Schedule 21 – Relevant State Policies

***[Note: The Relevant State Policies Schedule contains State-specific policy provisions from the NSW Treasury Toolbox and the Victorian Standard Form PPP Project Deeds, with applicable amendments from recent PPP projects. New policies include:***

***PART A – Victoria***

* ***Section 3 – Fair Jobs Code***
* ***Section 5 – Aboriginal Participation Requirements***
* ***Section 6 – Modern Slavery***
* ***Section 7 – Digital Asset Policy***
* ***section 8 – Tip Truck Owner Driver Policy***
* ***Section 9 – Protective Data Security Standards***
* ***Section 10 – Freedom of Information Act***
* ***Section 11 – Cladding***

***PART B – NSW***

* ***Section 1 – Aboriginal Procurement Policy***
* ***Section 3 – Modern Slavery***

***Part A is for use in Victoria only and Part B is for use in NSW only. Agencies to delete the relevant Part that does not apply.***

***Agencies to consider including or deleting any additional Relevant State Policies that apply on a project specific basis.]***

# [PART A – Victoria]

# Supplier Code of Conduct

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 1 have the meanings given to them in this Deed:
2. **Supplier Code of Conduct** means the document entitled "Procurement - Supplier Code of Conduct" issued by the State and, as at the date of this Deed, available at <http://www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct>.

## Supplier Code of Conduct

1. Project Co acknowledges and agrees that:

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

### (**compliance**): it has read and aspires to comply with the Supplier Code of Conduct, and will periodically check with reasonable frequency for updates and amendments to the Supplier Code of Conduct; and

### (**impact on obligations**): the expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the supplier, whether under this Deed or at Law.

# Local Jobs First Policy

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 2 have the meanings given to them in this Deed:
2. **Apprentice** means a person (other than a Cadet or Trainee) who is employed to undertake training in a trade under a Training Contract. The Local Jobs First Policy requires employers to employ apprentices under a Training Contract registered with VRQA which combines structured training with paid employment related to a Local Jobs First applicable project. For an Apprentice to be counted towards the MPSG Requirement (Development Activities) for a project they must be undertaking a course that relates directly to their role on a Local Jobs First Project and is consistent with the Training Contract.
3. **Cadet** means an employee engaged by an employer (other than an Apprentice or Trainee) who is concurrently enrolled at an Australian University undertaking a tertiary qualification. To be considered a Cadet for the purposes of a Local Jobs First applicable project, a Cadet's employment must be paid practical work experience connected to their tertiary qualification. Cadetships are different to professional traineeships (an employee who is not in an entry level role and is undertaking professional development training), which cannot count towards MPSG Requirement (Development Activities).
4. [**Deemed Hours Formula** has the meaning given in the LIDP.] ***[Note: As per the Local Jobs First Agency Guidelines, the 'Deemed Hours Formula' is optional for calculating the MPSG requirement for all applicable projects. Project teams to amend as appropriate and delete all other references to the 'Deemed Hours Formula' in this section, if the Deemed Hours Formula is not used.]***
5. **Department** has the meaning given in section 3(1) of the Local Jobs First Act.
6. **Industry Capability Network (Victoria)** means Industry Capability Network (Victoria) Limited ACN 007 058 120.
7. **LIDP** means the Local Industry Development Plan submitted by the Project Co at the time of Project Co's Proposal and certified by Industry Capability Network (Victoria) by providing an acknowledgement letter.
8. **LIDP Commitments** means the obligations and undertakings of Project Co as detailed in its LIDP.
9. **LIDP Monitoring Table** means the table of milestones and LIDP Commitments contained in the LIDP.
10. **Local Content** has the meaning given in section 3(1) of the Local Jobs First Act.
11. **Local Content Requirements** has the meaning given in section 2.2(a)(i).
12. **Local Jobs First Act** means the *Local Jobs First Act 2003* (Vic).
13. **Local Jobs First Commissioner** means the person appointed under section 12 of the Local Jobs First Act.
14. **Local Jobs First Policy** means the policy of the Victorian Government made under section 4 of the Local Jobs First Act.
15. **Local Jobs First Requirements** has the meaning given in section 2.2(a).
16. **MPSG** means the Major Projects Skills Guarantee policy that provides job opportunities for Apprentices, Trainees and Cadets on high value construction projects.

**MPSG Requirement (Development Activities)** has the meaning given in section 2.2(a)(ii).

1. **Responsible Minister for LJF** means the Minister with responsibility for administering the Local Jobs First Act.
2. **Revised LIDP** has the meaning given in section 2.3(a)(iv).
3. **Total Estimated Labour Hours (Development Activities)** means, in respect of the Development Activities, the total estimated labour hours as determined in accordance with the [Deemed Hours Formula]. ***[Note: Project teams to amend as appropriate if the Deemed Hours Formula is not used.]***
4. **Trainee** means an employee engaged by an employer (other than an Apprentice or Cadet) employed under a Training Contract registered with VRQA that combines training with paid employment in an entry level role related to a Local Jobs First applicable project. For a Trainee to be counted towards the MPSG Requirement (Development Activities) for a project they must be undertaking a course that relates directly to their role on a Local Jobs First Project and is consistent with the Training Contract. Professional Traineeships (an employee who is not in an entry level role and is undertaking professional development training) cannot count towards the MPSG Requirement (Development Activities).
5. **Training Contract** has the meaning given in the *Education and Training Reform Act 2006* (Vic).
6. **Victorian Management Centre** or **VMC** means the cloud-based secure online platform that enables the registration of projects and associated tenders, the submission of LIDPs, collection, analysis and reporting of local content and jobs data, including, MPSG (if applicable) and, supply chain monitoring and reporting.
7. **VRQA** means the Victorian Registration and Qualification Authority.

## Local Industry Development Plan (LIDP)

### (**Comply with LIDP and Local Jobs First Policy**): Project Co must, in performing its obligations under this Deed:

#### comply with the LIDP, including to:

##### utilise Local Content in the carrying out of the Project Activities so that the Local Content aggregated for all goods and services utilised:

###### in undertaking the Development Activities generally is [##]%; and

###### in undertaking the procurement and supply of Equipment as part of the Development Activities, is [##]%; and

###### in undertaking the Services is [##]%;

##### ensure that all Subcontractors and other advisers preference solutions that maximise the use of local materials, finishes, products, goods and services in construction, including Equipment, wherever possible,

##### (**Local Content Requirements**); and

##### ***[Note: The percentage for the Local Content Requirements for the Development Activities and the Services will be updated to reflect the Successful Respondent's commitment in its Proposal.]***

#### ensure that a minimum of [##]% of the Total Estimated Labour Hours (Development Activities) are performed by Apprentices, Trainees and Cadets (**MPSG Requirement (Development Activities)**);

#### perform all obligations required to be performed under the LIDP, including the LIDP Commitments, by the due date for performance; and

#### comply with the Local Jobs First Policy,

#### (**Local Jobs First Requirements**).

### (**Application of the LIDP**): Project Co acknowledges and agrees that its obligations as set out in the LIDP apply for the Term, any extension of the Term and until all of its reporting obligations under section 2.4 have been satisfied.

## Revised LIDP

### (**Revised LIDP**): If at any time:

#### an amendment to this Deed, a Modification or an Augmentation is proposed which involves or effects a change in the nature of the LIDP Commitments;

#### following receipt of a report from Project Co submitted in accordance with section 2.4, the State at the time of submission of the report in accordance with section 2.4, notifies Project Co that it is not satisfied that:

##### Project Co is meeting the Local Jobs First Requirements; or

##### Project Co will be able to meet the Local Jobs First Requirements; or

#### Project Co considers that the Local Jobs First Requirements are not being met,

### Project Co must, unless otherwise agreed with the State:

#### prepare a revised LIDP which demonstrates Project Co's ability to meet the Local Jobs First Requirements in collaboration with and certified by Industry Capability Network (Victoria) (**Revised LIDP**); and

#### submit the Revised LIDP to the State for review in accordance with the Review Procedures.

### (**Provision of Revised LIDP**): When requested by the State, Project Co must provide the Revised LIDP within the time stated in the State's request.

### (**Amendment**): The Revised LIDP must be submitted, reviewed and amended in accordance with the Review Procedures before any amendment to this Deed, Modification or Augmentation can take effect, unless the parties agree that a Revised LIDP is unnecessary.

### (**Agreed LIDP**): Once the Revised LIDP is agreed by the parties, the Revised LIDP replaces the LIDP and forms part of this Deed.

## Reporting

### (**Records**): Project Co must prepare and maintain records demonstrating its compliance with the LIDP.

### (**Reporting**): Project Co must provide to the State:

#### a table in the form of the LIDP Monitoring Table identifying LIDP commitments and actual achievements. The LIDP Monitoring Table must identify and explain any departures from the LIDP Commitments and the aggregated outcomes as reported in the LIDP Monitoring Table; and

#### a statutory declaration in the form set out as part of the online LIDP and made by a director of Project Co or Project Co's Chief Executive Officer or Chief Financial Officer to confirm that the information contained in the LIDP Monitoring Table is true and accurate,

* 1. during:

#### the Development Phase:

##### within 20 Business Days after the date which is 6 Months after Financial Close, and thereafter, at six monthly intervals; and

##### upon:

###### the earlier of Commercial Acceptance and 1 Month after the Date for Commercial Acceptance; and

###### Final Acceptance; and

#### the Operational Phase, within 20 Business Days after the date which is 6 Months after the Operational Commencement Date, and thereafter at six monthly intervals, until the Expiry Date.

### (**Victorian Management Centre**): Without limiting section 2.4(b), Project Co must use the VMC for monitoring and reporting.

### (**Further information**): At the request of the State Representative, Project Co must provide further information or explanation of any departures from the LIDP as reported in the LIDP Monitoring Table.

## Damages for failure to comply

1. ***[Note: Procuring agencies to consult with the relevant LJF policy holder to determine on a project specific basis whether and what consequences should apply if Project Co fails to deliver the local content outcomes committed to in its LIDP. In this Standard Form Project Deed, a failure to comply with the LIDP will result in liquidated damages being payable at the Date of Commercial Acceptance and may result in a Major Default under paragraph (p) of that definition. Consideration should also be given to whether abatement should apply if Project Co does not meet the required local content outcomes during the Operational Phase.]***

### (**Certification by the Independent Reviewer**): On the Date of Commercial Acceptance, the Independent Reviewer must certify:

#### the percentage of Local Content used by Project Co to the Date of Commercial Acceptance in undertaking the Development Activities; and

#### the percentage of actual total labour hours for the Development Activities performed by Apprentices, Trainees and Cadets to the Date of Commercial Acceptance,

#### by issuing a certificate in the form set out in the Schedule of Certificates and Notices.

### (**State’s entitlement to liquidated damages**): Without limiting section 2.5(d) if, by the Date of Commercial Acceptance, Project Co has not met:

#### the Local Content Requirements in undertaking the Development Activities to the Date of Commercial Acceptance as determined in accordance with section 2.5(a), Project Co will be liable to the State for liquidated damages as calculated in accordance with section [1.7] of the Payment Schedule and such amount will be a debt due and payable by Project Co to the State; and

#### the MPSG Requirement (Development Activities) to the Date of Commercial Acceptance as determined in accordance with section 2.5(a), Project Co will be liable to the State for liquidated damages as calculated in accordance with section [1.8] of the Payment Schedule and such amount will be a debt due and payable by Project Co to the State.

#### ***[Note: The Payment Schedule must include the formula for calculating the liquidated damages.]***

### (**Calculation of liquidated damages**): The parties acknowledge and agree that:

#### the liquidated damages referred to in section 2.5(b):

##### will be calculated in accordance with the formula set out in sections [1.7] and [1.8] of the Payment Schedule; and

##### the relevant formulas have been agreed by the parties in good faith and the adjustment resulting from their application is a genuine pre-estimate of the anticipated or actual Liability the State will suffer if Project Co fails to meet the Local Content Requirements and the MPSG Requirement (Development Activities) (as applicable) in undertaking the Development Activities by the Date of Commercial Acceptance;

#### each party wishes to avoid the difficulties of proof of damages in connection with a failure by Project Co to meet the aggregate Local Content Requirements and the MPSG Requirement (Development Activities) in undertaking the Development Activities by the Date of Commercial Acceptance; and

#### the liquidated damages payable in accordance with section 2.5(b) are reasonable and are not intended as a penalty.

### (**State's entitlement to common law damages**): Notwithstanding section 2.5(e), to the extent that all or any part of this section 2.5 is found for any reason to be void, invalid, unenforceable or otherwise inoperative so as to disentitle the State from receiving the amount of liquidated damages payable in accordance with section 2.5(b), the State will be entitled to recover common law damages for the failure by Project Co to meet the Local Content Requirements and the MPSG Requirement (Development Activities) (as applicable) in undertaking the Development Activities but Project Co's Liability for such damages will not be any greater than the Liability which it would have had if this section 2.5 had not been void, invalid, unenforceable or otherwise inoperative.

### (**Sole remedy**): Subject to sections 2.5(d) and 2.5(f), payment by Project Co of liquidated damages in accordance with section 2.5 will be the State’s sole financial remedy for a failure by Project Co to meet the Local Content Requirements and the MPSG Requirement (Development Activities) in undertaking the Development Activities to the Date of Commercial Acceptance.

### (**Default**): Section 2.5(e) does not limit the State's rights under clauses 45 and 46 of the Deed, in circumstances where Project Co breaches section 2.2 and that breach becomes a Major Default under paragraph (p) of the definition of Major Default.

## Verification of Project Co's compliance with LIDP

### (**Review of performance**): Project Co must:

#### permit the State, or any person authorised by the State, (including any accountant or auditor engaged by the State or the Department), from time to time during Business Hours and upon notice, to inspect, verify and make copies, at the State's expense, of all records maintained by Project Co for the purposes of ensuring Project Co's compliance with the LIDP, at Project Co's premises, or provide copies of those records to the State at its request;

#### permit the State, or any person authorised by the State, (including any accountant or auditor engaged by the State or the Department), from time to time to undertake a review of Project Co's performance in accordance with the LIDP; and

#### ensure that any Project Co Associate gives all reasonable assistance to any person authorised by the State to take copies of records or undertake such inspection, verification or review in accordance with this section 2.6.

### (**Authorisations**): Project Co acknowledges and agrees that the State, the State Representative, the Department, Industry Capability Network (Victoria) and any accountant or auditor engaged by the State or the Department are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding Project Co's compliance with the LIDP.

## Use of LIDP information

1. Project Co acknowledges and agrees that:

### (**assessment**): Industry Capability Network (Victoria) will assess Project Co’s performance against the LIDP; and

### (**disclosure**): the statistical information contained in the LIDP and the LIDP Monitoring Table may be:

#### included in the State’s report of operations under Part 7 of the *Financial Management Act 1994* (Vic) in respect of the State’s compliance with the Local Jobs First Policy in the financial year to which the report of operations relates;

#### provided to the Responsible Minister for LJF for inclusion in the Responsible Minister for LJF's report to the Parliament for each financial year on the implementation of the LIDP during that year; and

#### disclosed in the circumstances set out in clause 55.1 of the Deed and section 2.4 or as otherwise required by Law.

## Subcontracting

### Project Co must ensure that any Subcontracts contain clauses requiring Subcontractors:

### (**comply with Local Jobs First Policy and LIDP**): to comply with the Local Jobs First Policy and the LIDP to the extent that they apply to work performed under the Subcontract;

### (**provide information**): to provide necessary information that allows Project Co to comply with its reporting obligations under section 2.4; and

### (**permit inspection and verification**): to permit the State and the Department to exercise their inspection and verification rights under section 2.6.

## Local Jobs First Commissioner

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

#### it is required to comply with any information notice issued to it by the Local Jobs First Commissioner in accordance with section 24 of the Local Jobs First Act;

#### it is required to comply with any compliance notice issued to it by the Local Jobs First Commissioner in accordance with section 26 of the Local Jobs First Act;

#### its failure to comply with a compliance notice referred to in section 2.9(a)(ii) may result in the issue of an adverse publicity notice by the Responsible Minister for LJF under section 29 of the Local Jobs First Act; and

#### the Local Jobs First Commissioner may:

##### monitor and report on compliance with the Local Jobs First Policy and the LIDP; and

##### request the State to conduct an audit in relation to Project Co's compliance with the Local Jobs First Policy and the LIDP.

### (**Enforcement proceedings**): Project Co acknowledges and agrees that the Local Jobs First Commissioner may recommend that the State take enforcement proceedings against Project Co if Project Co has failed to comply with the Local Jobs First Policy or the LIDP by:

#### applying to a court to obtain an injunction; or

#### taking action available under this Deed.

### (**Default**): Section 2.9(b) does not limit the State's rights under clauses 45 and 46 of this Deed, in circumstances where Project Co breaches section 2.2, and that breach becomes a Major Default under paragraph (p) of the definition of Major Default.

# Fair Jobs Code

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 3 have the meanings given to them in this Deed:
2. **Adverse Ruling** means a ruling (by any court, tribunal, board, commission or other entity with jurisdiction or legal authority to determine the matter) that Project Co has breached an applicable employment, industrial relations or workplace health and safety law.
3. **DJPR** means the Department of Jobs Precincts and Regions (and any successor Government department) as the Department responsible for the FJC.
4. **Enforceable Undertaking** means a promise or agreement made by Project Co with a regulator, court or other body (including the Fair Work Ombudsman, WorkSafe Victoria and Wage Inspectorate Victoria) in respect of a breach or alleged/suspected breach of an applicable employment, industrial relations or workplace health and safety law.
5. **FJC** means the Fair Jobs Code issued by the State of Victoria available at https://www.buyingfor.vic.gov.au/fair-jobs-code.
6. **FJC Plan Addendum** means Project Co's Fair Jobs Code Plan Addendum, addressing industrial relations, occupational health and safety requirements and commitments and standards as required by the FJC.
7. **FJC Subcontractor** means a Subcontractor who enters into a contract valued at $10 million or more (exclusive of GST) with Project Co in connection with the Project Activities.
8. **FJC Unit** means the Fair Jobs Code Unit, an administrative group within DJPR with responsibilities in relation to the FJC.
9. **Pre-Assessment Certificate** means a certificate issued to Project Co by the FJC Unit prior to entering into this Deed, or which is renewed during the Term.

## Fair Jobs Code

### Project Co warrants that on the date of Financial Close, it holds a valid Pre-Assessment Certificate.

### In performing its obligations under this Deed, Project Co acknowledges and agrees that it must:

#### continue to hold a valid Pre-Assessment Certificate;

#### comply with its FJC Plan Addendum;

#### perform all obligations required to be performed under the FJC Plan Addendum by the date required under the FJC Plan Addendum; and

#### comply with the FJC.

### If at any time during the Term, Project Co's Pre Assessment Certificate is revoked by the FJC Unit, that revocation will constitute a breach of this section 3.

### Project Co acknowledges and agrees that the obligations for holding and maintaining a valid Pre-Assessment Certificate apply during the Term and until all of its reporting obligations as set out in section 3.4 are fulfilled.

## Verification of Project Co's compliance with the Fair Jobs Code

### Project Co must, on request by the State, provide a copy of the Pre-Assessment Certificate or any related correspondence with the FJC Unit.

### If, during the Term, Project Co's Pre-Assessment Certificate expires Project Co must provide notice to the State of the expiry within 10 Business Days.

### If Project Co fails to promptly take steps to renew an expired Pre-Assessment Certificate as soon as practicable after notifying the State of the expiration, the expiration will constitute a breach of this section 3.

## Reporting

### Project Co must prepare and maintain records demonstrating its compliance with, and implementation of, the FJC Plan Addendum.

### Project Co must provide reports which demonstrate Project Co's progress towards implementing the FJC Plan Addendum at a time or times to be determined by the State but not less than once per year.

### Prior to or on the Date of Commercial Acceptance, or on such other dates as notified by the State Representative, Project Co must provide to the State Representative:

#### a final report identifying FJC Plan Addendum commitments and actual achievements; and

#### a statutory declaration, made by a director of Project Co or the Project Co's Chief Executive Officer or Chief Financial Officer, declaring that the information contained in the final FJC Plan Addendum report is true and accurate.

### At the request of the State Representative, Project Co must provide further information or explanation of any differences between expected and achieved FJC Plan Addendum outcomes.

### The reporting obligations in this Schedule are in addition to and do not derogate from any other reporting obligations as set out in this Deed.

## Ongoing duty of disclosure and cooperation and audits

### If during the Term, Project Co is the subject of an Adverse Ruling or Enforceable Undertaking it must provide notice to the State and the FJC Unit within 10 Business Days of the Adverse Ruling or Enforceable Undertaking being made.

### During the Term, Project Co must:

#### cooperate with all reasonable requests from the State seeking evidence of Project Co's compliance with the FJC and the FJC Plan Addendum;

#### permit the State Representative, an accountant or auditor on behalf of the State, DJPR or any other person authorised by the State or DJPR, from time to time during ordinary business hours and upon notice, to inspect and verify all records maintained by Project Co relating to compliance with the FJC and FJC Plan Addendum under this Deed; and

#### ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the State or DJPR to undertake such audit or inspection.

### The State will bear all costs associated with undertaking any audit in accordance with section 3.5(b).

### Project Co acknowledges and agrees that the State, DJPR, the State's and DJPR's duly authorised representatives (including the FJC Unit) are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding Project Co's compliance with the FJC.

### The obligations set out in this section 3.5 are in addition to and do not derogate from any other obligation under this Deed.

### A failure to comply with this section 3.5 will constitute a breach of this section 3.

## FJC Subcontracting

### Project Co warrants that any FJC Subcontractors engaged or proposed to be engaged to perform work under this Deed hold a valid Pre-Assessment Certificate when they are engaged or proposed to be engaged.

### Project Co must ensure that any subcontracts entered into by Project Co with FJC Subcontractors in relation to work under this Deed contain clauses requiring FJC Subcontractors to:

#### comply with the FJC;

#### hold a valid Pre-Assessment Certificate;

#### notify Project Co if its Pre-Assessment Certificate is revoked, or if its Pre-Assessment Certificate expires without being replaced with a new Pre-Assessment Certificate;

#### comply with the ongoing duty of disclosure and cooperation set out in section 3.5, as if references to Project Co were references to the FJC Subcontractor;

#### comply with the FJC Plan Addendum, to the extent that it applies to work performed under the subcontract;

#### provide necessary information that allows Project Co to comply with its reporting obligations under section 3.4; and

#### permit the State and DJPR to exercise their inspection and audit rights under section 3.5.

### The subcontracting obligations set out in this section 3.6 are in addition to and do not derogate from any other obligations under this Deed.

### Project Co's failure to comply with this section 3.6 will constitute a breach of this section 3.

## Use of information

1. Project Co acknowledges and agrees that:

### FJC Unit will assess Project Co's compliance with the FJC;

### information regarding Project Co's compliance with the FJC including any disclosures regarding Adverse Rulings or Enforceable Undertakings:

#### will be reported by the State to the FJC Unit in compliance with the State's obligations under the FJC; and

#### may be disclosed in the circumstances authorised or permitted under the terms of this Deed or as otherwise required by Law; and

### nothing in this provision removes the obligation for Project Co to report Adverse Rulings or Enforceable Undertakings to the FJC Unit as per section 3.5.

# Social Procurement Framework

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 4 have the meanings given to them in this Deed:
2. **Apprentice** [means](http://means) a person whom an employer has undertaken to train under a Training Contract. For the purposes of the Building Equality Policy Commitments, only Apprentices primarily working onsite and undertaking an apprenticeship related to onsite building and construction work may be counted against the minimum Building Equality Policy Commitments.
3. **Building Equality Policy** means the Victorian government’s Building Equality Policy which came into effect on 1 January 2022, accessible at www.vic.gov.au/building-equality-policy, as amended from time to time.
4. **Building Equality Policy Actions** means the three actions that Project Co is required to deliver under the Building Equality Policy:

### Action 1 – meet project specific gender equality targets;

### Action 2 – engage women as apprentices and trainees to perform building and construction work; and

### Action 3 – implement Gender Equality Action Plans.

1. **Building Equality Policy Commitment** means a commitment made by Project Co, as set out in the Social Procurement Commitment Schedule, to deliver the Building Equality Policy Actions.
2. **Deemed Hours Formula** has the same meaning as Deemed Hours Formula in the Local Jobs First Policy Agency Guidelines as amended from time to time and accessible at www.localjobsfirst.vic.gov.au/.
3. **Gender Equality Action Plan** or **GEAP** means the Organisation Wide Gender Equality Action Plan and the Project Specific Gender Equality Action Plan.
4. **Kinaway** means Kinaway Chamber of Commerce Victoria Limited (ACN 600 066 199).
5. **Local Jobs First Policy** means the policy of the Victorian Government made under section 4 of the Local Jobs First Act.
6. **Map for Impact** means the online map produced by the Victorian Social Enterprise Mapping Project (accessible at <https://mapforimpact.com.au/>), as amended from time to time.
7. **Organisation Wide Gender Equality Action Plan** means the plan attached at Annexure A to the Social Procurement Commitment Schedule.
8. **Project Specific Gender Equality Action Plan** means Plan attached at Annexure B to the Social Procurement Commitment Schedule.

### **Social or Sustainable Outcome** means an outcome listed in Tables 1 or 2 of the Social Procurement Framework.

1. **Social Procurement Commitment** means a commitment to deliver a Social or Sustainable Outcome through an individual procurement activity, as identified in the Social Procurement Commitment Schedule.
2. **Social Procurement Commitment** **Schedule** means the agreed Social Procurement Commitment Proposal set out at Schedule 20 which includes the agreed Social Procurement Commitments, the agreed Building Equality Policy Commitments and the Gender Equality Action Plans.
3. **Social Procurement Framework** means Victoria's Social Procurement Framework published 26 April 2018 by the Victorian Government, as amended from time to time.
4. **Social Procurement Performance Report** has the meaning given in section 4.2(g)(i).
5. **Social Procurement Target** means the requirement that Project Co expend an amount equivalent to at least [1.5]% of the D&C Price in accordance with the Social Procurement Commitment Schedule***. [Note: The percentage of the D&C Price will be updated to reflect the Successful Respondent's commitment in its Proposal, to the extent that it exceeds [1.5]% of the D&C Price.]***
6. **Social Traders** means Social Traders Limited (ACN 132 665 804).
7. **Supply Nation** means Australian Indigenous Minority Supplier Office Limited (trading as Supply Nation) (ACN 134 720 362).
8. **Trainee** means a person (other than an Apprentice) employed under a Training Contract. For the purposes of the Building Equality Policy Commitments, only Trainees primarily working onsite and undertaking a traineeship related to onsite building and construction work may be counted against the minimum Building Equality Policy Commitments.
9. **Training Contract** means a training contract lodged with the Victorian Registration and Qualification Authority (**VRQA**) or a person nominated by the VRQA in accordance with the *Education and Training Reform Act* *2006* (Vic).
10. **Victorian Aboriginal business** means a business that:

### is at least 50 per cent Aboriginal and/or Torres Strait Islander-owned;

### undertakes commercial activity; and

### operates and has business premises in Victoria.

1. **Victorian Social Enterprise** means an organisation that is:

### certified by Social Traders, and operates and has a business premises in Victoria; or

### listed on the Map for Impact.

1. **VMC** means the information management platform that collects data to support government and industry with the Social Procurement Framework and Local Jobs First Policy, administered by the ICN and formerly the Victorian Management Centre.

## Social Procurement Framework

### (**Social Procurement Target**): Project Co must meet or exceed the Social Procurement Target.

### (**Social Procurement Commitment Schedule**): Project Co must, in undertaking the Project Activities:

#### comply with the Social Procurement Commitment Schedule ; and

#### perform all Social Procurement Commitments and the Building Equality Policy Commitments by the due date for performance as set out in the Social Procurement Commitment Schedule or directed by the State.

### (**Term**): Project Co acknowledges and agrees that the Social Procurement Commitment Schedule (including the Social Procurement Commitments and the Building Equality Policy Commitments) applies throughout the Term until all of its reporting obligations as set out in section 4.2(g) are fulfilled.

### (**Application to the Project Activities**): Project Co agrees that the Social Procurement Commitments will bind Project Co in relation to:

#### the Project Activities as a whole, including any Modification; and

#### all Project Activities conducted off site provided that the work has been specified as part of this Deed.

### (**Default**): Subject to section 4.2(ee), Project Co's failure to undertake all reasonable measures to achieve compliance with sections 4.2(a) to 4.2(i) may be determined by the State to constitute a Default.

### (ee) (**No Default**): Project Co's failure to comply with its obligations:

#### in section 4.2(b) in relation to its Building Equality Policy Commitments; or

#### in section 4.2(f) in relation to Subcontracts and Building Equality Policy Commitments,

### at any time prior to 1 January 2024 will not constitute a Default.

### (**Subcontracts**): Project Co must ensure that any Subcontracts contain clauses requiring Subcontractors to:

#### comply with the Social Procurement Commitments and Building Equality Policy Commitments to the extent that it applies to work performed under the Subcontract;

#### provide necessary information that allows Project Co to comply with its obligations under section 4; and

#### permit the State to exercise its inspection and verification rights under section 4.2(i).

### (**Reports**): Project Co has the following reporting obligations:

#### Project Co must submit written reports (**Social Procurement Performance Reports**) to the State demonstrating its:

##### compliance with the Social Procurement Commitment Schedule; and

##### performance against the Social Procurement Commitments and the Building Equality Policy Commitments;

#### the Social Procurement Performance Report submitted in accordance with section 4.2(g) must:

##### be submitted (where possible) by Project Co using the VMC - or as otherwise agreed by the State;

##### be in a form satisfactory to the State (acting reasonably);

##### include details specifying Project Co's performance in complying with the Social Procurement Commitment Schedule; and

##### include any reasons for non-compliance with the Social Procurement Commitment Schedule; and

##### include all supporting information reasonably required by the State to verify the contents of the Social Procurement Performance Report;

#### Social Procurement Performance Reports must be submitted by Project Co to the State:

##### as specified in the Social Procurement Commitment Schedule; and

##### otherwise:

###### at a frequency of at least every 6 Months during the Development Phase; and

###### within 20 Business Days after the end of each Financial Year during the Operational Phase; and

#### in addition to the Social Procurement Performance Reports, Project Co must submit:

##### a final Social Procurement Performance Report no earlier than 12 Months prior to the Final Expiry Date; and

##### a statutory declaration, in the form set out in Schedule 20 (*Social Procurement Commitment Schedule*), made by a director of Project Co or Project Co's Chief Executive Officer or Chief Financial Officer declaring that the contents of the final Social Procurement Performance Report are true and correct.

### (**Failure to meet Building Equality Policy Commitments**): With regard to Building Equality Policy Commitments, Project Co must:

#### notify the State as soon as practicable, but no later than 20 Business Days after becoming aware that it will not meet some or all of the Building Equality Policy Commitments; and

#### set out the steps proposed to be taken to meet the Building Equality Policy Commitments.

### (**Verification of Project Co's compliance with Social Procurement Commitment Schedule**): Project Co:

#### acknowledges and agrees that the State will have the right to inspect Project Co's records to verify its compliance with the Social Procurement Commitment Schedule;

#### must:

##### permit the State, or any person authorised by the State, from time to time during Business Hours and upon notice, to inspect, verify and make copies, at the State's expense, of all records maintained by Project Co for the purposes of ensuring Project Co's compliance with the Social Procurement Commitment Schedule at Project Co's premises, or provide copies of those records to the State at its request;

##### permit the State, or any person authorised by the State, from time to time to undertake a review of Project Co's performance against the Social Procurement Commitments or the Building Equality Policy Commitments;

##### ensure that any Project Co Associate gives all reasonable assistance to any person authorised by the State to undertake such inspection, verification or review; and

#### acknowledges and agrees that the State and the State Representative, are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding Project Co's compliance with the Social Procurement Commitment Schedule.

### (**Use of Social Procurement Framework information**): Project Co acknowledges and agrees that:

#### the statistical information contained in the Social Procurement Commitment Schedule and the measures of Project Co's compliance with the Social Procurement Commitment Schedule as reported:

##### will be provided to any departments and agencies responsible for the Social Procurement Framework and the Building Equality Policy, for combined reporting purposes for each financial year on the compliance and performance of the Social Procurement Framework and the Building Equality Policy during that year;

##### may be considered in the assessment or review of each Consortium Member's eligibility to tender for future Victorian Government contracts; and

##### may be disclosed in the circumstances authorised or permitted under the terms of this Deed or as otherwise required by Law; and

#### the State, or any person authorised by the State may use any information provided by Project Co to assess and review the impact of the Social Procurement Framework and Building Equality Policy on the building and construction industry.

### (**No derogation**): The obligations set out in sections 4.2(f), (g) and (i) are in addition to, and do not derogate from, any other obligations set out in this Deed.

# Aboriginal Participation Requirements

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 5 have the meanings given to them in this Deed:
2. **Aboriginal Participation Requirements** means the requirement that at least [#]% of the Project Co Development Phase Workforce or Project Co Operational Phase Workforce (as applicable) will be Aboriginal Persons undertaking Development Activities (in the case of the Project Co Development Phase Workforce) and Services (in the case of the Project Co Operational Phase Workforce) in Victoria, calculated as an Annualised Employee Equivalent against the Project Co Development Phase Workforce or Project Co Operational Phase Workforce (as applicable). ***[Note: The percentage for the Aboriginal Participation Requirements will be updated to reflect the Successful Respondent's commitment in its Proposal, to the extent that it exceeds #% of the Project Co Development Phase Workforce or Project Co Operational Phase Workforce.]***
3. **Aboriginal Persons** means persons who:

### are descended from an Australian Aboriginal or Torres Strait Islander;

### identify as an Australian Aboriginal or Torres Strait Islander; and

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

1. **Annualised Employee Equivalent (AEE)** means the figure calculated by dividing the total number of ordinary working hours that an employee worked and was paid for over the reporting period by the total number of fulltime ordinary working hours paid per annum summed over the reporting period. The employee's working hours include paid leave (e.g. sick leave, paternity leave, recreation leave, long service leave etc.) but not unpaid leave.
2. **APR Monitoring Table** has the meaning given in section 5.2(c).
3. **Cure Plan (APR)** has the meaning given in section 5.3(a).
4. **Project Co Development Phase Workforce** means the workforce employed or otherwise engaged by:

### Project Co;

### any Key Subcontractor;

### any Significant Subcontractor; and

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

1. undertaking all or any part of the Development Activities in Australia or New Zealand up to the Date of Commercial Acceptance and includes persons performing a head office, corporate or governance role to the extent such role is in connection with the Project, provided that to the extent a person undertakes multiple roles in connection with the Project, that person may not be counted more than once.
2. **Project Co Operational Phase Workforce** means the workforce employed or otherwise engaged by:

### Project Co;

### any Key Subcontractor;

### any Significant Subcontractor; and

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

1. undertaking all or any part of the Services in Australia or New Zealand and includes persons performing a head office, corporate or governance role to the extent such role is in connection with the Project, provided that to the extent a person undertakes multiple roles in connection with the Project, that person may not be counted more than once.

## Aboriginal Participation Requirements

### (**Compliance**): Project Co must comply with the Aboriginal Participation Requirements in the carrying out of the Project.

### (**Records**): Project Co must prepare and maintain records demonstrating its compliance with the Aboriginal Participation Requirements.

### (**Reporting**): Project Co must provide to the State:

#### a table:

##### detailing Project Co's compliance with the Aboriginal Participation Requirements; and

##### identifying and explaining any departures from the Aboriginal Participation Requirements,

1. (**APR Monitoring Table**); and

#### a statutory declaration made by a director of Project Co or Project Co's Chief Executive Officer or Chief Financial Officer declaring that the information contained in the APR Monitoring Table is true and accurate,

during:

#### the Development Phase:

##### within 20 Business Days after the end of each Financial Year; and

##### upon:

###### the earlier of the Date of Commercial Acceptance and 1 Month after the Date for Commercial Acceptance; and

###### the Date of Final Acceptance; and

#### the Operational Phase, within 20 Business Days after the end of each Financial Year.

### (**Further information**): At the request of the State Representative, Project Co must provide further information or explanation of any departures from the Aboriginal Participation Requirements as reported in the APR Monitoring Table.

## Cure Plan (APR)

### (**Cure Plan** **(APR)**): If at any time:

#### following receipt of a report from Project Co submitted in accordance with section 5.2(c), the State or the Independent Reviewer notifies Project Co that it is not satisfied that:

##### Project Co is meeting the Aboriginal Participation Requirements; or

##### Project Co will be able to meet the aggregate Aboriginal Participation Requirements; or

#### Project Co considers that the requirements of the Aboriginal Participation Requirements are not being met,

* 1. Project Co must unless otherwise agreed with the State:

#### prepare a plan which demonstrates Project Co’s ability to meet the aggregate Aboriginal Participation Requirements (**Cure Plan (APR)**); and

#### submit the Cure Plan (APR) to the State and the Independent Reviewer for review in accordance with the Review Procedures.

### (**Provision of Cure Plan (APR)**): When requested by the State, Project Co must provide the Cure Plan (APR) to the State and the Independent Reviewer within the time stated in the State’s request.

### (**Compliance**): Project Co must comply with the Cure Plan (APR).

## Independent Reviewer Certification

Within 20 Business Days of the Date of Commercial Acceptance, the Independent Reviewer must certify the percentage of the Project Co Development Phase Workforce which was comprised of Aboriginal Persons undertaking Development Activities in Victoria, calculated as an Annualised Employee Equivalent against the Project Co Development Phase Workforce, by issuing a certificate in the form set out in the Schedule of Certificates and Notices.

## Verification of Project Co's compliance with APR

### (**Review of performance**): Project Co must:

#### permit the State, or any person authorised by the State, from time to time during Business Hours and upon notice, to inspect, verify and make copies, at the State's expense, of all records maintained by Project Co for the purposes of ensuring Project Co's compliance with the Aboriginal Participation Requirements, at Project Co’s premises, or provide copies of those records to the State at its request;

#### permit the State, or any person authorised by the State, from time to time to undertake a review of Project Co’s performance in accordance with the Aboriginal Participation Requirements; and

#### ensure that any Project Co Associate gives all reasonable assistance to any person authorised by the State to take copies of records or undertake such inspection, verification or review in accordance with this section 5.5.

### (**Authorisations**): Project Co acknowledges and agrees that the State, and the State Representative, are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding Project Co’s compliance with the Aboriginal Participation Requirements.

### (**No derogation**): The obligations set out in section 5.5 are in addition to, and do not derogate from, any other obligations set out in this Deed.

## Use of APR information

1. Project Co acknowledges and agrees that the statistical information in relation to the Aboriginal Participation Requirements may be:

### (**report of operations**): included in the State's report of operations under Part 7 of the *Financial Management Act 1994* (Vic) in respect of the State's compliance with the Aboriginal Participation Requirements in the Financial Year to which the report of operations relates;

### (**Aboriginal Participation Requirements Report**): provided to the responsible Minister for the Aboriginal Participation Requirements for inclusion in the responsible Minister for the Aboriginal Participation Requirements' report to the Parliament for each Financial Year on the implementation of the Aboriginal Participation Requirements during that year; and

### (**disclosure**): disclosed in the circumstances set out in clause 55.1 of this Deed or as otherwise required by Law.

# Modern Slavery

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 6 have the meanings given to them in this Deed:
2. **Guiding Principles on Business and Human Rights** means the United Nations' Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework available at <https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf>.
3. **Grievance Mechanism** means a process for handling a complaint or grievance about Modern Slavery practices that is consistent with the criteria set out in the Guiding Principles on Business and Human Rights.
4. **Modern Slavery** has the meaning given in the Modern Slavery Legislation.
5. **Modern Slavery Legislation** means the *Modern Slavery Act 2018* (Cth) and any similar legislation in force from time to time in Victoria.
6. **Modern Slavery Risk Management Plan** has the meaning given in section 6.2(d).

## Modern Slavery

### (**Modern Slavery Legislation**): Project Co must:

#### comply with the Modern Slavery Legislation to the extent that such legislation is applicable to Project Co;

#### facilitate the State complying with any Modern Slavery Legislation applicable to the State, by providing in a timely manner all information concerning its supply chain and that of Project Co Associates which the State may reasonably require; and

#### ensure that such reporting and other information is accurate, complete and in such form as the State requires.

### (**Modern Slavery practices**): Project Co must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Project Activities.

### (**Modern Slavery training**): Project Co will ensure any Project Co Associates who are responsible for managing the operations and supply chains used in the performance of the Project Activities have undertaken suitable training to be able to identify and report Modern Slavery.

### (**Modern Slavery Risk Management Plan**): Within one month after Financial Close Project Co will prepare and implement a Modern Slavery Risk Management Plan in relation to its performance of the Project Activities and, if requested by the State, provide a copy of this plan to the State for review in accordance with the Review Procedures. The Modern Slavery Risk Management Plan must, at a minimum, detail:

#### Project Co's steps to identify and assess risks of Modern Slavery practices in the operations and supply chains used in the performance of the Project Activities;

#### Project Co's processes for addressing any Modern Slavery practices of which it becomes aware in the operations and supply chains used in the performance of the Project Activities;

#### the content and timing of training for Project Co Associates regarding Modern Slavery; and

#### the Grievance Mechanisms available to Project Co Associates,

### (**Modern Slavery Risk Management Plan**).

### (**Compliance with Modern Slavery Risk Management Plan**): Project Co must comply with the Modern Slavery Risk Management Plan in its performance of the Project Activities. For the avoidance of doubt, nothing in this section derogates from Project Co's other obligations arising under this Deed or otherwise in relation to the provision of the Project Activities.

### (**Action to address Modern Slavery**): If at any time Project Co becomes aware of Modern Slavery practices in the operations or supply chains used in the performance of the Project Activities, Project Co must as soon as reasonably practicable:

#### take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains; and

#### take all reasonable steps to remediate any adverse impacts caused or contributed to by Project Co from these practices in accordance with the Guiding Principles on Business and Human Rights.

### (**Recruitment Fees**): Without limiting section 6.2(f), Project Co must:

#### not require any Project Co Associate to pay fees, charges, expenses or financial obligations incurred in order to secure their employment or placement (**Recruitment Fees**), regardless of the manner, timing or location of the imposition or collection of these Recruitment Fees;

#### not destroy or exclusively possess, whether permanently or otherwise, the travel or identity documents of any Project Co Associate; and

#### ensure Project Co Associates can access a Grievance Mechanism to safely report any instances of Modern Slavery in the operations and supply chains used by Project Co in its performance of the Project Activities.

### (**Subcontractors**): Project Co must take reasonable steps to ensure that all Subcontracts contain Modern Slavery provisions that are reasonably consistent with the provisions in this section 6 (including compliance with the Modern Slavery Laws to the extent applicable).

# Digital Asset Policy

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 7 have the meanings given to them in this Deed:
2. **Digital Asset Policy** means the Victorian Government Digital Asset Policy prescribing requirements for the procurement and delivery of all Victorian capital project contracts greater than $20 million in value.
3. **High Value High Risk Projects** means projects classified as such under the HVHR Project Assurance Framework.
4. **HVHR Project Assurance Framework** means the high value high risk project assurance framework published by the Department of Treasury and Finance in October 2017, as may be updated from time to time.

## Digital Asset Policy

### (**Digital Asset Policy Requirements**): Project Co must, in performing its obligations under this Deed, comply with the Digital Asset Policy to the extent practical.

### (**Principles**): Project Co agrees to align with the aim of the Digital Asset Policy to use digital processes to support timely and effective decision making, by abiding by the following data principles:

#### data originates from a single source;

#### data is continuously shared and trusted;

#### data is integrated and federated;

#### data is produced with common standards and meta-data; and

#### data has transparency of origin, author, and an auditable history.

### (**Duration**): Project Co acknowledges and agrees that its obligations set out in the Digital Asset Policy apply throughout the Term, until all its reporting obligations set out in this section 7 are fulfilled.

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

#### prepare and maintain records demonstrating its compliance with the Digital Asset Policy;

#### include, in its Monthly Development Phase Progress Report and Monthly Operational Phase Performance Report (as applicable) submitted under clause 7.7(d) of this Deed, evidence demonstrating its progress towards its obligations required to be performed under the requirements set out in the Digital Asset Policy, which must:

##### be in a form satisfactory to the State (acting reasonably); and

##### include:

###### all supporting information reasonably required by the State or the Victorian Government to verify its compliance with the requirements of the Digital Asset Policy; and

###### any reasons for deviations from the Digital Asset Policy.

### (**Subcontracting**): Project Co acknowledges and agrees that this section 7 applies to any Subcontract and must ensure that each Subcontract includes an obligation on the Subcontractor to:

#### use its best endeavours to comply with the requirements in the Digital Asset Policy, to the extent that it applies to the works performed under the Subcontract; and

#### provide the necessary information that allows Project Co to comply with its reporting obligations under section 7.2(e).

# Tip Truck Owner Driver

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 8 have the meanings given to them in this Deed:
2. **Excavation Work** means work that involves the removal of soil or rock from a site to form an open face, hole or cavity.
3. **Freight Broker** means a broker or agent in the business of procuring or arranging the engagement of independent contractors by hirers, including a person who provides an online platform that facilitates the engagement of contractors by hirers.
4. **Published Rates** means the rates and cost schedules for Tip Truck Owner Drivers developed and published in accordance with the *Owner Drivers and Forestry Contractors Act 2005* (Vic), as revised from time to time in accordance with the *Owner Drivers and Forestry Contractors Act 2005* (Vic).
5. **Relevant Published Rate** means those of the Published Rates applicable to the type of tip truck to be provided by the Tip Truck Owner Driver.
6. **Tip Truck Owner Driver** means an independent contractor who drives a tip truck in connection with Excavation Work in the building and construction industry.

## Tip Truck Owner Drivers

### (**Application**): This section 8 applies where any aspect of the delivery of the Project Activities involves the use of a Tip Truck Owner Driver.

### (**Payment of Tip Truck Owner Driver**): Where Project Co engages a Tip Truck Owner Driver directly, or indirectly through a Subcontractor or Freight Broker, Project Co must ensure that the Tip Truck Owner Driver is paid according to the following:

#### if the Tip Truck Owner Driver is to be paid at an hourly rate then that must be at least at the Relevant Published Rate plus any Freight Broker fees due and payable and road tolls reasonably incurred;

#### if the Tip Truck Owner Driver is to be paid on a per load rate then the per load rate must be arrived at based on a reasonable estimate of the time likely to be required to complete the specific job, multiplied by the Relevant Published Rate adjusted for any agreed incentive component, plus any Freight Broker fees due and payable and road tolls reasonably incurred;

#### for the purposes of calculating a per load rate, a reasonable estimate of the time likely to be required must:

##### take into account all of the relevant circumstances of the specific job, including the volume or weight of the load to be moved, distance to be travelled for transfer, local traffic conditions, time of day, expected waiting times, special site conditions and other special circumstances; and

##### be based on what a competent and experienced person in the position of the person engaging the Tip Truck Owner Driver would consider to be a reasonable estimate;

#### if a per load rate includes an incentive component in addition to the minimum rate, the incentive component may be reduced in proportion to any shortfall in the load moved, as agreed between the Tip Truck Owner Driver and the party engaging the Tip Truck Owner Driver; and

#### if the Tip Truck Owner Driver is underpaid, Project Co must either pay the amount of the underpayment or otherwise ensure that it is paid by the relevant subcontractor or Freight Broker.

# Protective Data Security Standards

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 9 have the meanings given to them in this Deed:
2. **PDP Act** means the *Privacy and Data Protection Act 2014* (Vic).
3. **Protective Data Security Plan** means the plan prepared by the State for the purposes of section 89 of the PDP Act, as provided by the State to Project Co from time to time.
4. **Protective Data Security Standards** has the meaning given in the PDP Act.
5. **Public Sector Agency** has the meaning given in the PDP Act.
6. **Public Sector Data** has the meaning given in the PDP Act.
7. **Public Sector Data Systems** has the meaning given in the PDP Act.

## Protective Data Security Standards

1. Notwithstanding any other provision of this Deed, Project Co must:

### not do any act or engage in a practice that if done by a Public Sector Agency would contravene a Protective Data Security Standard in respect of:

#### Public Sector Data; or

#### Public Sector Data Systems kept by Project Co under or in connection with this Deed;

### in carrying out all Project Activities, collect, hold, manage, use, disclose and transfer Public Sector Data only:

#### for the purposes of meeting Project Co's obligations under this Deed;

#### in accordance with the parts of the Protective Data Security Plan relevant to Project Co; and

#### in accordance with all other security requirements the State notifies to Project Co in writing, where those requirements are reasonably necessary to ensure the parties comply with the PDP Act and the Protective Data Security Standards;

### where disclosing, transferring or otherwise making accessible Public Sector Data to any third party (including an Associate), ensure that the third party agrees to and complies with this section 9 to the same extent as Project Co (except that the third party may not further transfer, disclose or otherwise make accessible Public Sector Data without the State's prior written consent); and

### on termination or expiry of this Deed or at any time on request by the State, return to the State or securely destroy (at the State's discretion) all copies or other records containing Public Sector Data.

# Freedom of Information Act

### Project Co acknowledges and accepts that the State has obligations under the *Freedom of Information Act 1982* (Vic) in relation to the publication and disclosure of certain documents and provisions and particulars of this Deed.

### In order to comply with the State’s obligations under the *Freedom of Information Act* *1982* (Vic), Project Co:

#### acknowledges and accepts that the documentation within the possession of the State, whether created by the State or received by the State from another party in respect of the performance of the Project Activities may be subject to disclosure under the *Freedom of Information Act 1982* (Vic);

#### acknowledges and consents to the State making available all information in relation to Project Co or this Deed as it decides to release, or releases in order to comply with a decision or order of the Victorian Civil and Administrative Tribunal, under the *Freedom of Information Act 1982* (Vic); and

#### must co-operate and comply with any requests from the State regarding any application under the *Freedom of Information Act 1982* (Vic) to access any documentation within the possession of the State, whether created by the State or received by the State from another party in respect of the performance of the Project Activities.

### Possession in this context includes documentation that the State has an immediate right to possession of, including documents that the State is entitled to call for, request or hold under this Deed.

# Cladding

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 11 have the meanings given to them in this Deed:

**BCA Volume One** means Volume One of the National Construction Code Series including any variations or additions in the Appendix Victoria set out in the Appendices to that Volume.

1. **Prohibited Cladding Products** means:

### aluminium composite panels with a core of less than 93% inert mineral filler (inert content) by mass in external cladding as part of a wall system; and

### expanded polystyrene products used in an external insulation and finish (rendered) wall system.

1. **Type A Construction** has the meaning given to it in Part C1 of the BCA Volume One.

**Type B Construction** has the meaning given to it in Part C1 of the BCA Volume One.

## Cladding Products

1. Project Co must:

### not install Prohibited Cladding Products into any building work in connection with buildings of Type A Construction or Type B Construction; and

### if it becomes aware of the use of any Prohibited Cladding Products being used on the Works, immediately notify the State.

# [PART B – NSW]

# Aboriginal Procurement Policy

1. ***[Note: Agencies with their legal team should review this sample clause carefully and consider whether the proposed clause is appropriate for the relevant procurement, and re-frame as necessary on a case-by-case basis in accordance with the Aboriginal Procurement Policy.]***

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 1 have the meanings given to them in this Deed:
2. **Aboriginal Business** means a business that has at least 50 per cent Aboriginal or Torres Strait Islander ownership and that is recognised as such through an appropriate indigenous business verification organisation, including Supply Nation or the NSW Indigenous Chamber of Commerce.
3. **Aboriginal Employees** means employees of Project Co or its Subcontractor, who are people of Aboriginal or Torres Strait Islander descent as verified by Project Co in accordance with guidance provided under the Aboriginal Procurement Policy.
4. **Aboriginal Participation Fund** means the “Aboriginal Participation Fund” (or its successors managed by the Department of Education. This fund is designed to target skills and capacity gaps for Aboriginal people and businesses and to build the capacity and capability of Aboriginal businesses in NSW.
5. **Aboriginal Participation Plan** means the “Aboriginal Participation Plan” submitted by Project Co and approved by the State, setting out how Project Co will meet the Aboriginal Participation Requirements in respect of the Project and this Deed.
6. **Aboriginal Participation Requirement** means the mandatory minimum requirement for Aboriginal participation in the Project as determined by:

### [at least [1.5%] of the APP Deed Value is subcontracted to Aboriginal Businesses; or]

### [at least [1.5%] of the full time equivalent Australian based workforce deployed on the Project are Aboriginal Employees, on average over the term of the Project; or]

### [at least [1.5%] of the APP Deed Value is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Project; or]

### [any combination of the following, such that the combined percentages add up to at least [1.5%]:

#### a percentage of the APP Deed Value is subcontracted to Aboriginal Businesses;

#### a percentage of the full time equivalent Australian based workforce deployed on the Project are Aboriginal Employees, on average over the term of the Project; and

#### a percentage of the APP Deed Value is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Project.]

1. ***[Note: In accordance with the Aboriginal Procurement Policy, Agencies may at their discretion, require an Aboriginal participation percentage higher than 1.5%, in which case, the square bracketed % should be updated. In addition, Agencies should consider whether this Aboriginal Participation Requirement definition needs to be tailored to reflect the specific participation requirements of the Project in compliance with the Aboriginal Procurement Policy. If the Aboriginal Participation Requirement definition is tailored, the Agency should also consider whether the definition of Actual Aboriginal Participation below needs to be tailored accordingly also.]***
2. **Aboriginal Procurement Policy** means the NSW government’s “Aboriginal Procurement Policy” published at <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy> (as updated, amended or varied from time to time).
3. **Actual Aboriginal Participation** means the percentage of actual Aboriginal participation in the Project, as determined by combining:

### [the percentage of the APP Deed Value that is subcontracted to Aboriginal Businesses;]

### [the percentage of the full time equivalent Australian based workforce deployed on the Project who are Aboriginal Employees, on average over the term of the Project; and]

### [the percentage of the APP Deed Value that is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Project.]

1. **APP Deed Value** means the total amount payable by the State under this Deed [minus **[*Note: Insert specific details of any exclusions agreed between Project Co and the State in compliance with the Aboriginal Procurement Policy and guidelines. If no exclusions, delete the square bracketed items from this definition]***].
2. **Unmet Percentage** means the difference between the [1.5%] Aboriginal Participation Requirement and the Actual Aboriginal Participation in the Project.

## Aboriginal Participation Requirements

### Project Co must at all times, comply with, and perform its obligations under this Deed in compliance with the requirements of the Aboriginal Participation Plan and the Aboriginal Participation Requirements.

### Project Co:

#### agrees to:

##### provide to the State, the Aboriginal Participation Plan on commencement of this Deed;

##### report every calendar quarter to the State, in the format reasonably requested by the State, on Project Co’s progress towards meeting its commitment on the Aboriginal Participation Requirements in accordance with the Aboriginal Participation Plan; and

##### submit a final report on or before expiry or termination of this Deed and in the format reasonably requested by the State, confirming its compliance with the Aboriginal Participation Plan and the Aboriginal Participation Requirements. If Project Co is unable to confirm compliance with the Aboriginal Participation Plan and the Aboriginal Participation Requirements in the final report, the report must include a statement setting out (in reasonable detail) its computations in determining the Actual Aboriginal Participation and Unmet Percentage.

#### represents and warrants that any report or information it provides to the State in relation to its compliance with the Aboriginal Participation Requirements and the Aboriginal Participation Plan is, to the best of its knowledge, complete and accurate.

### If at the time of termination or expiry of this Deed, Project Co does not meet the Aboriginal Participation Requirements, Project Co must within 30 days of providing the final report under section 1.2(b)(i)(C) pay to the State, for the State to transfer into the Aboriginal Participation Fund, an amount equal to the Unmet Percentage multiplied by the APP Deed Value. If any amounts are not paid by Project Co in accordance with this section 1.2(c), it will constitute a debt due and owing by Project Co to the State. The State may set off any amounts due and owing by Project Co to the State under this section 1.2(c) against any amounts due and owing by the State to Project Co under this Deed.

### The Crown in right of the State of New South Wales, [the State] or an auditor engaged by the Crown in right of the State of New South Wales or [the State], may at any time conduct an audit of Project Co’s compliance with the Aboriginal Participation Requirements or Project Co’s processes and reporting standards in relation to reports provided under section 1.2(b). Project Co will, and procures that its Subcontractors will, assist and cooperate with the audit in good faith and provide all the necessary information as requested by the NSW Government, the State or the auditor.

### Project Co must provide to the State any information or other assistance, as reasonably requested by the State, to enable the State to meet its obligations under the Aboriginal Procurement Policy.

### The obligations of Project Co under this section 1.2 survive termination of the Deed.

## Independent Reviewer Certification

Project Co must procure that within 20 Business Days of the Date of Commercial Acceptance, the Independent Reviewer certifies the percentage of actual Aboriginal participation in the Project up to the Date of Commercial Acceptance, by issuing a certificate in the form set out in the Schedule of Certificates and Notices.

# NSW Code and Guidelines

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 2 have the meanings given to them in this Deed:
2. **NSW Guidelines** has the meaning given in section 2.2.
3. **NSW Code** has the meaning given in section 2.3(a).

## Reference

1. In addition to terms defined in this Deed, terms used in this section 2 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) (as published by the NSW Treasury in July 2013 and as amended or updated from time to time). The NSW Code and NSW Guidelines are available at <http://www.industrialrelations.nsw.gov.au>.

## Primary obligation

### (**NSW Code**): In carrying out the Project Activities, Project Co must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for Procurement (**NSW Code**) and the NSW Guidelines.

### (**Notification of Construction Compliance Unit**): Project Co must notify the Construction Compliance Unit (**CCU**) and the State of any possible non-compliance with the NSW Code and the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.

### (**Subcontractors bound by NSW Code**): Where Project Co engages a Subcontractor or consultant, Project Co must ensure that Subcontract or consultancy contract imposes on the Subcontractor or consultant equivalent obligations to those in this section 2 (under the heading 'NSW Code and Guidelines'), including that the Subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.

### (**Engagement of other parties**): Project Co must not appoint or engage another party in relation to the Project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or the NSW Guidelines.

## Access and information

### (**Maintenance of records**): Project Co must maintain adequate records of compliance with the NSW Code and the NSW Guidelines by it, its Subcontractors, consultants and related entities.

### (**Facilitation of authorised personnel**): Project Co must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:

#### enter and have access to sites and premises (or part thereof) controlled by Project Co, including but not limited to the Site [and the Facility]; ***[State Note: Insert reference to 'Facility' where used as a defined term on a project-specific basis in the Deed.]***

#### inspect any work, material, machinery, appliance, article or facility;

#### access information and documents;

#### inspect and copy any record relevant to the Project;

#### have access to personnel; and

#### interview any person,

* 1. as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and the NSW Guidelines, by Project Co, its Subcontractors, consultants, and related entities.

### (**Production of documents**): Project Co, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

## Sanctions

### (**Project Co not subject to a sanction**): Project Co warrants that at the time of entering into this Deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and the NSW Guidelines apply.

### (**Sanctions may be imposed**): If Project Co does not comply with, or fails to meet any obligation imposed by, the NSW Code or the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or the NSW Guidelines.

### (**Disclosure of sanctions**): Where a sanction is imposed on Project Co or its Associates:

#### it is without prejudice to any rights that would otherwise accrue to the parties; and

#### the NSW Government (through its agencies, ministers and the CCU) is entitled to:

##### record and disclose details of non-compliance with the NSW Code or the NSW Guidelines and the sanction; and

##### take them into account in the evaluation of future procurement processes and responses that may be submitted by Project Co, or its related entities, in respect of work to which the NSW Code and the NSW Guidelines apply.

## Compliance

### (**Cost of compliance**): Project Co bears the cost of ensuring its compliance with the NSW Code and the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Code and the NSW Guidelines. Project Co is not entitled to make any Claim against the State or the NSW Government for such costs.

### (**Responsibility to perform**): Compliance with the NSW Code and the NSW Guidelines does not relieve Project Co from responsibility to perform the Project Activities and any other obligation under this Deed, or from Liability for any Defect in the Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and the NSW Guidelines.

### (**Proposed Modification**): Where a Modification is proposed, and that Modification may, or may be likely to, affect compliance with the NSW Code or the NSW Guidelines, Project Co must immediately notify the State of the Modification:

#### the extent to which compliance with the NSW Code or the NSW Guidelines will be, or is likely to be, affected by the Modification; and

#### what steps Project Co proposes to take to mitigate any adverse impact of the Modification (including any amendments it proposes to the WHS Management Plan),

* 1. and the State will direct Project Co as to the course it must adopt within 10 Business Days of receiving notice.

# Modern Slavery

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 3 have the meanings given to them in this Deed:
2. **Anti-slavery Commissioner** means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW).
3. **Information** may include (as applicable) information about:

### any risks of, actual or suspected occurrences of, and/or remedial action taken in respect of, Modern Slavery;

### Modern Slavery policies and due diligence frameworks;

### Modern Slavery training programs;

### Supplier engagement with its supply chain and/or Subcontractors in relation to Modern Slavery;

### Modern Slavery audits (including any independent audit of Project Co or its Subcontractors) and factory inspections; and

### the source, place and country of origin of goods and services being supplied,

but excludes ”personal information” as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) or information which tends to identify individuals.

1. **Modern Slavery** has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.
2. **Modern Slavery Laws** means, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth).
3. **Modern Slavery Offence** has the same meaning as in the *Modern Slavery Act 2018* (NSW).
4. **Modern Slavery Statement** means a modern slavery statement as required or volunteered under the *Modern Slavery Act 2018* (Cth).

**Related Offence Provisions** means those provisions of the *Crimes Act 1900* (NSW), the *Human Tissue Act 1983* (NSW) and the Commonwealth *Criminal Code* which create slavery and associated offences, as listed from time to time in Schedule 2 to the *Modern Slavery Act 2018* (NSW).

1. **Self-Assesses** means self-assesses using a methodology that is satisfactory to the State, acting reasonably.

## Compliance

### Project Co warrants that, as at the date of its execution of this Deed:

#### any Information it has provided to the State in relation to Modern Slavery is, to the best of its knowledge, complete and accurate.

#### neither Project Co or, to the best of its knowledge, any Subcontractor, has been convicted of a Modern Slavery Offence; and

#### Project Co is not aware of any circumstances within its operations that could give rise to an official investigation or prosecution of a Modern Slavery Offence.

### Project Co:

#### must not, and must take reasonable steps to ensure that any Subcontractor does not engage in any activity or practice in the nature of Modern Slavery in its operations;

#### must take reasonable steps to ensure that Modern Slavery is not occurring in its, and to the best of its knowledge, any Subcontractor's supply chains; and

#### must otherwise comply, and take reasonable steps to ensure that any Subcontractor complies, with the Modern Slavery Laws and the Related Offence Provisions, to the extent applicable.

## Information

### Project Co must:

#### subject to any restrictions under any applicable laws by which it is bound, provide to the State, within 30 days of a request by the State, any Information and other assistance, as reasonably requested by the State, to enable the State to meet its obligations under the *Modern Slavery Act 2018* (NSW) and associated regulatory requirements (for example, annual reporting requirements and any NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the State (including by a third party on behalf of the State) or the NSW Audit Office and providing reasonable access to the State’s/Audit Office’s auditors to interview Project Co’s staff;

#### within 7 days of providing a Modern Slavery Statement to the Commonwealth, provide a copy of that Modern Slavery Statement to the State; and

#### notify the State in writing as soon as it becomes aware of either or both of the following:

##### a material change to any of the Information it has provided to the State in relation to Modern Slavery; and

##### any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any Subcontractor).

#### Failure to comply with section 3.3(a)(iii) will be deemed to be a Major Default.

### Without limiting section 3.3(a)(i), in providing Information to the State as to any actual or suspected occurrence of Modern Slavery in Project Co’s and any Subcontractor's operations or supply chains, Project Co must provide sufficient Information:

#### to identify where the occurrence has arisen in those operations or supply chains and its scale and severity; and

#### to enable the State to be satisfied, acting reasonably, that Project Co is taking reasonable steps to respond to and address that occurrence in accordance with any internal Modern Slavery policy and procedures of Project Co and any relevant Code of Practice/Conduct or other guidance issued by the Anti-slavery Commissioner or the NSW Procurement Board.

### Promptly following execution of this Deed, Project Co must communicate to its relevant staff and any Subcontractor's staff (as applicable):

#### the name and contact details of a specified representative of Project Co whom staff are invited to contact in respect of any actual or suspected occurrence of Modern Slavery in Project Co’s and any Subcontractor's operations and supply chains; and

#### where to access further information about Modern Slavery Laws, including contact details for the Anti-slavery Commissioner.

### In providing any requested Information to the State, Project Co must:

#### make such inquiries in relation to its operations and supply chains as may be reasonably expected to inform its response; and

#### communicate openly about the extent to which the Information it provides is complete and accurate (including a statement as to the limitations of the Information provided).

### Project Co may provide any Information or report requested by the State in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for Information from another Australian public sector agency, or refer the State to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by the State.

### Project Co must, during the Term and for a further period of seven (7) years:

#### maintain; and

#### upon the State’s reasonable request, give the State access to, and/or copies of,

### a complete set of records in the possession or control of Project Co to trace, so far as practicable, the supply chain of all goods and services provided under this Deed and to enable the State to assess Project Co’s compliance with section 3.

### Project Co consents to the State sharing Information obtained from Project Co in respect of Modern Slavery, including records referred to in section 3.3(f), with any other NSW Government agency or entity:

#### for the purpose of identifying or addressing that actual or potential Modern Slavery; or

#### to the extent the State has a reasonable belief of Modern Slavery actually or potentially occurring in the operations or supply chains of Project Co or any Subcontractor.

### Without limiting any other provision of section 3.3, Project Co:

#### agrees that the communication of such information to any Government Agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and

#### releases and indemnifies the State and the State of New South Wales from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

## Modern Slavery policy, due diligence processes, staff programs and training

### Without affecting the generality of section 3.2(b), if Project Co:

### submits a Modern Slavery Statement; or

### Self-Assesses as at high risk of causing or contributing to Modern Slavery in its operations or supply chains,

### Project Co must, if, and to the extent, requested by the State:

### develop and implement, and ensure that any Subcontractor which is exposed to similar risks develops and implements, a Modern Slavery plan, which includes a strategy on how to respond to and address an actual or suspected case of Modern Slavery and due diligence processes in relation to Modern Slavery in its operations and supply chains;

### provide programs and training for its staff and any Subcontractor's staff (as applicable) about Modern Slavery, including to:

#### ensure compliance with the Modern Slavery Laws and any Modern Slavery strategy and due diligence processes of Project Co;

#### promote awareness of the risks of Modern Slavery taking place in Project Co’s operations and supply chains; and

#### develop capacity to assess and effectively address such risks; and

### provide the State with:

#### a copy of each of the strategy and processes referred to in section 3.4 and Information on their implementation; and

#### Information on implemented training and programs.

## Subcontractors

### Project Co must take reasonable steps to ensure that all Subcontracts of the whole or part of this Deed contain Modern Slavery provisions that are reasonably consistent with the provisions in section 3, having regard to the nature of the procurement.

## Response to Modern Slavery incident

* 1. If Project Co becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any Subcontractor), Project Co must take reasonable steps to respond to and address the occurrence in accordance with any applicable policies and guidance as identified in section 3.3(b)(ii). Failure to comply with section 3.6(a) will be deemed to be a Major Default.
  2. Any action taken by Project Co under section 3.6(a) will not affect any rights of the State under this Deed, including its rights under section 3.7.

## Deemed events

### If:

#### Project Co has failed to disclose to the State, prior to execution of this Deed, that Project Co or any Subcontractor has been convicted of a Modern Slavery Offence; or

#### Project Co or any Subcontractor is convicted of a Modern Slavery Offence during the Term and is unable to demonstrate to the State (acting reasonably) that Project Co has taken all reasonable steps to respond to and address the Modern Slavery Offence,

#### then a Default Termination Event will be deemed to have occurred and the State may issue a notice to terminate this Deed under clause 46.4(a) of this Deed.

### If, in the State's reasonable view, Project Co has committed a substantial breach (including multiple minor (non-trivial) breaches) of section 3.2, section 3.3 or section 3.5, then a Major Default will be deemed to have occurred.