group Member does not, permit or suffer a change in the manager, trustee or responsible person of any Group Member that is a trust,

1. (each a **Share Capital Dealing**), without the State's prior consent, which must be requested by notice from Project Co to the State and which must be provided unless clause 52.5 applies.

## State's right to withhold consent

1. Subject to clause 52.9, the State may only withhold its consent to a Share Capital Dealing if the State is of the opinion (acting reasonably) that:

### (**solvency and no conflict**): a proposed new Equity Investor or Equity Investors (or any person that directly or indirectly Controls that new Equity Investor or Equity Investors):

#### is 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 State;

#### is an unsuitable Entity, having regard to the activities or business of that Entity, and its compatibility with the obligations of Project Co under the Project Documents; or

### (**negative effects**): the proposed Share Capital Dealing:

#### is against the public interest;

#### would adversely affect the ability or capability of a Project Entity to perform its obligations under any Project Document;

#### could lead to a Probity Event;

#### would, in respect of:

##### a Change in Control of a Consortium Member (who is not an Equity Investor) result in the Consortium Member being Controlled; or

##### a Change in Management, result in Project Co or the Project being managed,

##### 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 State;

##### is an unsuitable Entity, having regard to the activities or business of that Entity, and its compatibility with the obligations of the relevant Consortium Member under the Project Documents; or

##### does not have the necessary 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 State under the State Project Documents or in any other way in connection with the Project; or

### (**CDPD Conditions**): the proposed Share Capital Dealing is to take effect before ***[Note: Include if there is to be a CDPD Amount - all of the CDPD Conditions are satisfied in accordance with clause*** 33.1A***/ include if there is to be no CDPD Amount – the date which is 2 years after Final Acceptance].***

## Permitted Share Capital Dealings and on-market acquisitions

### (**Permitted Share Capital Dealings**): Notwithstanding clause 52.5, Project Co may effect, permit, suffer or allow a Permitted Share Capital Dealing at any time without the State's consent, provided that Project Co provides notice to the State of the proposed Permitted Share Capital Dealing:

#### subject to clause 52.6(a)(ii), as soon as reasonably practicable and, in any event, not less than 5 Business Days prior to the Permitted Share Capital Dealing; or

#### in relation to a Permitted Share Capital Dealing which relates to a transfer of shares or other interests which are listed on a stock exchange, as soon as reasonably practicable.

### (**On-market acquisitions**): If:

#### a Share Capital Dealing by way of 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 State is required under this Deed but could not have been obtained prior to the Share Capital Dealing,

* 1. that consent must be sought immediately after the Share Capital Dealing.

### (**On-market acquisitions proposed Additional or Replacement Security**): Where a Share Capital Dealing referred to in clause 52.6(b) 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 State, Project Co must provide details of any additional or replacement Parent Guarantee or Performance Bond which it proposes to procure so that the security available to Project Co and the State in respect of the obligations of the relevant Consortium Member in respect of which the Change in Control has occurred, under the Project Documents to which that Consortium Member is a party, is not adversely affected by the Change in Control.

### (**State's consent to on-market acquisitions**): If Project Co is required to seek the consent of the State to a Share Capital Dealing under clause 52.6(b) and Project Co receives any notice under clause 52.7 that the State:

#### provides a conditional consent to the Share Capital Dealing in accordance with clause 52.7(b), Project Co must procure the Additional or Replacement Security within the time required by the State; or

#### does not consent to the Change in Control, Project Co must procure that the person to whom Control has passed, ceases to have the Control which resulted in the Change in Control within 60 Business Days after receiving the State's notice under clause 52.7 that the State does not consent to the Change in Control.

## Consent to a Share Capital Dealing

1. The State must advise Project Co, within 10 Business Days (or such longer period as the State reasonably requests given the nature of the proposed Share Capital Dealing) after receiving Project Co's request for consent under clause 52.4 or 52.6(b), that:

### (**consent**): it consents to the Share Capital Dealing;

### (**conditional consent**): where clause 52.6(c) applies, without limiting clause 63.6(a), it consents to the Share Capital Dealing conditional upon Project Co procuring, in respect of the obligations of the relevant Consortium Member to which the Change in Control has occurred, under the Project Documents to which that Consortium Member is a party, an additional or replacement Parent Guarantee from an entity and on such terms, or Performance Bonds for an amount, acceptable to the State (**Additional or Replacement Security**);

### (**unacceptable**): in accordance with clause 52.5, the State does not consent to the Share Capital Dealing and the reasons why the Share Capital Dealing is unacceptable; or

### (**further information**): it requires further information from Project Co regarding the Share Capital Dealing, in which case:

#### Project Co must provide the additional information sought by the State within a further period of 10 Business Days after the State's request for the further information; and

#### the State must respond in terms of clause 52.7(a) or clause 52.7(b) within 10 Business Days after the receipt of such further information from Project Co.

## Costs relating to a Share Capital Dealing

1. Project Co must pay to the State the State's costs (including legal and financial advisers' fees) reasonably incurred in relation to considering or consenting to a proposed Share Capital Dealing.

## Designated Investor

### (**Designated Investor percentage**): Notwithstanding this clause 52 including Project Co's rights under clause 52.6, until the second anniversary of the Date of Final Acceptance, Project Co must ensure that each Designated Investor continues to hold at least the percentage set out in the Ownership Schedule of the total issued securities in:

#### the Holding Entity directly owned by the Designated Investor; and

#### Project Co indirectly (through its holding of issued securities in the Holding Entity directly owned by the Designated Investor).

### (**State consent**): The State may give or withhold its consent to a Share Capital Dealing which decreases the holding of any Designated Investor in:

#### the relevant Holding Entity (directly); or

#### Project Co (indirectly),

* 1. prior to the second anniversary of the Date of Final Acceptance.

## Assignment by the State

### (**Project Co consent required**): Subject to clause 52.10(b), the State may not sell, transfer or assign or otherwise dispose of all or any part of its interest in the State Project Documents without Project Co's prior consent.

### (**No consent required**): The State may sell, transfer or assign or otherwise dispose of all or any part of its interest in the State Project Documents and Project Co hereby consents to that sale, transfer, assignment or disposal, if:

#### it has provided Project Co 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 State Project Documents.

# Financial Model

## Provision of the Financial Close Financial Model

1. Project Co must provide to the State Representative on the date of Financial Close Project Co's audited financial model for the Project as at that date in a form and substance approved by the State (**Financial Close Financial Model**).

## Status of the Financial Model

### (**Purpose of Financial Model**): The parties acknowledge and agree that the Financial Model is only to be used for the purposes of:

#### varying the Financial Model on the occurrence of a Model Variation Event;

#### the calculation of Termination Payments; and

#### the determination of any Dispute in relation to the Financial Model.

### (**Project Co not entitled to claim and no adverse impact for State**): Project Co is not entitled to make any Claim against the State as a consequence of, and the State must not be adversely affected by:

#### any ambiguities, discrepancies, inconsistencies, conflicts, errors or omissions in the Financial Model; or

#### the fact that the Financial Model is a model and accordingly may not reflect the actual financial performance or the projected performance or budgets of the Project or Project Entities.

## Varying the Financial Model

1. The Financial Model must be varied in accordance with this clause 53 upon the occurrence of each of the following events:

### (**Refinancing**): achievement of financial close in respect of a Refinancing;

### (**adjustment to the Service Payment for Change Compensation Events**): any permanent adjustment to the Service Payments made in accordance with this Deed provided that no variation to the Financial Model is required for any Development Phase CCE Model Variation Event unless:

#### the aggregate value of all Development Phase CCE Model Variation Events (as set out in the Change Response provided in connection with each relevant Development Phase CCE Model Variation Event) that have occurred since the Financial Model was last varied in accordance with this clause 53.3(b), is greater than $[insert amount]; or

#### the value of any one Development Phase CCE Model Variation Event (as set out in the Change Response provided in connection with the relevant Development Phase CCE Model Variation Event) is greater than $[insert amount].

#### For the avoidance of doubt, where a Development Phase CCE Model Variation Event occurs, the value of that Development Phase CCE Model Variation Event (whether alone or together with other Development Phase CCE Model Variation Events) is less than the thresholds identified in clause 53.3(b)(i) and 53.3(b)(ii) (as applicable) and there is a subsequent variation to the Financial Model, the value of those Development Phase CCE Model Variation Events must be taken into account as part of that subsequent variation to the Financial Model.

#### ***[Note: The threshold amounts in this clause 53.3(b) should be based on a percentage of the capital payments for the Project and will not be subject to indexation.]***

### (**adjustment to the Service Payment for payment of Development Phase Finance Amount**): any variation to the Financial Model required pursuant to section 3.6 of the Change Compensation Principles and such update must occur as at the Date of Commercial Acceptance to adjust the Service Payments to ensure there is no increase to the Equity IRR (as set out in the Financial Close Financial Model) as a consequence of the payment of any such Development Phase Finance Amounts referred to in section 3.6 of the Change Compensation Principles;

### [not used];

### (**Augmentation**): achievement of Contract Close (as defined in the Augmentation Process Deed) in respect of an Augmentation;

### (**CDPD Amount**): on payment of the CDPD Amount, an adjustment to the Service Payment in accordance with clause 33 and the CDPD Adjustment Protocol;

### (**agreed events**): any other event which Project Co and the State agree should give rise to a variation to the Financial Model,

1. (each a **Model Variation Event**).

## Principles for variations to the Financial Model

1. When a Model Variation Event occurs, the Financial Model will be varied by the amounts:

### (**as prescribed in this Deed**): determined in accordance with this Deed; or

### (**as otherwise agreed**): otherwise agreed between the State and Project Co.

## Procedures for variations to the Financial Model

1. Any variation to the Financial Model to take account of a Model Variation Event must be made as follows:

### (**Project Co proposal**): Project Co must propose the variation by notice to the State Representative within 15 Business Days after the Model Variation Event occurs, giving full details of the assumptions and calculations used;

### (**Project Co to provide**): Project Co must provide the State Representative and any other authorised representatives of the State with:

#### full access to electronic copies of the proposed varied Financial Model;

#### a log of all changes that have been made to the Financial Model;

#### all supporting calculations;

#### a draft certificate from an auditor acceptable to the State confirming that an independent audit of the proposed varied Financial Model has been completed and that:

##### the calculations in the varied Financial Model have been checked and are in all material respects internally consistent and mathematically correct;

##### formulae applied across time periods in the varied Financial Model are consistent;

##### the varied Financial Model allows changes to assumptions and input data to correctly flow through to the results and outputs;

##### any macros in the varied Financial Model that govern the calculation of the varied Financial Model operate appropriately;

##### the assumptions and input data used in the varied Financial Model are consistent with all recent supporting Project Documents;

##### the calculations of any relevant ratios and financial covenants in the varied Financial Model have been checked and correctly reflect the definitions contained in the Finance Documents;

##### the varied Financial Model correctly incorporates the relevant structural features in the Debt term sheets such as reserve accounts, lock up provisions, default provisions, cash flow waterfall and amortisation;

##### the accounting assumptions, calculations and outputs (including financial statements) from the varied Financial Model are in accordance with Australian Accounting Standards Board (AASB) standards; and

##### the income taxation assumptions, calculations and outputs from the varied Financial Model are in accordance with Australian taxation laws; and

#### any other information reasonably requested by the State,

* 1. for the Model Variation Event, including reasonable access to the financial modellers who prepared the varied Financial Model and the amendments to it and relevant passwords or other access information;

### (**amendment**): once the variation to the Financial Model is agreed or determined in accordance with this Deed, Project Co must promptly amend the Financial Model accordingly and the parties agree that each other element of this Deed which is directly derived from the Financial Model or the Model Output Schedule will be updated to reflect the varied Financial Model (where applicable). Project Co must also submit a certificate from an auditor acceptable to the State that complies with clause 53.5(b)(iv) in respect of the updated varied Financial Model if requested to do so by the State; and

* 1. ***[Note: Project Teams to consider whether there are any circumstances in which a deemed amendment should not occur.]***

### (**review**): the amended Financial Model must be reviewed in accordance with the Review Procedures.

## Auditing the Financial Model

### (**Model auditors**): The State may at any time appoint a model auditor to audit the Financial Model and:

#### Project Co must provide all reasonable assistance to the model auditor;

#### the results of the audit must be disclosed to both the State and Project Co; and

#### to the extent any ambiguity, discrepancy, inconsistency, conflict, error or omission is revealed in the audit by the State, Project Co must promptly correct the Financial Model accordingly.

### (**Costs**): If an audit by the State results in a correction to the Financial Model, Project Co must pay the reasonable costs of the State in conducting the audit, but, if not, the State must bear the costs of the audit.

# Accounts

## Accounting records

### (**Proper books of account**): Project Co must:

#### keep proper books and accounts and all other records at its offices; and

#### ensure that each other Group Member, the D&C Contractor (during the Development Phase) and the Services Contractor (during the Operational Phase) keep proper books and accounts and all other records in connection with the Project at their respective offices.

### (**Annual audit**): Project Co must have its accounts, and must ensure that each other Group Member, the D&C Contractor (during the Development Phase) and the Services Contractor (during the Operational Phase) have their accounts audited annually on both an unconsolidated basis and on a consolidated basis (to the extent that Project Co or any of the other Group Members are part of a consolidated entity, within the meaning of the Corporations Act). ***[Note: Audited account requirements will be considered in light of the proponents and the timing for their statements to be prepared. The position set out above is the general requirement, if this is not possible, the State would like to understand what is available.]***

### (**Accounting principles**): Project Co must ensure that its accounts and the accounts of each other Group Member, the D&C Contractor (during the Development Phase) and the Services Contractor (during the Operational Phase) 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**): Project Co must ensure that its books and accounts and all other records, and the books and accounts and all other records in connection with the Project of each Group Member, are available to the State and any person authorised by the State at any time during Business Hours (subject to receiving 2 Business Days' notice from the State) during the Term for examination, audit, inspection, transcription and copying.

### (**Availability of accounts if Deed is terminated**): Without limiting its obligations under clause 47, if this Deed is terminated, Project Co must give access to all of its books and accounts and all other records, and must ensure that each other Group Member gives access to all of their books and accounts and all other records in connection with the Project, to the State and any State Associate where it is necessary for the carrying out of the Project Activities.

## Cost to complete information

1. Project Co must give to the State and, where requested by the Independent Reviewer, to the Independent Reviewer, all information any of the Group Members give or are required to give to any Financier in accordance with the Finance Documents in relation to the costs to complete construction of the Works, at such times required under the Finance Documents.

## Financial statements

***[Note: Account requirements will be considered in light of the proponents and the timing for their statements to be prepared. The position set out below is the general requirement, if this is not possible, the State would like to understand what is available.]***

### (**Audited financial statements**): As soon as practicable (and in any event not later than 120 days) after the close of each Financial Year, Project Co must give to the State certified copies of the consolidated (if applicable) and unconsolidated audited financial statements for the previous Financial Year for each Group Member and, if requested by the State, the D&C Contractor (during the Development Phase) and the Services Contractor (during the Operational Phase).

### (**Cashflow and profit and loss statements**): Not later than 30 days after the end of each Quarter, Project Co must give to the State certified copies of cashflow and profit and loss statements for Project Co and each other Group Member.

## Other information

1. Project Co must give to the State the following information:

### (**copies**): copies of all documents or information given or received by any Group Member to or from the Australian Securities & Investments Commission or Australian Stock Exchange Limited, promptly after the information is first given or received;

### (**material changes**): details of any material change in the financial condition of Project Co (since its incorporation) or any other Group Member, the Equity Investors, or a Key Subcontractor (in each case, since the date of their last audited accounts) which would prejudice the ability of Project Co to perform its obligations under the Project Documents as soon as reasonably practicable after becoming aware of those details;

### (**equity return**): without limiting its obligations under clause 54.1 and clause 54.3, the Actual Equity Disclosure no later than 5 Business Days after the Actual Equity Disclosure Date in each Operating Year, and if requested by the State, the Project Co Representative and any other person who prepared the relevant Actual Equity Disclosure must meet with the State within 10 Business Days after receipt of the State's request, to discuss the relevant Actual Equity Disclosure; and

### (**other information**): without limiting clause 5.3, such other information relating to the Project as the State may reasonably require from time to time as soon as reasonably practicable after the State has requested such information.

## Information Management System

1. ***[Note: To be included on a project specific basis as required.]***
2. Project Co must implement and maintain the Information Management System for all Project Co 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 State's document management systems as advised by the State;

### (**user friendly**): enables the State and any State Associate to quickly and easily retrieve, review and utilise the Project Co Material;

### (**tracks distribution**): tracks the distribution of all Project Co Material and Project Information to any Project Co 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 State

### (**Public Disclosure Obligations**): Subject to clause 55.1(d), the State and any Authority may disclose any information in connection with the Project (including any Confidential Information):

#### 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; ***[Note: To be updated as required on a project specific basis to include relevant Government departments.]***

#### to any State Associate, any Authority or any person authorised or nominated by the State 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 State;

#### in accordance with policies of the State or any Authority;

#### to any person who is bidding for or undertakes works similar to the Works or services similar to the Services after the Expiry Date and their actual and/or potential Associates, provided the relevant person agrees to maintain the confidentiality of the Confidential Information; or

#### to satisfy any other recognised public requirement,

* 1. (**Public Disclosure Obligations**) and Project Co must use all reasonable endeavours to assist the State and any Authority in meeting its Public Disclosure Obligations.

### (**Other purposes**): Subject to clause 55.1(d), the State or any Authority may disclose any information in connection with the Project (including any Confidential Information but excluding the Finance Documents and the Equity Documents) in connection with:

#### any Interface Works or any future road, transport or infrastructure project or transaction undertaken in Victoria that may be investigated, assessed, constructed, operated or maintained from time to time including any 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 State Project Document (including any tender process required to be conducted under the Termination Payments Schedule, the Change Compensation Principles or in respect of an Augmentation or proposed Augmentation).

* 1. [***Note: Clause 55.1(b) has been prepared, by way of example, for a road project, but will be updated by the State on a project specific basis to align with the Project.]***

### [Not used.]

### (**Commercially sensitive information**): Unless otherwise expressly entitled to do so in accordance with this Deed, the State must not publish or disclose any Commercially Sensitive Information without Project Co's prior written consent (which consent will not be unreasonably withheld or delayed), unless that Commercially Sensitive Information:

#### is required or authorised to be disclosed under Law;

#### is reasonably necessary for the enforcement of the criminal law;

#### is disclosed to the State's solicitors, auditors, insurers or advisers;

#### is generally available to the public;

#### is in the possession of the State without restriction in relation to disclosure before the date of receipt from Project Co;

#### 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 State or a State 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 State to comply with the Public Disclosure Obligations under clauses 55.1(a)(i), 55.1(a)(ii), 55.1(a)(iii), 55.1(a)(iv) or 55.1(a)(vii).

### (**Exercise of licence**): Nothing in this Deed prevents the State and any sublicensees using or disclosing any information to the extent necessary or desirable for, or in connection with, the exercise of any licence granted under this Deed.

## Restricted disclosure of information

### (**Confidential Information**): Subject to clause 55.2(b) and clause 55.4 and other than where the information is in the public domain, Project Co must treat as secret and confidential and must not, and must procure that each Project Co Associate does not, without the State's written consent, make public or disclose to any person any:

#### Project Documents;

#### Project Information;

#### information provided by:

##### the State or any State Associate to Project Co or any Project Co Associate; or

##### Project Co or any Project Co Associate to the State or any State Associate,

* + 1. in connection with the Project, whether provided prior to or after the date of this Deed;

#### Project Co Material;

#### Personal Information; or

#### other information in connection with the Project which Project Co is required to keep confidential in complying with the information privacy principles set out in the *Privacy and Data Protection Act 2014* (Vic) (as in force from time to time) or any other applicable Law,

* 1. (**Confidential Information**).

### (**Disclosure of Confidential Information**): Subject to clause 55.2(c) and without limiting Project Co obligations under clause 55.3 in respect of Personal Information, Project Co may disclose Confidential Information:

#### to a Project Co Associate to the extent necessary for the purpose of undertaking the Project;

#### to any prospective financier or equity investor of the Project, subject to the State having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that the State considers necessary;

#### [not used];

#### to an Interface Party, to the extent required in order to comply with Project Co's obligations with respect to Interface Parties under the Project Documents; or

#### in accordance with clause 55.4,

* 1. without seeking the State's consent to such disclosure.

### (**Confidentiality deed**): Before disclosing any Confidential Information in accordance with:

#### clause 55.2(b)(i), if the relevant Project Co Associate is not already subject to an agreement with Project Co in which it agrees to maintain the confidentiality of any disclosed Confidential Information;

#### clause 55.2(b)(ii); or

#### clause 55.2(b)(iv), if the relevant Interface Party is not already subject to an agreement with Project Co (or the State) in which it agrees to maintain the confidentiality of any disclosed Confidential Information,

* 1. Project Co must ensure that the person to whom the information is disclosed enters into a confidentiality deed with Project Co on terms reasonably acceptable to the State.

### (**Public statements**): Subject to clause 55.4, Project Co must:

#### not make any public disclosures, announcements or statements in relation to the Project or the State's or any State Associates' involvement in the Project, without the State's written consent;

#### comply with any terms and conditions that the State imposes on Project Co in granting its consent under clause 55.2(d)(i);

#### use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements to be made by it or any Project Co Associate relating to the Project or the State's or any State Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and

#### as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State under clause 55.2(d)(i) or for which the State's consent or approval was not required under clause 55.4.

## Personal Information

1. Project Co 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 Project 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 State on request, records detailing the recipient of any Personal Information Project Co has disclosed, the date of disclosure and the Personal Information that has been disclosed.

## Permitted disclosure without State consent

1. Project Co will not be required to obtain the State's consent or approval to any disclosure of Confidential Information or the information referred to in clause 55.2(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 State 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 Project Co 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 State's or any State Associates' involvement in the Project; and

#### Project Co having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

## Privacy

### (**Privacy**): Without limiting any obligations in respect of privacy set out in the PSDR, Project Co 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 State would be bound by the Information Privacy Principles and any applicable Privacy Code, in connection with that act or practice had it been directly done or engaged in by the State.

### (**Notice**): Project Co must immediately notify the State if it becomes aware of any breach of clause 55.5(a) by it or any Subcontractor.

### (**Release and indemnity**): Project Co must release, indemnify and keep indemnified on demand the State and any State Associate from and against any Claim or Liability which the State or any State Associate suffers or incurs resulting from any act done or practice engaged in by Project Co or any Subcontractor in connection with the Project, which would, had that act or practice been done or engaged in by the State, have contravened one or more of the Information Privacy Principles or any applicable Privacy Code.

## [Not used]

# Intellectual Property

### (**Intellectual Property Rights**): The rights and obligations of the parties with respect to Intellectual Property Rights are set out in the Intellectual Property Schedule.

### (**Compliance**): The parties agree to comply with the obligations imposed on them in the Intellectual Property Schedule.

# Commonwealth Requirements

1. ***[Note: Clause only required if Commonwealth funding is applicable to the project.]***

## Compliance with Commonwealth Funding Conditions

1. ***[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**): Project Co acknowledges that the Commonwealth of Australia may contribute to the funding for the Project.

### (**Compliance**): Project Co must comply with any Commonwealth Funding Conditions.

## WHS Accreditation Scheme

1. ***[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, Project Co:

### (**WHS accreditation**): warrants that the D&C Contractor is accredited under the WHS Accreditation Scheme; and

### (**D&C Contractor requirements**): must ensure that the D&C Contractor:

#### 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 57.2 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**).

### (**Project Co obligations**): Project Co:

#### must, and must ensure that all Project Co Associates, take all reasonably necessary steps to ensure compliance with the requirements in clause 57.2 if building work becomes Future Commonwealth Funded Building Work; and

#### without limiting clause 57.3(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, Project Co must comply with Schedule 21 (*Relevant State Policies Schedule)*.

# Data and cyber security

***[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 Project Co's obligations under this Deed:

### Project Co must notify the State, as soon as possible and in any case, no later than four hours, after becoming aware that:

#### a Cyber Security Incident affecting the Project Assets or the Project 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 Project Assets, Project Co's ability to perform its obligations under any Project Document, or the quality of the Project Activities,

1. where "significant impact" means any material disruption to the availability of essential goods or services provided in connection with the Project Assets or the Project Activities, or (in relation to the Project Assets) any other impact which is taken to be a “significant impact” on all or any part of the Project Assets by reason of section 30BEA of the *Security of Critical Infrastructure Act 2018* (Cth).

### Project Co must notify the State, as soon as possible and in any case, no later than 24 hours, after becoming aware that:

#### a Cyber Security Incident affecting the Project Assets or the Project 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 Project Assets;

##### the confidentiality of data or information about the Project or the Project Assets or data or information stored within [any systems forming part of the Project Assets or used to perform the Project Activities];

##### Project Co's ability to perform its obligations under this Deed; or

##### the quality of the Project Activities; and

### Project Co must, in relation to any Cyber Security Incident of the type referred to in clause 59.1(a):

#### provide the State with full details of that Cyber Security Incident;

#### to the extent permitted by Law, comply with all reasonable directions of the State in relation to the management of the Cyber Security Incident;

#### keep the State 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 State's prior written consent; and

#### where the State requires, notify the Cyber Security Incident to the Australian Signals Directorate or other persons in accordance with the State'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 State, Project Co or any Project Co Associates in connection with the Project Activities or the Project Assets, Project Co must:

### comply with, and ensure that any Project Co Associates comply with, Project Co's and any Project Co 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 State'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 State, and ensure that any Project Co Associates do all things reasonably required by the State, to assist the State in complying with the State's obligations; and

#### not do anything, and ensure that any Project Co Associates do not do anything, which would preclude or prevent the State from complying with its obligations;

### comply with, and ensure that any Project Co 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 Project Co by the State, to the extent relating to the Project Activities or the Project Assets;

### comply with, and ensure that any Project Co Associates comply with, any lawful notice, direction or request issued to the State under the Security of Critical Infrastructure Laws in relation to the Project Activities or the Project Assets, where the State provides a copy of such notice to Project Co; and

### where Project Co receives a notice, direction or request under the Security of Critical Infrastructure Laws in relation to the Project Assets or Project Activities:

#### notify the State of that notice, direction or request as soon as practicable after Project Co receives it; and

#### not respond to such notice, direction or request without the State's prior written consent (unless required by Law to do so).

# [Not used]

# Taxes

## GST General

### (**Revenue**): For the purposes of this clause 61, "Revenue" has the meaning given in clause 61.1(g).

### (**GST exclusive amounts**): Unless otherwise expressly stated all amounts referred to in this Deed are exclusive of GST.

### (**GST payable by Supplier**): If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:

#### any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;

#### an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and

#### the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided under this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 61.1(c) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply (unless the Recipient is required to issue the Tax Invoice).

### (**Variation in GST payable**): If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 61.1(c) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as applicable) the amount of this variation. If an adjustment event occurs in relation to a supply, and unless the Recipient is required to issue the Adjustment Note:

#### the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and

#### no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.

### (**GST ceasing to be payable**): No amount is payable by a party in accordance with clause 61.1(c) or clause 61.1(d) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.

### (**Expert Determination**): If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 61.1 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the Resolution Institute (or if the Resolution Institute advises that it will not nominate an expert or otherwise fails to do so within [20] Business Days of a request to do so, by the President of the Australian Centre for International Commercial Arbitration) for expert determination, which will be final and binding. The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 61 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.

### (**Revenue net of GST**): Any reference in this Deed or any Project Document to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.

### (**Cost net of GST**): Any reference in this Deed or any Project Document to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.

### (**State Contribution/Development Phase Capital Contribution/CDPD Amount**): Notwithstanding any other provision of this clause 61.1: ***[Note: State to review drafting and confirm GST treatment of each of State Contribution, Development Phase Capital Contribution and CDPD Amounts on a project specific basis.]***

#### the parties intend that the State will not bear any net costs (including funding costs arising from timing differences) in respect of GST payable on any Taxable Supply to which the State Contribution, a Development Phase Capital Contribution or the CDPD Amount relates;

#### the parties will use their reasonable endeavours to obtain and implement an agreement by the Commissioner of Taxation to offset, in the parties' running balance accounts, Project Co's liability to pay GST on a Taxable Supply to which the State Contribution, a Development Phase Capital Contribution or the CDPD Amount relates and the State's entitlement to Input Tax Credits for a Creditable Acquisition to which the State Contribution, a Development Phase Capital Contribution or the CDPD Amount relates. The setting off by the Commissioner of Taxation of these amounts in the parties' running balance accounts will be taken to satisfy any obligation of the State to pay to Project Co an amount in respect of GST on the relevant Taxable Supply (whether or not the amount set-off is equal to the whole of that GST);

#### Project Co must issue the State a Tax Invoice for any Taxable Supply to which the relevant State Contribution, a Development Phase Capital Contribution or the CDPD Amount relates in accordance with clause 33.2(a);

#### the State is not obliged to make a payment to Project Co in respect of GST in respect of a Supply to which the State Contribution, a Development Phase Capital Contribution or the CDPD Amount relates on a payment date in accordance with clause 33.2(b) (as applicable) until it has (acting reasonably and in accordance with clause 61.1(i)(ii)) received the benefit of an Input Tax Credit for such GST (by the Input Tax Credit being offset against a GST or other tax liability, credited to the State's running balance account, being refunded to the State or a combination of the above);

#### if the State is denied an Input Tax Credit by the Australian Tax Office, a Court or other appropriate Authority for all or part of the GST in respect of the State Contribution, a Development Phase Capital Contribution or CDPD Amount, Project Co must reimburse the State for any relevant GST it has paid in excess of its Input Tax Credit entitlement and indemnify the State for an amount equal to any penalty or interest as a result of claiming an Input Tax Credit for the whole of the GST on that State Contribution, Development Phase Capital Contribution or CDPD Amount;

#### if clause 61.1(i)(v) applies, the State must co-operate with Project Co as reasonably required by Project Co to enable the State and Project Co to discuss with the Australian Tax Office the reasons for the denial of an Input Tax Credit and will take reasonable steps, as reasonably directed by Project Co, to dispute the denial (provided that the obligation to dispute is not a condition precedent to the operation of clause 61.1(i)(v)). Project Co indemnifies the State for its costs incurred in disputing any denial of an Input Tax Credit;

#### if, as a result of clause 61.1(i)(vi), the State's entitlement to an Input Tax Credit is increased, the State must promptly pay to Project Co an amount equal to that increase together with any interest to which the State is entitled in relation to that amount;

#### the State must take all reasonable steps to ensure it (or the State entity that is treated as making the supplies and acquisitions under the State Project Documents for GST purposes) receives the benefit of the Input Tax Credit from the Australian Taxation Office as quickly as possible, including:

##### claiming the Input Tax Credit in the GST return for the Tax Period to which the Input Tax Credit is attributable;

##### lodging the GST return in which the Input Tax Credit is reported no later than the due date for that GST return;

##### forwarding any queries or correspondence from the Commissioner of Taxation in respect of that GST return (but only to the extent that the queries or correspondence relates to the relevant Input Tax Credit) to Project Co; and

##### promptly informing Project Co of any delays or other related issues in respect of the Input Tax Credit;

#### if at any time this Deed is terminated, the obligation of the State to pay Project Co any amount in accordance with clause 61.1(i)(iv) continues in full force and effect and is an obligation separate, independent and additional to the State's obligation to make a Termination Payment in accordance with clause 46.6. Notwithstanding the termination of this Deed, the State is obliged to use reasonable endeavours to obtain the Input Tax Credit and to pay to Project Co each amount in accordance with clause 61.1(i)(iv); and

#### if at any time this Deed is terminated, the obligation of Project Co to pay the State any amount in accordance with clause 61.1(i)(v) continues in full force and effect.

### (**General obligation**): Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.

### (**GST Groups**): For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member, and if a party to this Deed makes a Taxable Supply by virtue of entering into or performing this Deed and the 'recipient' of that Taxable Supply (within the meaning of the GST Act) is an Associate of another party to this Deed that other party to this Deed will be obliged either to pay the amount referred to in clause 61.1(c)(ii) or procure that the actual recipient pays the relevant amount, and the payer of that amount will be the 'Recipient' for the purposes of this clause 61.1 in relation to the relevant Taxable Supply.

### (**Project Deed to prevail**): If, but for this clause 61.1(l), a GST clause in another Project Document would apply in connection with a Taxable Supply to which this clause 61.1 also applies, then this clause 61.1 will apply in connection with that supply and the GST clause in the other Project Document will not apply.

### (**Definitions**): In this clause 61.1 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

## General liability for Taxes

### (**Payment**): As between the State and Project Co, Project Co bears the risk of and must pay all Rates and Taxes incurred or imposed in connection with:

#### the Project;

#### payments, income or net income received or receivable by any Group Member;

#### the execution, stamping and registration of any Project Document;

#### the performance of any Project Document and each transaction effected by or made under or in connection with any Project Document, including the Project Activities;

#### any amendment to, or any consent, approval, waiver, release, surrender or discharge of or under any Project Document;

#### any transaction, assignment, transfer or other dealing by or in relation to a Group Member (including dealings in the shares or other interests in a Group Member), whether or not related to the Project or the Project Documents, including in connection with a Change in Control or Share Capital Dealing and any Refinancing; and

#### any Site,

* 1. except as provided in clause 61.1.

### (**Indemnity**): Project Co must indemnify the State against any Claim or Liability in connection with the Rates and Taxes which Project Co is required to pay under clause 61.2(a).

# 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 62.1(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 62.1(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. ***[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 62.2(b), as a condition precedent to its entitlement to make any Claim against the State in respect of any direction or any other fact, matter or thing (including a breach of this Deed by the State) in connection with the Project Activities or this Deed, including anything in respect of which it is given an express entitlement under this Deed, Project Co must give the State the notice required by clause 62.2(c).

### (**Exceptions**): Clause 62.2(a) does not apply where this Deed specifies a process which must be followed by Project Co in making a Claim against the State, including specifying a time within which that Claim must be made, including a Claim:

#### under clause 26.7 for an extension of time to a Date for Acceptance;

#### clause 26.16 for acceleration;

#### under clause 32 in relation to relief in respect of an Intervening Event;

#### under clause 33.2(a) or clause 33.2A(a) for payment of the State Contribution, a Development Phase Capital Contribution or CDPD Amount;

#### under clause 34.4 for payment of a Service Payment or under clause 34.8(a) in relation to a Floating Rate Component;

#### under clause 35.7 in relation to a State Initiated Modification; or

#### in respect of which Project Co must submit a Change Notice in accordance with section 10.1 of the Change Compensation Principles,

* 1. in which case, Project Co must comply with the relevant process and provisions as a condition precedent to Project Co’s entitlement to make such Claim.

### (**Notices Project Co must give**): The notices Project Co must give to the State as referred to in clause 62.2(a) are:

#### a notice stating that Project Co is considering submitting a Claim and identifying the event that has triggered the potential Claim, within 10 Business Days after the date Project Co 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 Project Co is required to give notice under clause 62.2(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 State Project Document or otherwise, and if based on a term of a State 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 Project Co's Claim under clause 62.2(c)(ii), the State and Project Co must meet to discuss the Claim and the process for providing the State with any further information in respect of the Claim, including any further updates of the Claim.

### (**Further information**): If the parties are unable to agree a process for providing further information to the State in respect of the Claim within 20 Business Days after the State's receipt of Project Co's Claim under clause 62.2(c)(ii), Project Co 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 62.2(c)(ii) every 20 Business Days after the Claim under clause 62.2(c)(ii) was submitted, until after the event or consequences of the event have ceased.

## Notices of Claims

1. Project Co acknowledges and agrees that:

### (**no liability on any Claim**): the State and each State Associate will not be liable upon any Claim that Project Co is entitled to make against the State or a State Associate; and

### (**absolute bar on making any Claim**): Project Co will be absolutely barred from making any Claim against the State or any State Associate,

1. under any State Project Document or otherwise arising in connection with the Project unless Project Co gives the State or State Associate, as the case may be, the notices required by the State Project Documents in respect of such a Claim.

## Notice to Financiers

1. Project Co acknowledges that the State may provide to the Financiers a copy of any notice from:

### (**from Project Co**): Project Co to the State; or

### (**from State**): the State to Project Co,

1. in connection with the Project.

# 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 48 to 50, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from the courts of Victoria, with respect to any proceedings which may be brought in connection with this Deed.

## Entire agreement

1. The State Project Documents to which the State and Project Co 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 State'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 State;

#### 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 State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless otherwise expressly provided in this Deed.

### (**Compliance**): Project Co must comply, and must procure that each Project Co Associate complies, with any condition of a consent or approval given by the State.

### (**Deemed events**): If Project Co or a Project Co Associate fails to comply with any condition of a consent or approval given by the State, 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 State Project Documents**): Except as otherwise expressly provided in the relevant State Project Document, no amendment to any other State Project Document is valid or binding on a party unless made in writing and executed by the State and all other parties to the relevant State Project Document.

## 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. Project Co waives, and will procure that each Key Subcontractor waives, any right or remedy it may have under any Law which comes into effect after the date of this Deed if the exercise of such right or remedy would:

### (**no reduction**): lessen any obligation or Liability of Project Co; or

### (**no prejudice**): prejudicially affect the rights, powers or remedies of the State,

1. under a State Project Document to which Project Co or the relevant Key Subcontractor is a party.

## PPSA

1. Project Co acknowledges and agrees that:

### (**State’s rights**): if and to the extent that the State at any time forms a belief on reasonable grounds that the State is, or will become, a secured party in connection with this Deed or any other State Project Document or any transaction contemplated by this Deed or any other State Project Document, the State may, at Project Co’s expense, take all steps that the State considers necessary to:

#### perfect, protect, record, register, amend or remove the registration of, the State’s Security Interest in any relevant personal property that is the subject of that Security Interest (**Relevant Personal Property**); and

#### better secure the State’s position in respect of the Relevant Personal Property under the PPSA;

### (**Key Subcontractor to assist the State**): it will do, and ensure that each Key Subcontractor and the Management Services Contractor does, all things reasonably necessary to assist the State to take the steps described in clause 63.12(a);

### (**waiver of right to receive any verification statement**): it irrevocably and unconditionally waives, and will ensure that each Key Subcontractor and the Management Services Contractor irrevocably and unconditionally waives, its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the State in the Relevant Personal Property;

### (**excluded PPSA sections**): if, and only if, the State is or becomes a secured party in relation to Relevant Personal Property, and to the extent only that Chapter 4 of the PPSA would otherwise apply to an enforcement of a Security Interest in Relevant Personal Property, Project Co and the State agree, and Project Co will ensure that each Key Subcontractor and the Management Services Contractor agrees, that, pursuant to section 115 of the PPSA, the following provisions of the PPSA do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115, section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;

### (**no disclosure**): subject to section 275(7) of the PPSA, it will not, and it will ensure that each Key Subcontractor and the Management Services Contractor does not, disclose the contents of this Deed, the amount or performance obligation secured by the State’s Security Interest in Relevant Personal Property and the other information mentioned in section 275(1) of the PPSA pursuant to section 275(4) of the PPSA;

### (**Project Co to notify the State**): other than in relation to Security Interests arising in the ordinary course of the Project Activities and Security Interests described in section 12(d) of the PPSA of which Project Co is the grantor (but only where the interest does not secure payment or performance of an obligation) it must immediately notify the State if Project Co, a Key Subcontractor or the Management Services Contractor becomes aware of any person other than the State taking steps to register, or registering, a financing statement in relation to Relevant Personal Property; and

### (**removal of registered security interest**): it must arrange, and ensure that each Key Subcontractor and the Management Services Contractor arranges, for the removal or cessation of any registration of any Security Interest that affects the priority of the State’s interest in Relevant Personal Property.

1. For the purposes of this clause 63.12, "registration", "secured party", "verification statement", "financing statement", "personal property" and "financing change statement" each have the meaning given to those terms in the PPSA.

**Executed** as a deed.

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.

***[Note: Execution blocks to be inserted.]***