[#]

Incentivised Target Cost Development Deed

[#]  
(**Principal**)

[#]   
(**Shortlisted Respondent**)

The Secretary

Department of Treasury and Finance

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Australia

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ITC Development Deed

**Date**

**Parties** **[Insert details] ABN [insert]** of [insert address] (**Principal**)

and

**[Insert details] ABN [insert]** of [insert address] (**Shortlisted Respondent**)

Background

1. The Principal is responsible for the development of [insert]. ***[Drafting note: insert a general statement of the role and responsibility of the procuring agency]***
2. As a general summary, the scope of works for the Project is proposed to include the design and construction of [insert](**Project**). ***[Drafting note: insert a description of the Project]***
3. The Principal proposes to undertake the Project in two phases being:

### the Development Phase, during which one or more contractors will perform the Development Phase Services and may be required to perform Early Delivery Activities; and

### the Delivery Phase, during which a contractor (which may or may not be the Shortlisted Respondent) will undertake the Delivery Phase Activities under the ITC Delivery Deed.

1. The Principal has issued an Invitation for EOI seeking EOI Responses for the performance of the Works in respect of the Project.
2. The Shortlisted Respondent has submitted an EOI Response to the Invitation for EOI, relating to the Project. Other respondents may also have submitted EOI Responses to the Invitation for EOI.
3. The Shortlisted Respondent has been selected by the Principal to participate in the Development Phase in respect of the Project in accordance with this Deed, the Invitation for EOI and the RFP.
4. Other Shortlisted Respondents may have also been selected to participate in the Development Phase in accordance with the Invitation for EOI, the RFP and their respective ITC Development Deeds.
5. Subject to the terms of the Invitation for EOI, the RFP and this Deed, the Principal proposes to select a contractor (which may or may not be the Shortlisted Respondent) to undertake the Delivery Phase Activities under the ITC Delivery Deed.

***[Note: This document could be restructured if there is to be a competitive RFT process as well as the Development Deed phase.]***

Operative provisions

# Interpretation and related matters

## Definitions

In this Deed:

1. **Additional Conditions** means the additional conditions set out in Schedule 2 (if any).
2. **Agreed Amount** has the meaning given in clause 17(b)(i).
3. **Agreed ITC Delivery Deed** means the version of the ITC Delivery Deed:
   1. if alternative 1 for clause 14.1 applies, attached at Annexure 1; or
   2. if alternative 2 for clause 14.1 applies, described in clause 14.1(c).
4. **Deed** means this agreement including all Schedules and Exhibits.
5. **Approval** means any 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 performance of the Development Phase Services.

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

1. **Auditor-General for the State of Victoria** means the Auditor-General appointed under section 4 of the *Audit Act 1996* (Vic).
2. **Authority** means any:
   1. government; or
   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.
3. **Authorisation** means any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with an Authority.
4. **Background IP** **Rights** means any Intellectual Property Rights developed by a party independent of the Shortlisted Respondent or prior to the date of this Deed that is used for the ITC Delivery Deed.

**Bespoke Resolution Procedure** has the meaning given in clause 27.3(a).

**Business Day** means a day in Melbourne that is not:

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

**Brand** means all branding and goodwill associated with the Project (or any part of the Project) including:

* 1. all registered and unregistered trade marks (other than those trademarks of any Shortlisted Respondent Associate which are used in its business more generally and are not created or developed in connection with the Project);
  2. all names including business names, domain names and company names (other than those names of any Shortlisted Respondent Associate that are used in its business more generally and are not created or developed in connection with the Project); and
  3. all telephone numbers, email addresses, internet addresses and all other addresses used by the general public in relation to the Project to make contact using an information communication technology network.

1. **Cladding Guideline** means the guideline titled "Minister’s Guideline MG-14: Issue of building permits where building work involves the use of certain cladding products" issued under section 188(1)(c) of the *Building Act 1993* (Vic) on 13 March 2018.
2. **Claim** means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made under this Deed 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.
3. **Code of Conduct** means the Code of Conduct for Victorian Public Sector Employees 2015 issued by the Victorian Public Sector Standards Commissioner under section 61 of the *Public Administration Act 2004* (Vic).
4. **Code of Practice** means any code of practice as defined in, and approved under the Privacy Act.
5. **Commercially Sensitive Information** means any information relating to the Shortlisted Respondent's cost structure or profit margins.
6. **Commissioner for Privacy and Data Protection** means the Victorian Commissioner for Privacy and Data Protection appointed under section 96 of the Privacy Act.
7. **Confidential Information** has the meaning given in clause 22.2(a).
8. **Contract Date** means the date which appears on this Deed.
9. **Contract Particulars** means Schedule 1.
10. **Contracts Publishing System** means the system of the State requiring publication of details of contracts entered into by Victorian Government departments or any successor system.
11. **Corporations Act** means the *Corporations Act 2001* (Cth).
12. **Data** means all point and array information, text, drawings, statistics, tests, analysis and other materials (including geological, geotechnical and environmental information, maps, images, survey results and drill core and cutting shapes) embodied in any form which is:
    1. supplied by or on behalf of the Principal in connection with an ITC Delivery Deed (**Input Data**); or
    2. generated, recorded, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data or for the purpose of an ITC Delivery Deed.
13. **Date for Close-out** has the meaning given in the ITC Delivery Deed.
14. **Date for Completion** has the meaning given in the ITC Delivery Deed.
15. **Date for Practical Completion** has the meaning given in the ITC Delivery Deed.
16. **Date for Delivery Phase Offer** means the date or period of time specified in Item 2.

**Default** means where the Shortlisted Respondent (or any Member):

* 1. commits a material breach of this Deed;
  2. submits a Delivery Phase Offer that the Principal considers, in its discretion, fails to satisfy the requirements of this Deed or the Procurement Process; or
  3. is the subject of an Insolvency Event.

1. **Defect** has the meaning given in the Agreed ITC Delivery Deed (as applicable to the Early Works).
2. **Deliverables** means all documents and materials brought, or required to be brought, into existence, or otherwise procured, by the Shortlisted Respondent or any of its Associates, as part of, or for the purposes of, performing the Development Phase Services or otherwise in connection with the Project, including the Development Phase Deliverables.
3. **Delivery Phase** means the second phase of the Project, during which the Delivery Phase Activities will be undertaken.
4. **Delivery Phase Activities** means all things or tasks which the Delivery Phase Contractor is, or may be, required to do to comply with its obligations under the ITC Delivery Deed and includes the design (to the extent not completed during the Development Phase), construction, commissioning and completion of the Works.
5. **Delivery Phase Contractor** means the contractor engaged by the Principal to deliver the Delivery Phase Activities.
6. **Delivery Phase Offer** means the offer to undertake the Delivery Phase Activities prepared by the Shortlisted Respondent and submitted to the Principal under clause 14.3(a) (or resubmitted under clause 14.4(b)(ii)).
7. **Delivery Phase Offer Form** means the form of Delivery Phase Offer provided by the Principal’s Representative no later than 4 weeks after the Contract Date.
8. **Delivery Phase Pricing Schedule** means Schedule 6.
9. **Delivery Phase Program** means the program of that name described in, and prepared by the Shortlisted Respondent in accordance with, the Development Phase Services and Deliverables Schedule.
10. **Departure** has the meaning given in clause 11.2(a).
11. **Design Deliverables** means all design documentation (including documentation, drawings, specifications, reports, models, samples and calculations, equipment technical information, plans, charts, tables, schedules, data (stored by any means), photographs and finishes boards) in computer readable and written forms necessary to construct the Works.
12. **Design Development Process** means the process for preparing and developing the Design Deliverables described in the PSDR.
13. **Design Development Program** means the Shortlisted Respondent's Design Development Program tendered as part of the Shortlisted Respondent's Delivery Phase Offer, as updated from time to time in accordance with the Development Phase Services and Deliverables Schedule.
14. **Design Management Plan** means the Shortlisted Respondent's plan of that name tendered as part of the Shortlisted Respondent's Delivery Phase Offer, as updated from time to time in accordance with the Development Phase Services and Deliverables Schedule.
15. **Development Phase** means the first phase of the Project during which the Shortlisted Respondent will perform the Development Phase Activities, being the period from the Contract Date to the earlier of:
    1. the:
       1. date the parties enter into a ITC Delivery Deed; or
       2. if the parties do not enter into a ITC Delivery Deed, the expiry of the last Early Works DLP; and
    2. the termination of this Deed.
16. **Development Phase Activities** means the Development Phase Services and the Early Delivery Activities.
17. **Development Phase Budget Estimate** means an estimate of the Development Phase Services Fee that may be payable to the Shortlisted Respondent, including a breakdown of the Development Phase Services Fee Components, as set out in Item 3, as may be updated from time to time by agreement between the Principal's Representative and the Shortlisted Respondent’s Representative.
18. **Development Phase Deliverables** means each of the documents listed in the column titled "Development Phase Deliverables" in the Development Phase Services and Deliverables Schedule, containing the information and details set out in the Development Phase Services and Deliverables Schedule, and includes the Design Deliverables.

**Development Phase Objectives** has the meaning given in clause 2.2.

1. **Development Phase Plan** means the Shortlisted Respondent's plan of that name tendered as part of the Shortlisted Respondent's Project Proposal, and as updated from time to time in accordance with the Development Phase Services and Deliverables Schedule.
2. **Development Phase Pricing Schedule** means Schedule 5.
3. **Development Phase Program** means the Shortlisted Respondent's program of that name tendered as part of the Shortlisted Respondent's Project Proposal, and as updated from time to time in accordance with the Development Phase Services and Deliverables Schedule.
4. **Development Phase Services** means:
   1. the services and activities set out in or reasonably inferred from the Development Phase Services and Deliverables Schedule (including the preparation and provision of all Development Phase Deliverables);
   2. the performance by the Shortlisted Respondent of all other things or tasks that the Shortlisted Respondent is, or may be, required to do to comply with its obligations under this Deed; and
   3. all other services incidental to the services contemplated by paragraphs (a) and (b),

but excludes the Early Delivery Activities.

1. **Development Phase Services and Deliverables Schedule** means Schedule 4, as may be updated from time to time by agreement between the Principal’s Representative and the Shortlisted Respondent’s Representative.
2. **Development Phase Services Fee** means the amount payable by the Principal to the Shortlisted Respondent for the Development Phase Services, which is calculated in accordance with section 2 of the Development Phase Pricing Schedule.
3. **Development Phase Services Fee Component** has the meaning given in section 1 of the Development Phase Pricing Schedule.

**Direction** means any approval, assessment, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, order, permission, rejection, request or requirement.

1. **Early Delivery Activities** means all things or tasks which the Shortlisted Respondent is, or may be, required to do to comply with its obligations under this Deed in connection with the design, construction, commissioning and completion of the Early Works.
2. **Early Delivery Activities Commencement Date** means the date specified in an Early Delivery Activities Direction for commencement of the relevant Early Delivery Activities.
3. **Early Delivery Activities Completion Date** means the date specified in an Early Delivery Activities Direction for completion of the relevant Early Delivery Activities.

**Early Delivery Activities Direction** has the meaning given in clause 9.1(a).

1. **Early Delivery Activities Price** means the amount payable (if any) by the Principal to the Shortlisted Respondent for the Early Delivery Activities in accordance with clause 9.5(d) or clause 9.5(e) (as applicable).
2. **Early Delivery Activities Proposal** has the meaning given in clause 9.2(b).
3. **Early Delivery Activities Scope** means the technical scope specified in an Early Delivery Activities Direction which sets out the technical requirements for the relevant Early Delivery Activities.
4. **Early Works** means any physical works to be executed in accordance with this Deed, and which are to be handed over to the Principal.
5. **Early Works DLP** means the relevant period referred to in clause 9.7(a)(ii), as may be extended in accordance with clause 9.7(c).
6. **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).

**EOI Responses** mean responses to the Invitation for EOI.

**Estimated Delivery Phase Corporate Overhead and Profit** has the meaning given in the Development Phase Pricing Schedule.

**Estimated Delivery Phase Reimbursable Costs** has the meaning given in the Development Phase Pricing Schedule.

**Estimated Delivery Phase Risk & Contingency Provisions** has the meaning given in the Development Phase Pricing Schedule.

1. **Expert Determination Agreement** means the form of agreement set out in Schedule [#]
2. **Final TOC Estimate** means the last updated version of the TOC Estimate prior to the submission of the Delivery Phase Offer under clause 14.3(a).
3. **Financial Year** means each 12 month period commencing on 1 July and ending on 30 June.
4. **Good Industry Practice** means:
   1. with the exercise of that degree of skill, diligence, efficiency, prudence and foresight that would be reasonably expected from a professional, reputable and prudent provider of works and services similar to the Early Delivery Activities and Development Phase Services under conditions comparable to those applicable to the Project;
   2. with due expedition and without unnecessary or unreasonable delay;
   3. in a manner which allows for this Deed to be efficiently performed;
   4. using materials of new merchantable quality which are fit for its intended purpose;
   5. consistent with best practice for the engineering, design, procurement, supply, construction, testing and commissioning of works and services similar to the Works and the Development Phase Services; and
   6. in accordance with all Legislative Requirements.
5. **Government Agency** is any Australian government or any Australian governmental, semi-governmental or administrative entity, agency or authority and includes a Minister of the Crown (in any right), excluding a municipal governing body.
6. **Government Policy Requirements** means the requirements identified as such in Schedule 10.
7. **Guarantor** means the company specified as such in the Contract Particulars.

**GST** has the meaning given in the GST Act.

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

**GST Law** has the meaning given in the GST Act.

1. **Handle** means collect, hold, use, disclose, process, store, transfer, access, correct or otherwise deal with or handle.
2. **Heavy Vehicle National Law** means the *Heavy Vehicle National Law Application Act 2013* (Vic) and related regulations, codes of practice, other compliance codes, directions on safety or notices issued by any relevant Authority and standards applicable to any part of the Development Phase Services.
3. **Indemnified IP Person** means the Principal, each Principal Associate and any third party duly authorised or licensed by the Principal to exercise any Intellectual Property Rights assigned, granted or licensed to the Principal under this Deed and any Principal Associates.
4. **Indirect or Consequential Loss** means:
   1. any loss of opportunity, profit, anticipated profit, business, business opportunities or revenue or any failure to realise anticipated savings; or
   2. fines and penalties payable under agreements other than this Deed.
5. **Information Commissioner** means the Australian Information Commissioner appointed under section 14(1) of the *Australian Information Commissioner Act 2010* (Cth).
6. **Information Document** means any document, specification, drawing, calculation, information, data, report or sample (whatever its form) issued or made available to the Shortlisted Respondent by or on behalf of the Principal or the Principal's Associates, on, before or after the Contract Date, other than this Deed and any information, data, or document which the Principal expressly confirms in writing is a document which the Shortlisted Respondent is entitled to rely on, in respect of the Development Phase Activities.
7. **Information Privacy Principles** means the principles so identified and set out in the Privacy and *Data Protection Act 2014* (Vic).
8. **Insolvency Event** means the occurrence of any of the following events:
   1. in relation to an Entity:

#### (**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;

#### (**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;

#### (**winding up**): an order is made for the administration, dissolution or winding up of the Entity, or an application to the courts is made (and is not stayed or dismissed within 20 Business Days after being made), or a resolution is passed for the administration, dissolution or winding up of the Entity other than for the purposes of a Solvent reconstruction or amalgamation on terms approved by the Principal Representative;

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

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

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

* + - 1. is not withdrawn within 10 Business Days; and
      2. in the reasonable opinion of the Principal Representative, may have a material adverse effect;

#### (**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

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

* 1. in relation to a trust:

#### (**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

#### (**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

* 1. 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. **Insurance(s)** means all of the insurances required to be effected and maintained by the Shortlisted Respondent or any Shortlisted Respondent Associate under this Deed (or the relevant one of these as the case may be).
2. **Insurance Failure Event** means the extent to which an Insurance fails to respond, in accordance with its terms to an event which was the subject of coverage under that Insurance, other than where the failure to respond is due to a Principal Insurance Breach.
3. **Intellectual Property Rights** includes:
   1. all copyright and analogous rights;
   2. all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs (whether or not registrable), confidential information (including trade secrets and know-how), circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific or artistic fields; and
   3. all rights to register, rights in applications for the registration of and rights to extend or renew the registration of any of the foregoing,

whether created or in existence before, on or after the date of this Deed and whether existing in Australia or otherwise.

1. **IRT Period** has the meaning given in clause 26.2(c).
2. **IRT Representatives** has the meaning given in clause 27.1(a).
3. **Issue** means any disagreement, difference of opinion or conflict of interest one party has with the other in respect of or in any way connected with this Deed or its subject matter.
4. **Issue Resolution Team** (or **IRT**) means the issue resolution team established under clause 27.
5. **Invitation for EOI** means the document entitled [insert] issued by the Principal to the Shortlisted Respondent and Other Shortlisted Respondents on [date]. ***[Drafting note: insert a description of the Invitation for EOI, if appropriate. Whether an Invitation for EOI will be required is to be determined on a project-specific basis]***
6. **ITC Delivery Deed** means the contract under which the Principal will engage the Delivery Phase Contractor to undertake the Delivery Phase Activities.

**Item** means an item of the Contract Particulars.

1. **Key Personnel** means, subject to clause 5.5, the people listed in Schedule 3.
2. **Law** means:
   1. those principles of common law and equity established by decisions of courts;
   2. all Legislation of the Commonwealth, the Principal or an Authority; and
   3. Approvals (including any conditions or requirements under them).
3. **Legislative Requirements** includes:
   1. all Laws;
   2. policies and procedures of the Principal which are publicly available or notified to the Shortlisted Respondent by the Principal and which this Deed requires the Shortlisted Respondent, the Works (including the Early Works), the Development Phase Activities or the Delivery Phase Activities to comply with; and
   3. fees and charges payable in connection with the foregoing.
4. **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,
5. and whether under or in any way in connection with this Deed or arising at Law.
6. **Loss** means all costs, expenses, fees, losses, debts, liabilities, damages and claims, including any:
   1. legal fees and costs of investigation, litigation, settlement, judgment, appeal, interest, fines and penalties; and
   2. deductibles and increased premiums,

whether direct, indirect, consequential (including pure economic loss), present, future, actual or contingent.

1. **Mediation Referral Date** has the meaning given to it in clause 29(a).
2. **Member** means any person comprising the Shortlisted Respondent.
3. **Moral Rights** has the meaning given to it in the *Copyright Act 1968* (Cth).
4. **New WHS Regulations** means any regulations made by the Victorian Government which supersede the OHS Regulations.

**Offer Period** means the period set out in Item 5, as may be extended under clause 14.4(b)(iii).

1. **OHS Legislation** means all Laws in connection with occupational health and safety including the *Occupational Health and Safety Act 2004* (Vic), the OHS Regulations, all other regulations made under the *Occupational Health and Safety Act 2004* (Vic) and any related codes of practice, guidelines and advisory standards applicable to the Development Phase Activities.
2. **OHS Regulations** means the *Occupational Health and Safety Regulations 2017* (Vic).
3. **Open Book Basis** means being transparent in all dealings and sharing all relevant information in a timely way, including but not limited to the provision of pricing, costing and other information on an open book basis to the Principal to enable a fully auditable, transparent and value for money assessment of actual costs and profit margins in respect of:
   1. any amount payable to the Shortlisted Respondent under this Deed;
   2. the preparation of, and any adjustment to, the TOC Estimate under this Deed;
   3. the Estimated Delivery Phase Corporate Overhead and Profit;
   4. the Estimated Delivery Phase Reimbursable Costs;
   5. the Delivery Phase Offer; or
   6. the procurement of any Subcontractors.
4. **Other Shortlisted Respondent** means any other shortlisted respondent that has entered into an ITC Development Deed.
5. **Other Shortlisted Respondent Delivery Phase Offer** means the offer to undertake the Delivery Phase Activities prepared by any Other Shortlisted Respondent.
6. **Parent Company Guarantee** means the parent company guarantee given in accordance with clause 3.1(d).
7. **Parent Guarantor** means each person giving a Parent Company Guarantee.
8. **Personal Information** means any personal information, within the meaning given in the *Privacy Act 1988* (Cth).
9. **Personnel** means, in relation to a Shortlisted Respondent:
   1. its Related Bodies Corporate;
   2. its subcontractors; and
   3. the employees, agents, consultants, officers and representatives of a Shortlisted Respondent, a related body corporate (as defined in the Corporations Act) of a Shortlisted Respondent and a subcontractor of a Shortlisted Respondent.
10. **Pre-existing Intellectual Property** has the meaning given in clause 14.7.
11. **Prescribed Combustible Product** has the meaning given in the Cladding Guideline.
12. **Principal Insurance Breach** means the extent to which an Insurance fails to respond, in accordance with its terms, to an event or risk which would otherwise have been the subject of coverage under that Insurance, due to:
    1. a breach of:
       1. this Deed; or
       2. the relevant Insurance policy,

by the Principal or a Principal Associate; or

* 1. conduct of the Principal or a Principal Associate which is an exclusion under the relevant insurance.

1. **Principal IP** means all Intellectual Property Rights and trade secrets and know-how comprised in:
   1. the Data;
   2. the Brand; and
   3. the Trade Marks.
2. **Privacy Act** means the *Privacy and Data Protection Act 2014* (Vic).
3. **Protective Data Security Standard** means any standard issued under Part 4 of the Privacy Act.

**Project Document Control System or PDCS** means the project document control system for the Project described in the PSDR, if any.

1. **Principal Associate** means each of the following persons:
   1. the Principal Representative; and
   2. any other person to whom the Principal delegates a right, power, function or duty in accordance with this Deed,

and their respective Associates, each only when acting in connection with the Project, but does not include the Shortlisted Respondent or any of their Associates.

1. **Principal's Benchmark** means the benchmark TOC for the Project, prepared by or on behalf of the Principal during the Development Phase.
2. **Principal Contractor** has the meaning given in the OHS Legislation.
3. **Principal's Representative** means the person nominated as such in Item 6 or any replacement person appointed from time to time by the Principal under clause 5.1.
4. **Probity Event** means the occurrence of any of the following events:
   1. an event that relates to the Shortlisted Respondent or a Parent Guarantor which:
      1. has or may have a material adverse effect on, or on the perception of, the character, integrity or honesty of the Shortlisted Respondent or a Parent Guarantor; or
      2. has or may have a material adverse effect on:
         1. the public interest; or
         2. public confidence in the Project;
   2. a failure of the Shortlisted Respondent or a Parent Guarantor (and for the purposes of clause 24.2 only, any Subcontractor) to achieve or maintain reasonable standards of ethical behaviour or other standards of conduct that would otherwise be expected of a party involved in a State government project, in the role in which that person is involved; or
   3. a conflict of interest involving the Shortlisted Respondent or a Parent Guarantor which has or will have a material adverse effect on the ability of the Shortlisted Respondent or Parent Guarantor (as applicable) to carry out and observe its obligations in connection with the Project.
5. **Probity Investigation** has the meaning given in clause 24.1(a).
6. **Procurement Process** means the process described collectively by the Invitation for EOI, the RFP, this Deed and any relevant declarations or undertakings that the Principal requires the Shortlisted Respondent or an Other Shortlisted Respondent to execute.
7. **Project Document** has the meaning given in the ITC Delivery Deed.

**Project** has the meaning given in Item 1.

1. **Project Leadership Team** or **PLT** means the leadership team established under clause 5.4.
2. **Project Management Team** or **PMT** means the management team established under clause 5.3.
3. **Project Objectives** has the meaning given in the Agreed ITC Delivery Deed.
4. **Project Proposal** means the Shortlisted Respondent's proposal for the performance of specific Development Phase Activities, submitted to the Principal in response to the RFP.
5. **Proportionate Liability Scheme** means Part IVAA of the *Wrongs Act 1958* (Vic) and any statutory provisions which are of similar effect in any State or Territory.
6. **PSDR** means the Project Scope and Delivery Requirements for the Project included in Annexure 2, as updated or amended under clause 11.1.
7. **PSDR Amendments Register** means the register of that name described in, and prepared by the Shortlisted Respondent in accordance with, the Development Phase Services and Deliverables Schedule.

**Public Audit** means any audit, investigation or enquiry conducted by a Public Auditor or pursuant to any Public Audit Legislation.

1. **Public Audit Legislation** means section 94A of the *Constitution Act 1975* (Vic) and the *Audit Act 1994* (Vic) or any other associated Legislative Requirements.

**Public Auditor** means any auditor or officer appointed under any Public Audit Legislation or any authorised nominee or representative of such auditor or officer.

1. **Public Disclosure Obligations** means the disclosure of any information by the Principal (including Confidential Information):
   1. where that disclosure is:
      1. in accordance with Laws;
      2. to satisfy the disclosure requirements of the Auditor-General for the State of Victoria;
      3. to satisfy the requirements of Parliamentary accountability;
      4. if the disclosure is in the course of the official duties of the responsible Minister, the Treasurer of Victoria or the Attorney General;
      5. to any Principal Associate, any Authority or any person authorised or nominated by the Principal to the extent necessary for the purpose of the Project provided they agree to maintain the confidentiality of any Confidential Information;
      6. in annual reports of the Principal;
      7. in accordance with policies of the Principal or any Authority;
      8. to any person who is bidding for or undertakes works similar to the Works after the Date of Close-Out and their actual and/or potential Associates, provided the relevant person agrees to maintain the confidentiality of the Confidential Information; or
2. to satisfy any other recognised public requirement.
3. **Public Sector Employee** has the same meaning as set out in section 4 of the *Public Administration Act 2004* (Vic).
4. **Referred Issue** has the meaning given to it in clause 26.2(b).
5. **Regular Performance Report** means the report of that name described in, and prepared by the Shortlisted Respondent in accordance with, the Development Phase Services and Deliverables Schedule.
6. **Relationship Principles** has the meaning given in clause 2.3(a).
7. **Relevant Personal Information** means any "personal information" (within the meaning of that term under the Privacy Act) that is collected, held, used or managed by the Shortlisted Respondent from time to time in connection with this Deed or the performance of any Delivery Phase Activities.
8. **Representatives** has the meaning given to it in clause 28(a).
9. **Request for Proposal** or **RFP** is the request for proposal issued to the Shortlisted Respondent by the Principal in relation to the Works.
10. **Schedule of Rates** means the schedule of rates and prices referred to in the Development Phase Pricing Schedule.

**Shortlisted Respondent Act or Omission** means:

* 1. a breach of this Deed by the Shortlisted Respondent; or
  2. any other act or omission of the Shortlisted Respondent or any its Associates, other than an act or omission undertaken in accordance with this Deed or undertaken lawfully in connection with the Development Phase Services.

1. **Shortlisted Respondent’s Records** has the meaning given in clause 21.1(a)(ii).
2. **Shortlisted Respondent’s Representative** means the person nominated as such in Item 4 or such other person appointed to that role in accordance with clause 5.2.

**Site** means the site where the Works will be constructed as described in Item 7.

1. **Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 2002* (Vic).
2. **State Entity** means the Crown in Right of the State of Victoria, Ministers of the Crown and a public body (as that term is defined under the *Financial Management Act 1994* (Vic)).
3. **Subcontractor** means any subcontractor, supplier or consultant engaged by the Shortlisted Respondent or in a chain of contracts in which the Shortlisted Respondent is ultimately the head contractor, to carry out any part of the Development Phase Activities.
4. **Subcontract Packaging and Procurement Plan** has the meaning given in clause 8.2.
5. **Successful Respondent** means the Shortlisted Respondent or Other Shortlisted Respondent selected by the Principal to enter into the ITC Delivery Deed.
6. **Target Outturn Cost** or **TOC** has the meaning given in the Delivery Phase Pricing Schedule.
7. **Tax** or **Taxes** means any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by an Authority or the Principal, together with any interest, penalty, charge, fee or other amount imposed or made on, or in connection with, any of the foregoing, but excluding any Rates.
8. **Third Party IP Rights** means any Intellectual Property Rights in or relating to the Development Phase Activities or Delivery Phase Activities (as applicable) that are not capable of being vested in the Principal because the Shortlisted Respondent does not own and is unable to acquire those Intellectual Property Rights.
9. **TOC Component** has meaning given in the Delivery Phase Pricing Schedule.
10. **TOC Estimate** has the meaning given in the Delivery Phase Pricing Schedule.
11. **Trade Marks** means any trade marks specified by the Principal to the Shortlisted Respondent in writing and any other trademarks used by or on behalf of the Shortlisted Respondent or a Shortlisted Respondent Associate in relation to the Project (other than those trademarks of any Shortlisted Respondent Associate which are used in their business generally and are applied by them to devices or equipment they supply, but which do not include, directly or indirectly, any brands which are created or developed in connection with, the Project or any part of the Project).
12. **Unresolved Issue** has the meaning given to it in clause 26.2(d).
13. **Works** means the physical works that are to be executed by the Delivery Phase Contractor under the ITC Delivery Deed.

## Interpretation

In this Deed:

### (**headings**): headings are for convenience only and do not affect the interpretation of this Deed,

and, unless the context otherwise requires:

### (**person**): references to a person include an individual, firm, corporation or unincorporated body;

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

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

### (**party**): a reference to a “party” is to a party to this Deed;

### a reference to any party or person includes their legal representatives, successors, and permitted assigns;

### (**replacement authorities**)**:** a reference to any Authority, institute, association or body is:

#### if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred (as the case may be); and

#### if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;

### (**document as amended**): a reference to this Deed or to any other document or instrument is deemed to include a reference to this Deed or such other document or instrument as amended, novated, supplemented, varied or replaced from time to time;

### (**legislation**): a reference to any legislation or to any section or provision of it includes any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision;

### (**standard**): a reference to a standard, code or guideline includes that standard, code or guideline as amended or updated from time to time;

### (**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;

### (**number and gender**): words in the singular include the plural (and vice versa) and words denoting any gender include all genders;

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

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

#### a section is a reference to a section of a Schedule;

#### a Part is a reference to a Part of a Schedule; and

#### an Attachment is a reference to an Attachment to a Schedule to this Deed;

### (**definitions**): where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

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

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

### (**Business Day**): where 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;

### (**liability**): a reference to “liability” will be read as including any actual, prospective or contingent liability whether or not currently ascertainable and whether arising under or for breach of contract, in tort (including negligence), restitution, pursuant to statute or otherwise at Law;

### (**may**): the word “may”, when used in the context of a power, right or remedy, does not mean that the party is obliged to exercise that power, right or remedy and may or may not do so, in its absolute discretion;

### (**no bias against drafter**): no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed or any part; and

### (**measurements**): measurements of physical quantities must be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth), as amended from time to time.

## Ambiguity, discrepancy or inconsistency

### (**Notification**):If the Shortlisted Respondent identifies an ambiguity, discrepancy or inconsistency in this Deed, it must, prior to taking any further action in relation to the ambiguity, discrepancy or inconsistency, provide details of the ambiguity, discrepancy or inconsistency to the Principal’s Representative as soon as possible and in no case later than 5 Business Days after becoming aware of the ambiguity, discrepancy or inconsistency.

### (**Resolution**): Within 5 Business Days of receiving a notice under clause 1.3(a), or if the Principal otherwise identifies an ambiguity, discrepancy or inconsistency in this Deed:

#### the Principal’s Representative will direct the Shortlisted Respondent as to how to resolve the ambiguity, discrepancy or inconsistency; and

#### the Shortlisted Respondent must comply with any Direction given by the Principal’s Representative under this clause 1.3(b).

## Principal’s rights, duties and functions

### (**Acknowledgement**): The Shortlisted Respondent acknowledges that the Principal has executive functions beyond matters of concern to this Deed.

### (**Principal’s own interests**): Unless otherwise expressly stated in this Deed:

#### the Principal is not, by reason of the Principal entering into this Deed fettering its ability to perform an executive function; and

#### nothing in this Deed gives rise to any duty on the part of the Principal to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations under this Deed.

### (**Principal’s rights**): Notwithstanding anything expressly stated or implied in this Deed to the contrary:

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

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

### (**No Claim**): Except as otherwise expressly provided in this Deed, the Shortlisted Respondent will not be entitled to make any Claim against the Principal in connection with any exercise or failure of the Principal to exercise any of its legal, executive or statutory rights, duties or functions.

### (**Survival**): This clause 1.4 survives the termination or expiration of this Deed.

## Additional Conditions

### The Additional Conditions form part of this Deed.

### To the extent of any ambiguity, discrepancy or inconsistency between the terms of this Deed (excluding the Additional Conditions) and the Additional Conditions, the Additional Conditions will prevail.

# Procurement strategy and Development Phase Objectives

## Overview of procurement strategy

The Shortlisted Respondent acknowledges and agrees that:

### (**Project phases**): the Principal proposes to undertake the Project in two phases, being the Development Phase and the Delivery Phase;

### (**engagement**): the Principal has engaged the Shortlisted Respondent to perform the Development Phase Services during the Development Phase;

### (**no acknowledgement**): neither:

#### the Principal’s entry into this Deed;

#### the inclusion as a Schedule to this Deed, or the negotiation of, any Agreed ITC Delivery Deed (as applicable); nor

#### a direction to carry out, or the carrying out of, any Early Delivery Activities in accordance with clause 9,

constitutes an acknowledgement or representation by the Principal that it will accept the Delivery Phase Offer or proceed with the Project in the form contemplated in the Invitation for EOI or the RFP;

### (**no limitation**): nothing in this Deed limits the obligations of the Shortlisted Respondent or the rights of the Principal under the Invitation for EOI or the RFP;and

### (**co-operation not exclusive**): while the Principal will co-operate with and assist the Shortlisted Respondent to perform the Development Phase Services, the Principal may simultaneously be co-operating with and assisting each Other Shortlisted Respondent to provide services under its ITC Development Deed with the Principal.

## Purpose of and desired outcomes of procurement strategy

The Shortlisted Respondent acknowledges that the Principal has adopted the procurement strategy described in clause 2.1:

### (**desired outcomes**): in order to:

#### facilitate the Principal achieving value for money in the procurement of the Works and maximise the scope and quality of Works delivered for the available funds;

#### harness innovation and optimise planning, design and delivery methodologies and opportunities; and

#### facilitate better collaboration between the Principal and the Shortlisted Respondent and all relevant stakeholders;

### (**deliverables**): so that the Principal receives Development Phase Deliverables which meet the requirements of this Deed; and

### (**identify risks**): to identify and eliminate or otherwise minimise or mitigate the effects of any issues and risks which may adversely impact on the Delivery Phase Activities or the Works or achieving value for money, including through innovation and expertise in planning, design and delivery methodologies,

(together, the **Development Phase Objectives**).

## Relationship Principles

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

#### co-operating to achieve the Development Phase Objectives;

#### acting in an innovative and collaborative manner to promote a “one team” culture;

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

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

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

### (**collaborative behaviour**): Each party must at all times endorse and support collaborative behaviour and promptly take reasonable steps to address behaviour that is not collaborative.

### (**no relief from obligations**): Nothing in this clause 2.3 will relieve the parties from or alter their liabilities or obligations under this Deed.

# Fundamental Shortlisted Respondent obligations

## General Shortlisted Respondent obligations

The Shortlisted Respondent must:

### (**Perform**): perform its obligations under and in accordance with this Deed;

### (**Keep informed**): keep the Principal’s Representative fully and regularly informed about all matters affecting and relating to the Development Phase Activities or the Project;

### (**Provide assistance**): provide any assistance to the Principal reasonably necessary to facilitate the effective provision by other contractors of services and works for the Project;

### (**Parent Company Guarantee**): must, on or before the date of this Deed provide a Parent Company Guarantee by:

#### an Entity; and

#### in a form,

### approved by the Principal, duly executed and enforceable; *[****Drafting note: to be considered on a project-specific basis]***

### (**Suitably qualified**): at all times be suitably qualified and experienced and ensure that their Associates are so qualified and experienced and exercise Good Industry Practice;

### (**Due care**): exercise due skill, care and diligence in the performance of its obligations under this Deed;

### (**Develop Offer**): develop a Delivery Phase Offer taking into account all of the above and the other requirements of this Deed;

### (**Avoid risks**): avoid risks where possible and mitigate those risks that are unavoidable; and

### (**Efficient** **design**): provide an efficient design that minimises adverse impacts upon and does not create risk to the environment or any person’s safety and health and maximises production and quality.

## Development Phase Services

### (**Services requirements**): During the Development Phase, the Shortlisted Respondent must perform the Development Phase Services:

#### in accordance with:

##### the Development Phase Services and Deliverables Schedule;

##### the Development Phase Plan, Development Phase Program, Design Management Plan and Design Development Program;

##### the requirements of all relevant Authorities;

##### all Legislative Requirements;

##### Good Industry Practice; and

##### all Directions from the Principal;

#### in an open, consultative and collaborative manner with the Principal, the Principal’s Associates and any other third parties nominated by the Principal; and

#### so as to achieve the Development Phase Objectives.

### (**Site access**):Where the Shortlisted Respondent requires access to the Site (or any part of the Site) to perform the Development Phase Services, the Shortlisted Respondent must, and must ensure that the Shortlisted Respondent’s Associates (as applicable):

#### satisfy all conditions precedent to access as specified in this Deed or otherwise notified by the Principal or any of the Principal’s Associates; and

#### comply with any conditions of access notified to the Shortlisted Respondent by, and all reasonable directions of, the Principal and any of the Principal’s Associates when accessing the Site.

## Development Phase Deliverables

### (**Deliverables**): The Shortlisted Respondent must prepare each of the Development Phase Deliverables so that they will, at the time of their submission to the Principal’s Representative under this Deed:

#### meet the requirements of this Deed and the PSDR ;

#### be accurate and, to the extent that the relevant Development Phase Deliverable relates to and impacts on other Development Phase Deliverables, be consistent and co-ordinated;

#### comply with any requirements of the Principal including any comments by the Principal’s Representative notified to the Shortlisted Respondent in accordance with clause 3.3(c); and

#### comply with all relevant Legislative Requirements.

### (**Submission**):The Shortlisted Respondent must submit the Development Phase Deliverables to the Principal’s Representative in accordance with the Development Phase Program, the Design Development Program and as otherwise required by Development Phase Services and Deliverables Schedule.

### (**Review**): The Principal may review and comment on any Development Phase Deliverables prepared and submitted by the Shortlisted Respondent. The Shortlisted Respondent must submit amended Development Phase Deliverables to the Principal’s Representative which address the Principal’s comments as soon as practicable.

### (**No effect on obligations**): No review of, approval of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Development Phase Deliverable submitted by the Shortlisted Respondent or any other Direction or act or omission by the Principal’s Representative, or otherwise by or on behalf of the Principal in relation to, a Development Phase Deliverable will relieve the Shortlisted Respondent from, or alter, affect or reduce, the obligations and liabilities of the Shortlisted Respondent under this Deed or any ITC Delivery Deed or entitle the Shortlisted Respondent to make a Claim against the Principal (including with respect to any decision by the Principal not to enter into an ITC Delivery Deed with the Shortlisted Respondent).

## ITC Delivery Deed

Without limiting the Shortlisted Respondent’s obligations or the Principal’s rights under this Deed, the Shortlisted Respondent acknowledges and agrees that:

### (**Consequences of acceptance**): subject to the Principal accepting the Delivery Phase Offer under clause 14.4(a)(i):

#### the Development Phase Activities and any Early Works will be deemed to form part of the Delivery Phase Activities and Works as if they had been undertaken by the Delivery Phase Contractor under the ITC Delivery Deed;

#### the Development Phase Deliverables will be deemed to have been prepared by the Delivery Phase Contractor under the ITC Delivery Deed; and

#### the Delivery Phase Contractor will not be relieved of any of its obligations or liabilities under the ITC Delivery Deed as a result of any services or work performed by the Shortlisted Respondent under or in connection with this Deed; and

### (**Performance**): without limiting clause 3.2, all Development Phase Activities must be performed such that the Development Phase Activities and the Development Phase Deliverables comply with the requirements of the Agreed ITC Delivery Deed as if they had been performed or prepared under the Agreed ITC Delivery Deed.

## Authority to act

Other than as expressly authorized under this Deed, the Shortlisted Respondent has no authority to, and must not:

### (**enter commitments**): enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, the Principal; or

### (**bind Principal**):take any act or step to bind or commit the Principal in any manner, whether as a disclosed agent of the Principal or otherwise.

## Occupational health and safety

The Shortlisted Respondent must:

### (**comply**): comply, and procure that its Subcontractors and any other person engaged by the Shortlisted Respondent to perform any part of the Development Phase Services comply, with the OHS Legislation, including obligations under the OHS Legislation to consult, cooperate and coordinate activities with all other persons who have an occupational health and safety duty in relation to the same matter;

### (**good faith**): exercise a duty of the utmost good faith to the Principal in carrying out the Development Phase Services to enable the Principal to discharge the Principal’s duties under the OHS Legislation;

### (**avoid risk**): carry out the Development Phase Services to ensure the health and safety of persons is not put at risk; and

### (**demonstrate compliance**):whenever requested by the Principal’s Representative or required by the OHS Legislation, demonstrate compliance with the OHS Legislation, including by providing evidence of any Approvals, prescribed qualifications or experience or any other information relevant to work health and safety matters.

## Non-conforming cladding

If the Shortlisted Respondent becomes aware of the use of any Prescribed Combustible Product on the Project, the Shortlisted Respondent must immediately notify the Principal’s Representative.

## Government Policy Requirements

The Shortlisted Respondent must, in performing its obligations under this Deed, comply with the Government Policy Requirements.

# Role of the Principal

### The Principal:

### (**Payment**): will pay for the performance of:

#### the Development Phase Services in accordance with clause 16; and

#### any Early Delivery Activities in accordance with clause 9.5(d) and 9.5(d);

### (**Cooperation):** without limiting its rights under this Deed, will cooperate with the Shortlisted Respondent in the Shortlisted Respondent’s performance of the Development Phase Services;

### (**Provide Site access)**: subject to the Shortlisted Respondent satisfying all conditions precedent to access as specified in this Deed or otherwise notified by the Principal, will provide to the Shortlisted Respondent sufficient access to that part of the Site as the Shortlisted Respondent may reasonably require to allow it to perform the Development Phase Services; and

### (**Review Deliverables**): may review the Development Phase Deliverables submitted for review in accordance with clauses 3.3(b) and 3.3(c).

# Contract administration

## Principal’s Representative

### (**Principal’s rights**): The Principal’s Representative may exercise all of the Principal’s rights and perform all of the Principal’s functions under this Deed unless the Shortlisted Respondent is advised by the Principal from time to time of any limitations to the exercise of rights or performance of functions by the Principal’s Representative.

### (**Directions**):The Principal’s Representative will give directions under this Deed as agent of the Principal.

### (**Shortlisted Respondent to comply**): The Shortlisted Respondent must comply with any Direction by the Principal’s Representative given or purported to be given under this Deed.

### (**Oral directions**): Except where this Deed otherwise provides, a Direction may be given orally but the Principal’s Representative must as soon as practicable confirm it in writing. Any failure to confirm a Direction in writing will not invalidate the giving of the Direction.

### (**Replacement**): The Principal may at any time replace the Principal’s Representative, in which case the Principal will appoint another person as the Principal’s Representative and notify the Shortlisted Respondent of that appointment.

### (**Appointment**): The Principal’s Representative may from time to time appoint an individual or individuals to exercise any functions of the Principal’s Representative under this Deed. The appointment of one or more individuals does not prevent the Principal’s Representative from exercising any function.

### (**Notification**): The Principal’s Representative must as soon as practicable notify the Shortlisted Respondent in writing of:

#### the appointment and the name of any individual appointed by the Principal’s Representative under clause 5.1(f) and the functions delegated to that individual; and

#### the termination of the appointment of any individual appointed by the Principal’s Representative under clause 5.1(f).

### (**No fetter):** The appointment of the Principal’s Representative or any other individual under this clause 5.1 does not prevent the Principal from exercising any rights or performing any functions.

## Shortlisted Respondent’s Representative

### (**Shortlisted Respondent’s Rights)**: The Shortlisted Respondent’s Representative may exercise all of the Shortlisted Respondent’s rights and perform all of the Shortlisted Respondent’s functions under this Deed unless the Principal is advised by the Shortlisted Respondent from time to time of any limitations to the exercise of rights or performance of functions by the Shortlisted Respondent’s Representative.

### (**Meeting attendance**): The Shortlisted Respondent must ensure that the Shortlisted Respondent’s Representative attends all meetings required by this Deed and is otherwise involved in Development Phase Services to the extent necessary to ensure that the Shortlisted Respondent is complying with its obligations under this Deed.

### (**Directions**): A Direction is deemed to be given to the Shortlisted Respondent if it is given to the Shortlisted Respondent’s Representative.

### (**Replacement**): The Shortlisted Respondent may only replace the Shortlisted Respondent’s Representative under clause 5.5(c).

## Project Management Team

### (**Establishment**):The parties will establish a Project Management Team consisting of the number of nominated representatives from each of the parties as are specified in Item 8. The initial nominated representatives of each party are the persons named in Item 8.

### (**Functions**): The primary functions of the Project Management Team will include:

#### reviewing the Regular Performance Reports prepared by the Shortlisted Respondent in accordance with the Development Phase Services and Deliverables Schedule;

#### reviewing the Development Phase Services against the Shortlisted Respondent’s Development Phase Program;

#### reviewing the quality of the work performed by the Shortlisted Respondent;

#### reviewing and attempting to resolve issues arising out of community relations;

#### reviewing and considering matters arising from the Deliverables, including the Design Deliverables;

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

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

#### undertaking any other functions agreed between the parties.

### (**Meetings**): The Project Management Team must meet:

#### [weekly] , or

#### as otherwise agreed by the parties; and

#### when otherwise called to meet on no less than 10 Business Days’ notice by the Principal Representative;

#### and all such meetings will be chaired by a senior representative nominated by the Principal’s Representative.

### (**Representatives**): Each of the parties must use reasonable endeavours to ensure that, where appropriate, its representatives appointed to the Project Management Team remain as representatives on the Project Management Team for the duration of the Development Phase.

### (**Proper diligence**): The parties must ensure that their employees who are representatives of the Project Management Team exercise proper diligence in the performance of their functions and responsibilities, and in all aspects of their work.

## Project Leadership Team

### (**Establishment**): The parties will establish a Project Leadership Team consisting of the number of nominated senior representatives from each of the parties as are specified in Item 9. The initial nominated representatives of each party are the persons named in Item 9.

### (**Functions**): The primary functions of the Project Leadership Team are to:

#### establish and ensure the implementation of the strategic leadership and direction of the parties in relation to the Development Phase;

#### establish a culture necessary to achieve the Development Phase Objectives; and

#### consider and discuss any other issues referred to the Project Leadership Team by the Project Management Team.

### (**Meetings**): The Project Leadership Team must meet

#### [fortnightly], or

#### as otherwise agreed by the parties; and

#### when otherwise called to meet on no less than 10 Business Days’ notice by the Principal Representative,

and all such meetings will be chaired by the senior representative nominated by the Principal’s Representative.

### (**Representatives**): Each of the parties must use reasonable endeavours to ensure that, where appropriate, its representatives appointed to the Project Leadership Team remain as representatives on the Project Leadership Team for the duration of the Development Phase.

### **(Role): T**he role of the Project Leadership Team is advisory only and its decisions and recommendations are not binding on the parties.

### (**No effect on rights**): The Principal’s and the Shortlisted Respondent’s involvement in the Project Leadership Team does not affect the Principal’s rights or the Shortlisted Respondent’s obligations under this Deed.

## Key Personnel

### (**Engagement**): The Shortlisted Respondent must, at all times, employ or engage the Key Personnel in, and ensure that the Key Personnel possess the appropriate skill, expertise, authority and qualifications for, the positions specified in Schedule 3.

### (**Deemed knowledge**):Any matters within, or which ought reasonably to have been within, the knowledge of the Key Personnel are deemed to be within the knowledge of the Shortlisted Respondent.

### (**Duration**):The Shortlisted Respondent must ensure that the Key Personnel remain working on the Project in the positions specified in Schedule 3 for the duration of the Development Phase and must not remove or replace any Key Personnel without the prior approval of the Principal’s Representative or unless otherwise directed by the Principal under clause 5.6.

### (**Replacement**):The Principal’s Representative may not unreasonably withhold or delay its approval of a proposed replacement of Key Personnel if:

#### the relevant Key Personnel has:

##### resigned from its employment or has terminated its engagement with the Shortlisted Respondent;

##### died;

##### become incapable of performing its duties due to injury or illness; or

##### committed a breach of any express or implied term of its contract of employment or independent contract which would warrant termination of its employment or engagement; and

#### the Shortlisted Respondent has demonstrated to the reasonable satisfaction of the Principal’s Representative that the proposed replacement is appropriately technically qualified, has adequate experience (technical or otherwise, as the role requires) in relation to the proposed role and is of good repute.

## Removal of personnel

### (**Direction to remove**): If the Principal forms the view that any individual employed or engaged by the Shortlisted Respondent or its Subcontractors is unsatisfactory, the Principal may direct the Shortlisted Respondent to remove, from any activity connected with the Project, that individual.

### (**Shortlisted Respondent obligation**): Following removal of any individual under this clause 5.6, the Shortlisted Respondent must not employ or engage, and must ensure that no Subcontractor employs or engages, that individual in respect of activities connected with the Project without the prior approval of the Principal.

# Audit

## Principal’s right to enter, inspect and test

### (**Right of entry**): Subject to clause 6.1(b), the Shortlisted Respondent must permit the Principal, any Principal Associate and any other person directly authorised by the Principal to do so to enter any part of the Site to:

#### inspect, observe or test any part of the Development Phase Activities;

#### exercise any right, power or function or carry out any obligation which the Principal has under this Deed or Law;

#### examine and make copies of all Deliverables (including Design Deliverables) in connection with the Project; or

#### take such other action as the Principal considers necessary to discharge its legal, executive or statutory rights, duties or functions.

### (**Conditions of access**): When entering the Site controlled by the Shortlisted Respondent (or any Shortlisted Respondent Associate), the Principal must, and must ensure any Principal Associate and any other person authorised to enter the Site by the Principal:

#### only does so during business hours or upon giving reasonable notice to the Shortlisted Respondent (except in the case of an emergency that occurs on or in respect of the Site when no notice is required);

#### does not unnecessarily or unreasonably interfere with the carrying out of the Development Phase Activities; and

#### does not damage any Early Works or the Site.

### (**Shortlisted Respondent to assist**): If requested by the Principal, the Shortlisted Respondent must assist the Principal in connection with any access, observation, inspection or testing including:

#### providing access to such part of the Early Works and all Deliverables (including Design Deliverables) as may be required by the Principal;

#### preparing and providing such samples of materials used in connection with the Early Works as required by the Principal; and

#### if requested by the Principal, carrying out any tests (including tests reasonably required by the Principal that are not otherwise required by this Deed) and providing the results of those tests to the Principal.

### (**Early Works not to be covered up**):

#### The Principal may direct that any part of the Early Works must not be covered up or made inaccessible without the Principal’s approval, which will not be unreasonably withheld or delayed.

#### If a direction has been given under clause 6.1(e)(i) and a part of the Early Works has been covered up or made inaccessible without the Principal’s approval and the Principal wishes to inspect or test that part of the Early Works, the Shortlisted Respondent must uncover or make accessible such part of the Early Works.

### (**Costs of inspection or testing**):

#### the Principal will bear the costs incurred by it; and

#### the Shortlisted Respondent will be entitled to claim compensation if the Shortlisted Respondent or any Shortlisted Respondent Associate incurs additional costs,

### due to any inspection or test of the Development Phase Activities undertaken by the Principal, unless the inspection or test:

#### is in connection with Early Works covered up or made inaccessible without the Principal’s approval if such approval was required;

#### reveals a Defect or shows that the Development Phase Activities are not in accordance with the requirements of this Deed; or

#### was otherwise required by this Deed to be carried out by the Shortlisted Respondent and the Shortlisted Respondent did not do so,

### in which case, the Shortlisted Respondent will not be entitled to make any Claim against the Principal in connection with any such inspection or test undertaken by the Principal and must pay all reasonable costs incurred by the Principal in connection with the inspection or test, which will be a debt due and payable by the Shortlisted Respondent to the Principal.

## Auditor-General

### (**Auditor-General’s rights**): The parties acknowledge and agree that, notwithstanding any provision of this Deed 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 this Deed and each party submits to those powers and responsibilities;

#### the Principal or the Shortlisted Respondent may be the subject of an audit by the Auditor-General for the State of Victoria pursuant to section 94A of the *Constitution Act 1975* (Vic) or the *Audit Act 1994* (Vic); and

#### without limiting clause 6.2(a), the Shortlisted Respondent undertakes to the Principal that it will, and it will procure that each Shortlisted Respondent Associate will, at its own cost, co-operate and fully comply with the directions and requests of the Auditor-General for the State of Victoria and the Principal in relation to any audit referred to in clause 6.2(a).

# Financial statements

As soon as practicable (and in any event not later than 120 days) after the close of each Financial Year, the Shortlisted Respondent must give to the Principal certified copies of the consolidated (if applicable) and unconsolidated audited financial statements for the previous Financial Year the Principal, the Shortlisted Respondent.

### 

# Subcontracting and third party arrangements

## Subcontracting

### (**Principal** **Requirements**): The Shortlisted Respondent:

#### must not tender or subcontract the whole or any part of the Development Phase Activities without the Principal Representative’s prior approval;

#### must not engage as a Subcontractor, any business entity that has been excluded from tendering for Victorian Government contracts;

#### must:

##### ensure the procurement of all Subcontractors is conducted so as to achieve value for money outcomes for the Principal and otherwise on an Open Book Basis; and

##### if requested by the Principal’s Representative:

###### conduct a tender process for the procurement of a Subcontractor; and

###### provide the Principal’s Representative with details of the tender processes conducted for the procurement of any Subcontractor (including details of the number of tenders sought and received and the prices proposed by each tenderer); and

#### remains fully responsible for:

##### the acts and omissions of its Subcontractors; and

##### the Development Phase Activities notwithstanding the Shortlisted Respondent has subcontracted the performance of any part of the Development Phase Activities.

### (**Required Terms**): Each subcontract must:

#### include at least the following:

##### an obligation on the Subcontractor to participate in any novation required by the Principal under clause 25.3(d);

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

##### a provision requiring the Subcontractor to effect and maintain appropriate insurance;

##### an obligation on the Subcontractor to observe the requirements of clause 20, 21 and 22 to the same extent as the Shortlisted Respondent is required to do so (as if the Subcontractor were named in that clause in place of the Shortlisted Respondent), to the extent the Subcontractor performs any obligations of the Shortlisted Respondent under this Deed or any part of the Development Phase Activities;

##### no ‘pay when paid’ or ‘pay if paid’ provisions;

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

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

###### require the Shortlisted Respondent to pay the Subcontractor within 20 Business Days of issuing a payment certificate;

##### a right for the Shortlisted Respondent to terminate the subcontract for convenience;

##### any provisions required to be included in subcontracts in accordance with the Government Policy Requirements; and

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

#### in the case of each subcontract under which the Shortlisted Respondent proposes that any services or works may be undertaken during the Delivery Phase, be on the basis that engagement for the Delivery Phase is dependent on the Principal accepting the Delivery Phase Offer under clause 14.4(a)(i).

### (**Provide copy**): The Shortlisted Respondent must, if required by the Principal’s Representative, provide the Principal’s Representative with a copy of any executed subcontract, together with all documentation relevant to that subcontract.

## Subcontract Packaging and Procurement Plan

1. The Shortlisted Respondent must prepare a detailed subcontract packaging and procurement plan in respect of the Delivery Phase Activities (**Subcontract Packaging and Procurement Plan**) which:

### (**Identifies**): details the Delivery Phase Activities that are proposed to be self-performed and those that are proposed to be subcontracted;

### (**Subcontracted activities**):for Delivery Phase Activities that are proposed to be subcontracted:

#### details of how the Delivery Phase Activities are to be packaged;

#### details of the subcontract model (including base form of contract and payment model) and proposed tender lists for each proposed subcontract package;

#### details of subcontracts for Delivery Phase Activities that are proposed to be tendered during the Development Phase;

#### confirmation of which subcontractors engaged by the Shortlisted Respondent during the Development Phase will continue to perform services or carry out works during the Delivery Phase, including any proposed adjustments to the amounts payable under subcontracts entered into during the Development Phase; and

#### the proposed budget for each subcontract;

### (**Template documentation**): must include template tender and subcontract documentation or otherwise detail when these will be provided to the Principal; and

### (**Provide information**): any other information requested by the Principal’s Representative.

## Novation

### (**Novation**): When directed by the Principal, the Shortlisted Respondent must promptly execute a deed of novation in a form required by the Principal (**Deed of Novation),** such Deed of Novation being between the Principal, the Shortlisted Respondent and the Subcontractor stated in Item 10 for the particular part of the Development Phase Services.

### (**Payment**): Upon novation in accordance with this clause 8.3, the unpaid amount then payable under each contract novated pursuant to a Deed of Novation (each a Novated Contract), shall be a Development Phase Services Reimbursable Cost.

### (**Shortlisted Respondent obligations**): Following novation in accordance with this clause 8.3, the Shortlisted Respondent must:

#### not terminate a Novated Contract without the Principal’s prior written consent;

#### notify the Principal in writing of its intention to terminate a Novated Contract and provide reasons for its decision;

#### where a Novated Contract is terminated or frustrated, engage a replacement Subcontractor in accordance with clause 8, on terms no less prejudicial to the Principal than the Novated Contract; and

#### allow the Principal and the Principal’s Representative to consult with any of the Subcontractors stated in Item 10 in relation to Development Phase Services and Development Phase Deliverables at no cost to the Principal.

# Early Delivery Activities

## Early Delivery Activities Direction

### (**Notice**): The Principal’s Representative may, at any time, provide to the Shortlisted Respondent a written notice entitled “Early Delivery Activities Direction” in the form provided in Schedule 7, being a Direction to the Shortlisted Respondent to perform Early Delivery Activities (**Early Delivery Activities Direction**).

### (**Direction required**): The Shortlisted Respondent must not carry out any Early Delivery Activities except as directed by the Principal’s Representative in accordance with this clause 9.

### (**Compliance**): The Shortlisted Respondent must comply with any Early Delivery Activities Direction.

## Early Delivery Activities proposed by the Principal

### (**Proposed Activities**): Without limiting clause 9.1, the Principal’s Representative may, at any time, issue the Shortlisted Respondent with a notice of proposed Early Delivery Activities being considered by the Principal.

### (**Response**): Within 10 Business Days (or such longer period agreed to by the Principal’s Representative acting reasonably and having regard to the nature of the proposed Early Delivery Activities) after receipt of a notice from the Principal’s Representative under clause 9.2(a), the Shortlisted Respondent must provide a response to the Principal’s Representative in the form set out in Schedule 8 (**Early Delivery Activities Proposal**).

## Early Delivery Activities proposed by the Shortlisted Respondent

### (**Proposed Activities**): The Shortlisted Respondent may, by notice in writing to the Principal’s Representative, propose Early Delivery Activities which it considers would be beneficial on a value for money basis (**Proposed Early Delivery Activities**).

### (**Response**): Following receipt of a notice from the Shortlisted Respondent in respect of the Proposed Early Delivery Activities, the Principal’s Representative may (in its absolute discretion):

#### request additional information from the Shortlisted Respondent in respect of the Proposed Early Delivery Activities;

#### request a meeting with the Shortlisted Respondent to discuss the Proposed Early Delivery Activities;

#### issue an Early Delivery Activities Direction in respect of the Proposed Early Delivery Activities; or

#### notify the Shortlisted Respondent that it does not wish the Shortlisted Respondent to perform the Proposed Early Delivery Activities.

## Early Delivery Activities requirements and limitations

### (**Acknowledgement**):The Shortlisted Respondent acknowledges and agrees that:

#### nothing in this Deed constitutes an acknowledgement or representation to the Shortlisted Respondent by the Principal that the Principal’s Representative will issue any Early Delivery Activities Direction; and

#### the Principal may, in its absolute discretion, elect whether or not to issue an Early Delivery Activities Direction.

### (**Subcontracts**):If required to do so in the Early Delivery Activities Direction, the Shortlisted Respondent must ensure that any subcontracts which it proposes to enter into in connection with the Early Delivery Activities contain provisions which enable the subcontracts to be freely assigned or novated to the Principal (or any of the Principal’s Associates nominated by the Principal).

## Carrying out Early Delivery Activities

If the Principal’s Representative issues an Early Delivery Activities Direction:

### (**Governing terms**): subject to clause 9.5(b) and the terms of the Early Delivery Activities Direction, the Early Delivery Activities will be subject to the terms and conditions of the Agreed ITC Delivery Deed and the rights and obligations of the parties in respect of the Early Delivery Activities and the Early Works will be governed by:

#### the Agreed ITC Delivery Deed; and

#### the particulars for the Early Delivery Activities and the Early Works set out in the Early Delivery Activities Direction;

### (**No Risk or Reward Regime**): without limiting clause 3.4, the Risk or Reward Regime (as defined in the Agreed ITC Delivery Deed) will not apply during the Development Phase;

### (**Interpretation**): for the purposes of this clause 9.5, the terms of the Agreed ITC Delivery Deed will be read as follows:

#### references to “Delivery Activities” under the Agreed ITC Delivery Deed will be read as Early Delivery Activities;

#### references to “Works” under the Agreed ITC Delivery Deed will be read as Early Works;

#### references to “Contractor” under the Agreed ITC Delivery Deed will be read as “Shortlisted Respondent”; and

#### references to the “Superintendent” under the Agreed ITC Delivery Deed will be read as “Principal’s Representative”;

### (**Payment regime**): payment for the Early Delivery Activities will be made in accordance with the Agreed ITC Delivery Deed, unless and until otherwise agreed by the parties;

### (**Method for payment**): if the parties enter into a ITC Delivery Deed, payment for the Early Delivery Activities performed by the Shortlisted Respondent, to the extent not already made under this Deed, will be made under the ITC Delivery Deed; and

### (**Mobilisation**): in performing any Early Delivery Activities, the Shortlisted Respondent must not mobilise its resources or establish any accommodation, facilities or presence on any part of the Site unless such mobilisation is expressly directed by the Principal.

## Shortlisted Respondent to cease performing the Early Delivery Activities

### (**Cease performing Early Delivery Activities**): If:

#### the Principal’s Representative has issued an Early Delivery Activities Direction under clause 9.1(a); and

#### the Shortlisted Respondent subsequently receives a written notice from the Principal’s Representative:

##### requesting it to cease the performance of the Early Delivery Activities; or

##### terminating this Deed under clause ‎25.2,

### the Shortlisted Respondent must:

#### immediately cease performing all Early Delivery Activities on the date it receives the relevant notice under clause 9.6(a)(ii); and

#### if directed by the Principal’s Representative in relation to a subcontract in respect of the Early Delivery Activities, promptly:

##### novate the subcontract, or assign the rights and benefits under the subcontract, to the Principal (or any of the Principal’s Associates nominated by the Principal); and

##### take all steps necessary to effect such novation or assignment,

### without payment and in accordance with the Principal’s Representative’s direction.

### (**Payment for Early Delivery Activities**): If clause 9.6(a) applies, unless the termination under clause 25.2 is due to an Insolvency Event or a material breach of this Deed by the Shortlisted Respondent, the Shortlisted Respondent:

#### will, subject to the terms of the Early Delivery Activities Direction be entitled to payment of the following amounts:

##### payment for all Early Delivery Activities validly performed up to the date of receiving the notice from the Principal’s Representative under clause 9.6(a)(ii) in respect of which payment has not been made in accordance with the payment regime under the Agreed ITC Delivery Deed; and

##### the materials or other items reasonably ordered by the Shortlisted Respondent for the Early Delivery Activities and for which it is legally bound to pay provided that:

###### the value of the materials and other items have not been previously paid or included in the amount payable under clause 9.6(b)(i)A; and

###### title in the materials and other items will vest in the Principal upon payment.

#### must take all reasonable steps to mitigate the costs referred to in clause 9.6(b)(i); and

#### subject to the payment of the amounts referred to in clause 9.6(b)(i), the Shortlisted Respondent releases and discharges the Principal from all Claims that the Shortlisted Respondent has, or may have had arising out of or in connection with the Early Delivery Activities.

## Early Works DLP

### (**Duration**): If the Principal rejects the Delivery Phase Offer under clause 14.4(a)(iii)A and the Principal’s Representative has issued an Early Delivery Activities Direction under clause 9.1(a):

#### the Shortlisted Respondent must, unless directed otherwise by the Principal’s Representative, continue to carry out the Early Delivery Activities so as to achieve completion of the Early Works in accordance with this Deed (including any Early Delivery Activities Direction); and

#### the Early Works DLP will commence on:

##### the date that the Shortlisted Respondent achieves completion of the Early Works in accordance with this Deed (including any Early Delivery Activities Direction); or

##### if the Principal’s Representative directs the Shortlisted Respondent that the Early Delivery Activities are not to continue, the date the Principal notifies the Shortlisted Respondent that it rejects the Delivery Phase Offer under clause 14.4(a)(iii),

##### and will expire 12 months after that date, unless extended by the Principal’s Representative in accordance with clause 9.7(b).

### (**Defects**): The Shortlisted Respondent must, during the Early Works DLP, rectify in accordance with this Deed (including any Early Delivery Activities Direction) all Defects which exist at the commencement of the Early Works DLP or are notified to the Shortlisted Respondent by the Principal during the Early Works DLP.

### (**Extension**): If the Shortlisted Respondent is required to rectify a Defect under clause 9.7(b), the Principal’s Representative may extend the Early Works DLP for that part of the Early Works which contains the Defect for such time as the Principal’s Representative determines, such extension to be no longer than 6 months after the expiry of the Early Works DLP (without regard to any extension).

# Design Development Process

The Shortlisted Respondent must conduct and manage the Design Development Process and prepare the Design Deliverables in accordance with:

### the PSDR;

### the Design Management Plan and Design Development Program; and

### all other requirements of this Deed.

# PSDR

## Revisions to the PSDR

### (**Amendment**): The Principal may, from time to time during the Development Phase, update or amend the PSDR, in which case the Principal’s Representative will promptly provide the Shortlisted Respondent with a copy of the updated or amended PSDR.

### (**Updated compliance**): The Shortlisted Respondent must perform the Development Phase Services and develop the Development Phase Deliverables so as to comply with the requirements of the updated or amended PSDR.

## Proposed technical Departures

### (**Proposal)**: The Shortlisted Respondent may propose a non-conformance with or departure from the PSDR if it believes that that non-conformance or departure would better facilitate the achievement of the Development Phase Objectives (**Departure**).

### **(Proposal Form**) To propose a Departure, the Shortlisted Respondent must submit a proposal to the Principal’s Representative in the form, and so as to meet the requirements of the form, provided in Schedule 9.

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

#### is not obliged to consider, comment on or approve; and

#### may consider, comment on, reject or approve, or not consider, comment on, reject or approve, or approve with conditions,

any Departure proposed under clause 11.2(b).

### (**Approval**): If the Principal approves a Departure to the PSDR, the Principal will update the PSDR in accordance with clause 11.1(a).

### (**Approval Required**): The Shortlisted Respondent must not act upon or progress any Departure unless the Principal has approved the Departure.

# TOC Estimate

## Principal’s Benchmark

### (**Preparation**): The Principal:

#### will prepare the Principal’s Benchmark during the Development Phase and, in doing so, have regard to clause 12.1(b); and

#### may, but is not required to, disclose the Principal’s Benchmark (or any part thereof) to the Shortlisted Respondent.

### (**Considerations**):In preparing the Principal’s Benchmark in accordance with clause 12.1(a), the Principal will take into account any material increase or decrease in the scope of, or the costs or time of performing, the Development Phase Activities or the Delivery Phase Activities (as the case may be) as a result of:

#### any Early Delivery Activities Direction under clause 9.1 (except to the extent the Early Delivery Activities Direction brings forward Delivery Phase Activities into the Development Phase);

#### any update or amendment to the PSDR under clause 11.1(a); and

#### any suspension of the Development Phase Services under clause 15.3 (other than as a result of a Shortlisted Respondent Act or Omission).

### (**Additional performance percentage**): Where the Final TOC Estimate is less than the Principal’s Benchmark, the Shortlisted Respondent will be entitled to an additional performance percentage amount as part of the Performance Reward Potential Pool (as defined in the Agreed ITC Delivery Deed) in accordance with Schedule 5 of the Agreed ITC Delivery Deed.

### (**No Claim**): To the extent permitted by Law, the Shortlisted Respondent will not be entitled to make (nor will the Principal be liable upon) any Claim arising out of or in connection with the Principal’s Benchmark, the preparation of the Principal’s Benchmark, or any entitlement to an additional performance percentage amount under the ITC Delivery Deed in accordance with clause 12.1(c).

## Requirements for preparing TOC Estimate

The Shortlisted Respondent must prepare and update the TOC Estimate:

### (**Compliance**): in accordance with the Development Phase Services and Deliverables Schedule and the Delivery Phase Pricing Schedule;

### (**Basis**)**:** on the basis of:

#### the PSDR; and

#### the Design Deliverables most recently submitted and reviewed in accordance with clauses 3.3(b) and 3.3(c) prior to the time of preparing the TOC Estimate;

### (**Reflect terms**): to reflect the terms of the Agreed ITC Delivery Deed;

### (**Calculation**): calculated in accordance with:

#### the rates or prices included in the Schedule of Rates if and insofar as those rates or prices are applicable to a TOC Component;

#### if clause 12.2(d)(i) does not apply, on the basis of input prices which have been procured following the outcome of a competitive tendering process; or

#### if clause 12.2(d)(ii) does not apply, on the basis of appropriate benchmarking data approved by the Principal’s Representative;

### (**Open Book**): on an Open Book Basis; and

### (**Contingency and risk allowance**): so as to ensure that the Estimated Delivery Phase Risk & Contingency Provisions are progressively reduced from the amount in prior versions of the TOC Estimate prepared during the Development Phase to the greatest extent practicable.

## TOC Estimate warranties

The Shortlisted Respondent must ensure that the TOC Components do not include:

### (**Duplication**): any amount that is or ought to have been included in another TOC Component; and

### (**Corporate overhead or profit**): without limiting clause 12.3(a), any corporate overhead or profit other than in accordance with section 2(e) of the Delivery Phase Pricing Schedule.

## Updated TOC Estimates

The Shortlisted Respondent must prepare any updated TOC Estimate so that the Principal can easily identify all changes to the previous version of the TOC Estimate and must provide detailed reasons for such changes.

# Independent advisors

### (**Appointment**): The Shortlisted Respondent acknowledges and accepts that the Principal may appoint advisors including:

#### a probity auditor;

#### a financial auditor;

#### an estimator;

#### a construction, engineering or technical reviewer;

#### commercial advisors; and

#### legal advisors,

to be accountable independently and directly to the Principal to validate Delivery Phase Offers, to perform any task required by the Principal and to provide independent reports and validation of any aspect of the Delivery Phase Offer.

### (**Advisor role**): Without limiting clause 13(a), the Principal may engage the services of an independent advisor to:

#### observe the preparation of the TOC Estimate by the Shortlisted Respondent and verify all of the methodology, approaches, assumptions, quantities, rates, amounts, estimations and contingencies used or included in the TOC Estimate prepared as part of the Delivery Phase Offer; and

#### provide a report to the Principal in respect of the TOC Estimate.

### (**Co-operation**): The Shortlisted Respondent agrees, in the spirit of the commitments it has made in clause 3 and elsewhere in this Deed, to:

#### provide the Principal’s independent advisors with full access to all records and the basis of all of the methodology, approaches, assumptions, quantities, rates, amounts, estimations and contingencies referred to above during the investigations and the preparation of the TOC Estimate; and

#### fully co-operate with and assist the Principal’s advisors to ensure that such advisors are able to effectively and expeditiously carry out their duties.

### (**Open-book approach**): In preparing the TOC Estimate, the Shortlisted Respondent commits to an ‘open book’ approach, meaning that the Principal can have access to all records, information and data in the possession of the Shortlisted Respondent which in any way has a bearing on the TOC Estimate. This aspect of the open book philosophy must be carried forward by the Shortlisted Respondent into all aspects of costing and accounting.

### (**Honesty**): The Shortlisted Respondent must honestly and openly answer any questions the Principal’s independent advisors or the Principal may have in connection with the Delivery Phase Offer (including the TOC Estimate) in a manner consistent with the Shortlisted Respondent’s commitments under clause 3 of this Deed.

### (**Costs**): The Principal will bear all of the costs of any independent advisors appointed under this clause 13.

# Process for entry into ITC Delivery Deed

## Form of ITC Delivery Deed

The alternative applicable in this clause 14.1 is set out in Item 11.

***ALTERNATIVE 1: AGREED DELIVERY PHASE DEED***

The parties acknowledge and agree that:

### (**Agreed terms**): as at the Contract Date, the parties have agreed the terms of the Agreed ITC Delivery Deed; and

### (**No amendment**): the Agreed ITC Delivery Deed will not be amended other than under clause 14.5(a).

***ALTERNATIVE 2: NEGOTIATED FORM OF DELIVERY PHASE DEED***

The parties acknowledge and agree that:

### (**Finalisation**): the parties will negotiate and finalise the terms of the Agreed ITC Delivery Deed following the Contract Date in accordance with this clause 14.1;

### (**Negotiations**): the parties will commence:

#### promptly, where draft terms and conditions or commercial principles have been included in Schedule 8; or

#### otherwise, within 10 Business Days of the Principal making available draft terms and conditions,

#### and diligently progress negotiations to finalise agreement of the terms of the ITC Delivery Deed and, for this purpose, will allocate sufficient resources and time for negotiation;

### (**Agreement reached**): if the parties reach agreement as to the terms of the ITC Delivery Deed, those terms will become the Agreed ITC Delivery Deed;

### (**Timeframe**): the parties will seek to reach agreement as to the terms of the ITC Delivery Deed within the timeframe stated in Item 12; and

### (**Costs**): except as expressly set out in Schedule 5, each party will bear its own costs and expenses in the negotiation and finalisation of the Agreed ITC Delivery Deed.

## Progressive development of Delivery Phase Offer

### (**Progressive** **Development**): The Shortlisted Respondent acknowledges and agrees that it will:

#### progressively develop the Delivery Phase Offer;

#### provide the Principal’s Representative with successive drafts of the Development Phase Deliverables forming part of the Delivery Phase Offer in accordance with the Development Phase Services and Deliverables Schedule, the Development Phase Program and the Design Development Program; and

#### respond to and address any comments provided by the Principal under clause 14.2(a)(iv),

so as to:

#### give the Principal the opportunity to review and comment on the successive drafts of the Development Phase Deliverables, and the Shortlisted Respondent the opportunity to fully address those comments in accordance with clause 3.3(c) before the submission of the Delivery Phase Offer by the Date for Delivery Phase Offer under clause 14.3; and

#### minimise the risk of rejection or the need for lengthy negotiations of the Delivery Phase Offer.

### (**Subsequent drafts**): With each draft of a Development Phase Deliverable submitted to the Principal’s Representative, the Shortlisted Respondent must identify any material differences in that draft of the Development Phase Deliverable from the immediately preceding draft of the same Development Phase Deliverable submitted to the Principal’s Representative, together with reasons for the differences.

## Submission of Delivery Phase Offer

### (**Timing**): The Shortlisted Respondent must use its best endeavours to submit the Delivery Phase Offer to the Principal by the Date for Delivery Phase Offer.

### (**Form**): The Delivery Phase Offer must be in the form of the Delivery Phase Offer Form and meet the requirements set out in clause 14.3(c).

### (**Requirements**): The Delivery Phase Offer must:

#### remain open and capable of acceptance by the Principal for the Offer Period;

#### be prepared:

##### on an Open Book Basis;

##### on the basis of the PSDR; and

##### unless otherwise agreed with the Principal, without adjustment to the Design Deliverables, Delivery Phase Program, Final TOC Estimate and all other Development Phase Deliverables relevant to the Delivery Phase Activities most recently submitted and reviewed in accordance with clauses 3.3(b) and 3.3(c);

#### subject only to amendments contemplated under clause 14.5(a), reflect the terms of the Agreed ITC Delivery Deed and not contain any amendments to the Agreed ITC Delivery Deed, or any assumptions, conditions or requirements that are inconsistent with the Agreed ITC Delivery Deed; and

#### otherwise meet the requirements for the Delivery Phase Offer required by the Principal.

### (**Details**): The Shortlisted Respondent must, if requested by the Principal, promptly provide:

#### copies of supporting documentation concerning the Delivery Phase Offer, including copies of quotations, prices, estimates, quantities and the like; and

#### details of the conduct and outcome of any procurement processes pursuant to which input prices have been incorporated into the Delivery Phase Offer.

## Principal’s options

### (**Notification**): Prior to the expiry of the Offer Period, the Principal’s Representative will notify the Shortlisted Respondent:

#### that the Principal accepts the Delivery Phase Offer – in which case clause 14.5 applies;

#### wishes to negotiate the Delivery Phase Offer – in which case clause 14.4(b) applies; or

#### rejects the Delivery Phase Offer – in which case:

##### if the Principal’s Representative has issued an Early Delivery Activities Direction under clause 9.1, clause 9.7 applies and clause 25.2may apply; or

##### otherwise, clause 25.1(b) will apply.

### (**Negotiation**): If the Principal’s Representative notifies the Shortlisted Respondent that the Principal wishes to negotiate the Delivery Phase Offer under clause 14.4(a)(ii), then:

#### the Shortlisted Respondent must undertake genuine and good faith negotiations with the Principal to reach agreement, as to:

##### the adjustment (if any) required to the proposed TOC; and

##### such other changes to the Delivery Phase Offer as may be proposed by the Principal;

#### the Shortlisted Respondent must resubmit the Delivery Phase Offer under clause 14.3(a), as soon as reasonably practicable, adjusted to reflect the matters negotiated under clause 14.4(b)(i) in which case clause 14.4(a) will apply to the resubmitted Delivery Phase Offer; and

#### the Offer Period will be extended as agreed by the parties.

## Execution of ITC Delivery Deed

If the Principal accepts the Delivery Phase Offer under clause 14.4(a)(i), then:

### (**Preparation and amendment**): the Principal will prepare the ITC Delivery Deed for execution by the Successful Respondent using the Agreed ITC Delivery Deed which will only be amended:

#### on the basis of any conditions of the Delivery Phase Offer where the conditions and the impact of those condition on the Agreed ITC Delivery Deed have been accepted by the Principal;

#### to address those matters identified in this Deed as being subject to finalisation during the Development Phase;

#### to correct a drafting error; and

#### as otherwise agreed between the Principal and the Successful Respondent;

### (**Execution deadline**): the Successful Respondent must execute the ITC Delivery Deed within 10 Business Days of receipt of the ITC Delivery Deed (as prepared by the Principal in accordance with clause 14.5(a)); and

### (**Commencement**): the ITC Delivery Deed will come into force and effect upon execution of the ITC Delivery Deed by both the Principal and the Delivery Phase Contractor.

## Ownership of Delivery Phase Offer

[***Drafting Note: Clause may require amendment on a Project specific basis for alignment with the RFT.***]

Subject to clause 20, ownership of the Delivery Phase Offer and all documentation and information comprising the Delivery Phase Offer or prepared for the purposes of the Delivery Phase Offer (**Information**), immediately vests in the Principal upon its creation and the Shortlisted Respondent has no right to:

### (**Principal’s approval**): use any part of the Delivery Phase Offer or Information without the Principal’s prior written approval;

### (**Disclosure**): disclose any part of the Delivery Phase Offer or Information without the Principal’s prior written approval, except as permitted under clause 22; or

### (**Return**): request the return of any part of the Delivery Phase Offer or Information.

## Use of Delivery Phase Offer and Pre-existing Intellectual Property

[***Drafting Note: Clause may require amendment on a Project specific basis for alignment with the RFT.***]

If the Shortlisted Respondent is not the Successful Respondent, or if the Principal does not execute the ITC Delivery Deed, and the Principal elects to use any information or documentation from the Shortlisted Respondent’s Delivery Phase Offer or Pre-existing Intellectual Property pursuant to the licence granted under clause 20.1, to the extent permitted by Legislative Requirements, the Principal (on its own behalf and on behalf of its Associates) releases the Shortlisted Respondent from any Loss or Claims arising out of or in connection with such use, save and except for any Loss or Claims the Principal or any of its Associates suffer or incur arising out of or in connection with:

### (**IP Breach**): any breach by the Shortlisted Respondent, or any of its Associates, of any Intellectual Property rights of any third party;

### (**Unlawful conduct**): any fraud, unlawful conduct or wilful default by the Shortlisted Respondent or any of its Associates; or

### (**Breach of Deed**): any breach of this Deed, the terms of the Invitation for EOI or the RFP by any Member of the Shortlisted Respondent or any of its Associates.

# Time

## Progress and time for completion

The Shortlisted Respondent must:

### (**Progress**): regularly and diligently:

#### progress the Development Phase Services; and

#### prepare the Development Phase Deliverables; and

### (**Submit)**: use its best endeavours to submit the Delivery Phase Offer by the Date for Delivery Phase Offer.

## Programming

The Shortlisted Respondent must not depart from the Development Phase Program and the Design Development Program most recently reviewed and amended in accordance with clause 3.3(c), without the Principal’s prior written approval.

## Suspension

### (**Instruction**): The Principal’s Representative may instruct the Shortlisted Respondent to suspend or, after a suspension has been instructed, re-commence the carrying out of all or any part of the Development Phase Services and is not required to exercise the Principal’s power under this clause 15.3(a) for the benefit of the Shortlisted Respondent.

### **(Consequences**): Where a suspension is instructed under clause 15.3(a) other than as a result of a Shortlisted Respondent Act or Omission, the Shortlisted Respondent:

#### must take all reasonable steps to mitigate the costs incurred by it as a result of the suspension; and

#### subject to clause 15.3(b)(i), will be entitled to payment of the Development Phase Services Fee for the period of the suspension,

but, to the extent permitted by Law, the Shortlisted Respondent will not otherwise be entitled to make (nor will the Principal be liable upon) any Claim arising out of or in connection with a suspension instructed under clause 15.3(a).

# Payment

***[Drafting note: this document may be amended*** *for the* ***agreed costing model, e.g. a fully reimbursable cost model, a reimbursable cost model up to a fixed cap, or a fixed lump sum model.]***

## Payment obligation

***[Drafting note: the payment mechanism may be reviewed on a project-specific basis, e.g. to allow for the payment of milestone payments]***

Subject to clause 16.10 and any other right of set-off that the Principal may have, the Principal will pay the Shortlisted Respondent in progressive payments:

### for the Development Phase Services – the Development Phase Services Fee; and

### any other amounts which are payable by the Principal to the Shortlisted Respondent under this Deed,

in accordance with this clause 16.

## Payment claims

### (**Time for payment claim**): Subject to clause 16.3, the Shortlisted Respondent must give the Principal’s Representative claims for payment on the 25th day of the month, based on the value of the Development Phase Services carried out to that date.

### (**Form of payment claim**): Payment claims given under clause 16.2(a) must:

### be in a form satisfactory to the Principal’s Representative;

#### show separately the amounts (if any) claimed on account of:

##### the Development Phase Services Fee and each Development Phase Services Fee Component; and]

##### all other amounts then payable by the Principal to the Shortlisted Respondent under this Deed;

#### include a monthly cash flow forecast updated for the payment claim, showing amounts paid to date and amounts forecast for the next month (against the Development Phase Budget Estimate, )Development Phase Plan and Development Phase Program);

#### have been prepared and calculated on an Open Book Basis and specify or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Shortlisted Respondent; and

#### include such other information required under this Deed or as otherwise reasonably requested by the Principal’s Representative.

## Conditions precedent to payment claim

The Shortlisted Respondent’s entitlement to submit a payment claim under clause 16.1 is subject to the Shortlisted Respondent having effected all insurances required under clause 18, and any other conditions precedent to payment expressly set out in this Deed.

## Payment certificate

### (**Time for payment certificate**):The Principal’s Representative:

#### must, within 10 Business Days of receiving a payment claim submitted or purported to be submitted in accordance with clause 16.2; or

#### may, if the Shortlisted Respondent fails to submit any such claim in accordance with clause 16.2, at any time,

give the Shortlisted Respondent (with a copy to the Principal), a payment certificate in the form determined by the Principal’s Representative.

### (**Form of payment certificate**): All payment certificates issued under clause 16.4(a) must state:

#### the payment claim to which it relates (if any);

#### the amount already claimed by the Shortlisted Respondent up to the date of the relevant payment claim;

#### the amount already paid to the Shortlisted Respondent up to the date of the relevant payment claim;

#### the amount payable by the Principal to the Shortlisted Respondent in respect of the relevant payment claim; and

#### if the amount in clause 16.4(b)(iv) is less than the amount claimed in the payment claim, the reason why the amount in clause 16.4(b)(iv) is less than the amount claimed in the payment claim.

### (**Modification**): The Principal’s Representative may, in any payment certificate, correct any error in, or otherwise modify, any previous payment certificate.

## Payment

### (**Invoice**): Within 5 Business Days of the Shortlisted Respondent receiving a payment certificate under clause 16.4(a), the Shortlisted Respondent must give the Principal’s Representative a tax invoice in accordance with clause 17 for the amounts stated as then payable by the Principal to the Shortlisted Respondent in the payment certificate.

### (**Payment to Shortlisted Respondent**): Subject to clauses 16.7(b) and 16.10, within 10 Business Days of the Principal receiving a payment certificate under clause 16.4(a), the Principal will pay the Shortlisted Respondent the amount shown in the payment certificate.

### (**Moneys owing to Principal**):Where a payment certificate indicates that an amount is due from the Shortlisted Respondent to the Principal, the Shortlisted Respondent must pay to the Principal that amount within 5 Business Days after receiving a tax invoice from the Principal for that amount.

### (**Provide bank account**):The Shortlisted Respondent must, no later than five Business Days after the earlier of the issue of a tax invoice in accordance with clause 16.5(a), notify the Principal in writing of the Shortlisted Respondent’s nominated bank account for payment by the Principal to the Shortlisted Respondent under this Deed.

### (**Issues**): Any Issue regarding the amount payable to the Shortlisted Respondent will be resolved in accordance with clause 26 and, upon resolution, the Principal will (if required) make the payment to the Shortlisted Respondent within 20 Business Days of the date of the resolution.

## Payment on account only

### (**No admission or approval**): The issue of a payment certificate by the Principal’s Representative or any payment of moneys under clause 16.5 is to be taken as payment on account only and does not constitute:

#### evidence of the value of work or the services performed or that the work or services have been satisfactorily performed in accordance with this Deed;

#### an admission of liability; or

#### approval by the Principal or the Principal’s Representative of the Shortlisted Respondent’s performance or compliance with this Deed.

## Payment of workers and Subcontractors

### (**Required evidence**): The Shortlisted Respondent must, with each payment claim under clause 16.2, provide the Principal’s Representative with:

#### a statutory declaration, together with any supporting evidence which may be reasonably required by the Principal’s Representative, duly signed by a representative of the Shortlisted Respondent who is in a position to know the facts stated, that, except to the extent disclosed in the relevant certificate (such disclosure to specify all relevant amounts, workers or Subcontractors):

##### all workers who have, at any time, been employed by the Shortlisted Respondent in respect of the Development Phase Services have at the date of the payment claim been paid all moneys due and payable to them in respect of their employment in connection with the Development Phase Services; and

##### all Subcontractors have, as at the date of the payment claim, been paid all moneys due and payable to them in respect of the Development Phase Services; and

#### documentary evidence that, except to the extent otherwise disclosed (such disclosure to specify all relevant amounts and workers), as at the date of the payment claim, all workers who have been employed by a Subcontractor have been paid all moneys due and payable to them in respect of their employment in connection with the Development Phase Services.

### (**Principal’s entitlement**): The Principal is entitled to:

#### withhold from any amount stated as then payable by the Principal to the Shortlisted Respondent in a payment certificate under clause 16.4(a); or

#### pay directly to the Subcontractor out of moneys due to the Shortlisted Respondent as part of the Development Phase Services Fee,

any amount disclosed as unpaid under this clause 16.7 or that the Principal otherwise become aware is due and payable to a Subcontractor.

### (**Debt due and payable**): If the Principal makes a payment directly to a Subcontractor under clause 16.7(b)(ii), the Shortlisted Respondent is deemed to have directed the Principal to make such payment and such amount will be a debt due and payable by the Shortlisted Respondent to the Principal on demand.

## Security of payment legislation

### (**Acknowledgements**): The Shortlisted Respondent acknowledges and agrees that:

#### a payment claim submitted to the Principal’s Representative under clause 16.2 that also purports to be (or is at Law) a payment claim under the Security of Payment Act is received by the Principal’s Representative as agent for the Principal;

#### unless otherwise notified to the Shortlisted Respondent by the Principal, the Principal’s Representative will give payment certificates and carry out all other functions of the Principal under the Security of Payment Act as the agent of the Principal;

#### to the extent permitted by and for the purposes of the Security of Payment Act, the “reference dates” are those of the dates prescribed in clause 16.2 on which the Shortlisted Respondent has satisfied the requirements of clause 16.3; and

#### a reference to a “payment certificate” is also a reference to a “payment schedule” for the purposes of the Security of Payment Act.

### (**Failure to state no prejudice**): Failure by the Principal’s Representative to state in a payment certificate issued under the Security of Payment Act or otherwise an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise then be payable by the Principal to the Shortlisted Respondent will not prejudice:

#### the ability or power of the Principal’s Representative to state in a subsequent payment certificate an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise then be payable by the Principal to the Shortlisted Respondent; or

#### the Principal’s right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Deed or otherwise at Law.

### (**Payment certificate amount**): The Shortlisted Respondent agrees that the amount stated in a payment certificate as payable by the Principal to the Shortlisted Respondent is, subject to clause 16.7, to the extent permitted by and for the purposes of the Security of Payment Act, the amount of the “progress payment” calculated in accordance with the terms of this Deed and which the Shortlisted Respondent is entitled to be paid in respect of this Deed.

### (**Adjudication authority**): Upon an adjudication application under the Security of Payment Act, the authorised nominating authority for the purposes of the Security of Payment Act will be the Resolution Institute, Victorian Chapter.

### (**No disclosure**): The Shortlisted Respondent must not, at any time, without the consent of the Principal, divulge or suffer or permit its servants, Subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Principal or any details thereof in respect of an adjudication application made under the Security of Payment Act (in this clause 16.8, the **Information**).

## Interest on overdue payments

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then:

### (**Notification**): in respect of the Shortlisted Respondent, the Shortlisted Respondent must immediately notify the Principal’s Representative; and

### (**Interest payable**):subject to clause 16.9(a) (as applicable), interest will be payable thereon from but excluding the date upon which or the expiration of the period within which they should have been paid to and including the date upon which the moneys are paid.

### (**Rate**): The rate of interest payable under clause 16.8(b) will be the amount prescribed pursuant to the *Penalty Interest Rates Act (1983)* (Vic). ***[Drafting Note: procuring agency may insert an alternative overdue interest percentage in place of the rate specified in the Penalty Interest Rates Act.]***.

## General right of set off

Without limiting or otherwise affecting the Principal’s rights under any other provision in this Deed or otherwise at Law, and to the extent permitted by law the Principal may deduct from any moneys due and payable to the Shortlisted Respondent under this Deed:

### (**Moneys owing**): any debt or other moneys due from the Shortlisted Respondent to the Principal; or

### (**Bona fide claim**): any bona fide claim to money which the Principal may have against the Shortlisted Respondent whether for damages or otherwise under this Deed or otherwise at Law arising out of or in connection with this Deed.

# Goods and Services Tax

### (**Reduction for Input Tax Credits**): Notwithstanding any other provision of this Deed, any amount payable for a supply made under or in connection with this Deed which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any Input Tax Credits which that party is entitled to in connection with that cost, expense or other amount.

### (**GST payable**): If GST becomes payable on any Taxable Supply made by a party (in this clause 17 a **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 (in this clause 17 the **Agreed Amount**) is exclusive of GST; and

#### an additional amount will be payable by the party which is the recipient of the Taxable Supply (in this clause 17, a **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.

### (**Tax invoice**): As a condition precedent to any amount on account of GST being due from the Recipient to the Supplier in respect of a Taxable Supply, the Supplier must provide a Tax Invoice to the Recipient in connection with that supply.

### (**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 17(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply, and except where 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 17(b) or 17(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.

### (**Definitions**): In this clause 17 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

# Insurance

## Public liability insurance

### (**Effect Policy**): On or before the Contract Date, the Principal must effect in relation to the Development Phase Services a public liability policy of insurance.

### (**Listed as insured**): The policy must name the Principal as the insured and include the Shortlisted Respondent and each Subcontractor engaged from time to time by the Shortlisted Respondent in relation to the Development Phase Services, as a party to whom the benefit of the insurance cover extends. The Principal must maintain such policy for the duration of the Development Phase.

## Professional indemnity insurance

### (**Effect Policy**): On or before the Contract Date, the Shortlisted Respondent must effect in relation to the Development Phase Services a professional indemnity policy of insurance for an amount not less than $[insert] (in respect of an individual claim and in the aggregate).

### (**requirements of policy**): The policy must cover losses incurred and claims arising from the provision of professional services, including arising from breach of duty in the performance of professional services. The Shortlisted Respondent must maintain such policy until 7 years after the Date of Close-Out. ***[Drafting note: quantum of PI insurance to be inserted]***

## Insurance of employees

### (**Effect Policy**): On or before the Contract Date, the Shortlisted Respondent must insure against liability for death of or injury to persons employed by the Shortlisted Respondent including liability by statute and at common law. The insurance cover must be maintained until all work including remedial work is completed.

### (**Statutory liability coverage**): Where permitted by Law the insurance policy or policies must be extended to indemnify the Principal for the Principal’s statutory liability to persons employed by the Shortlisted Respondent.

## Motor vehicle insurance

### Before commencing any on-Site activities, the Shortlisted Respondent must effect and maintain or cause to be effected and maintained insurance for motor vehicles covering death of or injury to any person and loss of or damage to any property resulting from the use of any motor vehicle in connection with the Development Phase Services:

### for an amount not less than [$10 million]; and

### with a deductible not higher than [insert].

## General requirements

### (**Reputable insurer**): Where the Shortlisted Respondent is required to effect policies of insurance under this clause 18, the policies must:

#### be effected with an insurer which at all times:

##### is authorised to carry on business under the *Insurance Act 1973* (Cth); and

##### has a long term credit rating of no less than A – (Standard & Poors) or is otherwise approved by the Principal (such approval not to be unreasonably withheld where the insurer has an equivalent credit rating, as determined by the Principal, assigned by an alternative credit rating agency); and

#### other than in respect of the professional indemnity policy of insurance, contain terms, to the extent permitted by Law, to the effect that the insurer:

##### will not impute to any insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other insured;

##### agrees to waive all rights of subrogation or action against any of the parties to whom the benefit of the insurance cover extends as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby); and

##### agrees to treat each insured as a separate insured as though a separate contract of insurance had been entered into with each of the insured, without increasing the deductibles or reducing the overall limit of indemnity; and

#### professional indemnity policy of insurance, be maintained during the Development Phase.

### (**Insurance of Subcontractors**):The Shortlisted Respondent must ensure that each of its Subcontractors has in force and maintains:

#### similar insurance to the insurance under clause 18.3 covering the Subcontractor’s employees; and

#### similar insurance to the insurance under clause 18.4 covering the Subcontractor’s vehicles.

#### [***Drafting note: To be considered in respect of PI insurance.***]

### (**Provide evidence**): The Shortlisted Respondent must, on request of the Principal’s Representative, promptly provide evidence to the satisfaction and approval of the Principal’s Representative of, the insurance effected and maintained by the Shortlisted Respondent under this Deed.

### (**Premiums**) The Shortlisted Respondent must ensure that all premiums in respect of polices of insurance it is required to effect under this clause 18 are paid on time and, except for insurance effected and maintained under clause 18.3, such costs will be Development Phase Services Reimbursable Costs.

### (**Costs of claim**): The Shortlisted Respondent must pay or bear all amounts by way of deductibles and excesses which apply to a claim made under any insurances required to be effected and maintained in accordance with this Deed, which amounts will be treated as a Development Phase Services Reimbursable Costs.

### (**Compliance with conditions**): The Shortlisted Respondent must ensure that the conditions of any insurance effected under this clause 18 are complied with by the Shortlisted Respondent and its Subcontractors.

### (**Notification of claim**): The Shortlisted Respondent must:

#### as soon as practicable, notify the Principal’s Representative in writing of any occurrence that may give rise to a claim in connection with the Development Phase Services under a policy of insurance required by clause 18 or of any other matter or thing for which those policies require notice to be given, unless an insured’s right of indemnity under the relevant insurance would be prejudiced by giving such notice; and

#### in respect of each policy of insurance that the Shortlisted Respondent, or a Subcontractor, is required to maintain under this Deed, keep the Principal’s Representative informed of subsequent developments concerning the claim and ensure that its Associates in respect of their operations similarly inform the Principal’s Representative.

### (**Policy effected by Principal**): Where a policy of insurance is required by this Deed to be effected by the Principal, the Principal’s Representative:

#### upon request by the Shortlisted Respondent from time to time, must provide a certificate of currency evidencing the currency of the relevant insurance; and

#### must notify the Shortlisted Respondent of any occurrence that may give rise to a claim in connection with the Development Phase Services under the relevant policy of insurance.

# Risk and liability

## Indemnity by Shortlisted Respondent

### The Shortlisted Respondent must indemnify the Principal and the Principal’s Associates from and against :

### loss of or damage to property of the Principal or any of the Principal’s Associates, including existing property in or upon which the Development Phase Services are being carried out; and

### claims by any person against the Principal or any of the Principal’s Associates in respect of personal injury or death or loss of or damage to any property,

arising out of or as a consequence of the performance by the Shortlisted Respondent of the Development Phase Services, but the Shortlisted Respondent’s liability to indemnify the Principal and the Principal’s Associates will be reduced proportionally to the extent that the act or omission of the Principal or any of the Principal’s Associates.

## Benefits held on trust

### (**Benefit of indemnities**): The Principal holds on trust for the Principal’s Associates and each other Indemnified IP Person, the benefit of:

#### each indemnity, release, limitation of Liability and exclusion of Liability given by the Shortlisted Respondent under this Deed in favour of the Principal’s Associates and any other Indemnified IP Person; and

#### each right in this Deed to the extent that such right is expressly stated to be for the benefit of the Principal, a Principal’s Associate or any other Indemnified IP Person.

### (**Shortlisted Respondent Acknowledgement**): The Shortlisted Respondent acknowledges the existence of such trusts and consents to the Principal exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of the Principal’s Associates and each other Indemnified IP Person.

### (**Amendment**): The parties agree that the Principal does not require the consent of any of the Principal’s Associates or any other Indemnified IP Person to amend or waive any provision of this Deed.

## Limitation of liability

### Subject to clause 19.4, the aggregate liability of the Shortlisted Respondent to the Principal arising out of or in connection with this Deed (including the indemnities that are held on trust by the Principal under clause 19.2) in respect of liability arising out of or in connection with the Development Phase Services, whether that liability arises under a specific provision of this Deed, for breach of contract, negligence or otherwise, will in no event exceed the amount set out in Item 13.

## Exceptions to limitation of liability

Clause 19.3 does not apply to exclude or limit any liability of the Shortlisted Respondent arising from or in connection with:

### (**Injury or damage**): personal injury, death, or loss of or damage to any property;

### (**Shortlisted Respondent failure**): events or circumstances to the extent a party would be entitled and able to recover insurance proceeds under insurance required by this Deed (at the minimum level of cover required by this Deed) in relation to those events or circumstances, or would have been so entitled and able but for:

#### a failure of the Shortlisted Respondent to obtain or maintain the insurances for which it is responsible in accordance with the Deed;

#### a failure by the Shortlisted Respondent to claim under the relevant insurances (or comply with the claim procedures under the relevant insurances);

#### the Shortlisted Respondent not complying with any provision, obligation or duty owed under the relevant insurance policy (including the Shortlisted Respondent’s duty to disclose); or

#### the inclusion of clause 19.3;

### (I**ndemnity**) the liability of the Shortlisted Respondent under an indemnity;

### (**Unlawful conduct**): liability in connection with:

#### any criminal act or fraud; or

#### Wilful Misconduct

#### on the part of the Shortlisted Respondent or any Shortlisted Respondent Associate;

### (**Third party property**): liability in connection with any loss of or damage to third party property or any injury to, illness or death of any person

### (**Liability at law**) any liability that cannot be excluded at Law;

### (**Amounts payable under Deed**): any amounts to the extent payable under and calculated in accordance with this Deed; or

### (**Abandonment**): the Shortlisted Respondent abandoning the Development Phase Services;

and these amounts or liabilities are not included in assessing the Shortlisted Respondent’s liability for the purposes of clause 19.3.

## Indirect or Consequential Loss

### **(No Liability of the Principal**): Subject to clause 19.5(b), but otherwise despite anything to the contrary in this Deed, neither the Principal nor any Principal Associate has any Liability to the Shortlisted Respondent or any Shortlisted Respondent Associate for any Indirect or Consequential Loss suffered or incurred by the Shortlisted Respondent or any Shortlisted Respondent Associate as a result of any breach of this Deed by the Principal or any Principal Associate.

### (**Exceptions to no Principal Liability**): The exclusion of Liability of the Principal and any Principal Associate under clause 19.5(a) does not apply to:

#### Liability which cannot be limited at Law;

#### Liability arising from:

##### any criminal act or fraud; or

##### Wilful Misconduct under this Deed,

* 1. on the part of the Principal or Principal Associate;

#### Liability arising from any loss of or damage to third party property or injury to, illness or death of any person;

#### any amounts payable and calculated in accordance with this Deed.

### (**No Liability of Shortlisted Respondent**): Subject to clause 19.5(d), but otherwise despite anything to the contrary in this Deed, neither the Shortlisted Respondent nor any Shortlisted Respondent Associate has any Liability to the Principal or any Principal Associate (or in respect of the indemnity provided by the Shortlisted Respondent under clauses 20.2 or 20.4 only, any other Indemnified IP Person) for any Indirect or Consequential Loss.

### (**Exceptions to no Shortlisted Respondent Liability**): The exclusion of Liability of the Shortlisted Respondent and any Shortlisted Respondent Associate under clause 19.5(c) does not apply to:

#### Liability which cannot be limited at Law;

#### the extent to which the Shortlisted Respondent or a Shortlisted Respondent 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 for which the Shortlisted Respondent recovers in accordance with an indemnity from a third party;

#### Liability in connection with:

##### any criminal act or fraud; or

##### Wilful Misconduct,

* 1. on the part of the Shortlisted Respondent or any Shortlisted Respondent 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 expressly imposed on the Shortlisted Respondent under this Deed to pay the Principal any amounts to the extent payable under and calculated in accordance with this Deed, including:

##### any interest under clause 16.9; and

##### any amounts expressly provided to be a debt due and payable under this Deed.

#### any amounts to payable under and calculated in accordance with this Deed;

#### Liability in connection with abandonment of the whole or a substantial part of the Development Phase Activities by the Shortlisted Respondent or any Shortlisted Respondent Associate; and

#### Liability of the Principal to [#]. [***Drafting Note: This item may be used if there are any specific third party liabilities (that are in addition to those set out at clause 19.5(d)(v)), including economic loss, that the Principal may have as a consequence of the Shortlisted Respondent breaches of this Deed. See Guidance Notes for further detail as to when this may be used***.]

# Intellectual Property

## Intellectual Property Rights granted to the Principal

### The Shortlisted Respondent grants to the Principal a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sublicense) to use, reproduce, modify, adapt, develop, communicate to the public and otherwise exploit any Deliverables (including Design Deliverables), and to exercise all or any of the Intellectual Property Rights in any Deliverables (including Design Deliverables) (as applicable), for the purposes of:

#### (**Project**): the Project in connection with which they are developed or otherwise made available to the Principal (and including, where the Shortlisted Respondent’s ITC Development Deed is terminated or the whole or part of the relevant Development Phase Activities are taken out of the hands of the Shortlisted Respondent for any reason, to perform or complete any of those Development Phase Activities which have not been performed or completed, or not been performed or completed in accordance with the relevant ITC Development Deed);

#### (**Use of Early Works**): the use or enjoyment of any Early Works (as applicable), including the operation of the Early Works and any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the Early Works, including the integration of any of them with any other assets or infrastructure;

#### (**Data**): accessing, using, publishing or storing any Data vested in the Principal under clause 20.5;

#### (**Exercise of rights**): the exercise of Principal’s rights in accordance with a ITC Development Deed;

#### (**Principal’s business**): the Principal’s business, operations or activities, including the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of any thing (including infrastructure, equipment, computer hardware, computer software and computer or telecommunications systems) whether or not that thing interfaces or interoperates with, or is located (in whole or in part) under, on or above any Early Works; and

#### (**Tender process**): a tender process for the procurement of any thing or integration referred to in, any of the preceding sub-paragraphs of this clause 20.1.

### Each part of this clause 20.1 is to be construed as a separate and independent ground on which the licence may be exercised, and without limiting each other or any other part of this clause.

## Intellectual Property and Moral Rights indemnity

### (**Definitions**): For the purposes of this clause 20.2: those indemnified are the Principal, each Principal Associate and any third party duly authorised or licensed by the Principal to exercise any Intellectual Property Rights assigned, granted or licensed to the Principal under this Deed and any Principal Associates (each an **Indemnified IP Person**).

### (**Indemnity**): The Shortlisted Respondent indemnifies each Indemnified IP Person from and against

#### any Claim or Liability suffered or incurred by an Indemnified IP Person in connection with any alleged or actual infringement or violation of Intellectual Property Rights or Moral Rights:

##### by the Shortlisted Respondent or a Shortlisted Respondent Associate in the course of, or incidental to, performing any obligations under this Deed other than to the extent such Intellectual Property Rights or Moral Rights (as applicable) comprise the Principal IP; and

##### by an Indemnified IP Person using, exercising or enjoying:

###### the Deliverables (including the Design Deliverables) or the Early Works as delivered by or on behalf of the Shortlisted Respondent to the Principal or as amended or changed from time to time (but not to the extent that any Claim or Liability arises from any amendment or change made by the Principal or third parties engaged by the Principal which is not as directed or approved by the Shortlisted Respondent) in connection with this Deed; or

###### its rights in respect of such Intellectual Property Rights or Moral Rights in the manner authorised by this Deed;

#### any Claim or Liability suffered or incurred by an Indemnified IP Person in connection with a breach of the warranties set out in clause 20;

#### 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 Development Phase Activities or Delivery Phase Activities being unavailable as a result of or in connection with the Shortlisted Respondent not fulfilling its obligations under this Deed.

### (**Moral Rights indemnity**): The Shortlisted Respondent 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 Early Works, Works or the Deliverables (including the Design Deliverables) (as applicable), or arising in the future out of or in connection with the any change, distortion, alteration, relocation or destruction of any Works, Early Works or Deliverables (including the Design Deliverables) (as applicable).

## Background IP Rights and Third Party IP Rights

To the extent the Intellectual Property Rights in or relating to any Deliverables (including Design Deliverables), Early Works or Works (as applicable) are Background IP Rights or Third Party IP Rights, the Shortlisted Respondent will grant, or will procure that the relevant third party grant or grant, to the Principal a licence (including the right for the Principal to sublicense) in respect of those Intellectual Property Rights on the terms of clause 20.1.

## Moral Rights

### (**Infringement and Indemnity)**: The Shortlisted Respondent:

#### must ensure that it does not infringe any Moral Right of any author of any work in performing any Development Phase Activities; and

#### must ensure that it obtains an irrevocable and unconditional written consent (on the terms reasonably required by the Principal), for the benefit of the Principal and the Shortlisted Respondent, from the author of any work forming part of the Early Works, Works or Deliverables (including Design Deliverables) (as applicable) to the Principal and its sub-licensees doing or authorising the doing of an act or making or authorising the making of an omission (whether occurring before or after this consent is given), anywhere in the world which, but for the consent, infringes or may infringe that author’s Moral Rights in the work (including the right to make any adaptation or distortion of the work, and to subject to the work to any treatment, with or without attribution to the author); and

#### must not (and must not encourage or permit anyone else to) apply any duress to any person or make a statement to any person knowing that the statement is false or misleading in a material particular, or knowing that a matter or thing has been omitted from the statement without which the statement is false or misleading in a material particular, in procuring consents under clause 20.4(a)(ii).

### (**Survival**): This clause 20.4 survives the termination or expiration of this Deed and any ITC Delivery Deed entered into by the Principal and the Shortlisted Respondent.

### (**Interpretation**): Where used in this clause 20.4, the term “work” has the meaning given in section 189 of the *Copyright Act 1968* (Cth).

## Data

### (**Assignment)**:All Data and Intellectual Property Rights in the Data vests in the Principal. The Shortlisted Respondent assigns all such Intellectual Property Rights to the Principal now and as they may arise in future. The Principal grants to the Shortlisted Respondent an irrevocable licence (with the right to sub-license to its subcontractors) to use and reproduce the Data for the purpose of performing its obligations under an ITC Delivery Deed.

### (**Assistance**): The Shortlisted Respondent must do all things and execute such documents reasonably required to perfect such assignment, and assist the Principal in releasing Data to the public (including by making datasets available), upon request by the Principal.

### (**Restriction on use**): The Shortlisted Respondent must only use, copy or supply Data to the extent necessary to perform its obligations under a ITC Delivery Deed.

# Information

## Deliverables and Shortlisted Respondent’s Records

### (**Create and maintain**): The Shortlisted Respondent must create and maintain:

#### the Deliverables; and

#### complete and accurate accounts, records (including information stored by computer and other devices) and time sheets relating to the performance of the Development Phase Activities and otherwise in connection with this Deed, as would be expected of a professional and experienced, provider of services and works engaged in respect of services and works of a similar nature to the Development Phase Activities (**Shortlisted Respondent’s Records**).

### (**Open book requirements**): The Shortlisted Respondent must:

#### to the extent the Deliverables and the Shortlisted Respondent’s Records comprise financial information, prepare all Deliverables and Shortlisted Respondent’s Records in accordance with established and good accounting and estimating practices and procedures;

#### maintain, all of records and other documentation referred to in this Deed that relate to the Development Phase Activities in accordance with, where applicable, good accounting practices, standards and procedures;

#### upon receipt of a request from the Principal, make the Deliverables and the Shortlisted Respondent’s Records fully available on an Open Book Basis to the Principal, the Principal’s Representative and any other person authorised by the Principal or the Principal’s Representative for examination, audit, inspection, transcription and copying; and

#### make available to the Principal (or the Principal’s nominated auditor) any existing documentation or information in whatever form relating to the Development Phase Services.

### (**Audit**) The Principal may initiate an audit at any time to verify the Development Phase Services Reimbursable Costs component of the Development Phase Services Fee.

### (**Legal professional privilege**): The requirement in clause 21.1(b)(iii) does not apply to Deliverables or the Shortlisted Respondent’s Records (or any company board papers) that are the subject of legal professional privilege.

### (**Access**): The Shortlisted Respondent will also give the Principal’s Representative (or other person authorised by the Principal’s Representative) access to, or provide verified copies of, any information which may be reasonably required by the Principal to assess any Claim by the Shortlisted Respondent. The Shortlisted Respondent must keep the Shortlisted Respondent’s Records for a minimum of 7 years, or any other period directed in writing by the Principal’s Representative, after:

#### in the case of termination under clause 25.1(a),the earlier to occur of:

##### ‘Completion’, as defined and in accordance with the ITC Delivery Deed; and

##### termination of the ITC Delivery Deed;

#### in the case of termination under clause 25.1(b), the date of termination; or

#### otherwise, the earlier to occur of:

##### the expiry of the last Early Works DLP; and

##### termination under clause 25.2.

### (**Nominated auditor**): For the purposes of this clause 21.1, all of the references to the nominated auditor of the Principal will include the Auditor-General for the State of Victoria.

# Confidential Information and privacy

## Confidential Information and disclosure by the Principal

### (**Public Disclosure Obligations**): Subject to clause 22.1(b), the Principal and any Authority may disclose any information in connection with the Project (including any Confidential Information):

#### in accordance with Laws;

#### to satisfy the disclosure requirements of the Auditor-General for the State of Victoria;

#### to satisfy the requirements of Parliamentary accountability;

#### if the disclosure is in the course of the official duties of the responsible Minister, the Treasurer of Victoria or the Attorney General; ***[Drafting Note: To be updated as required on a project specific basis to include relevant Victorian Government departments.]***

#### to any Principal Associate, any Authority or any person authorised or nominated by the Principal to the extent necessary for the purpose of the Project provided they agree to maintain the confidentiality of any Confidential Information;

#### in annual reports of the Principal;

#### in accordance with policies of the Principal or any Authority;

#### to any person who is bidding for or undertakes works similar to the Development Phase Activities or the Works after termination and their actual and/or potential Associates, provided the relevant person agrees to maintain the confidentiality of the Confidential Information; or

#### to satisfy any other recognised public requirement,

### (**Public Disclosure Obligations**) and the Shortlisted Respondent must use all reasonable endeavours to assist the Principal and any Authority in meeting its Public Disclosure Obligations.

### (**Other purposes**): The Principal or any Authority may disclose any information in connection with the Project (including any Confidential Information ) in connection with:

#### 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 Principal Project Document.

#### ***[Drafting Note: Clause 22.1(b) has been prepared, by way of example, for a road project, but will be updated by the Principal on a project specific basis to align with the Project.]***

### (**Commercially sensitive information**): Unless otherwise expressly entitled to do so in accordance with this Deed, the Principal must not publish or disclose any Commercially Sensitive Information without the Shortlisted Respondent's prior written consent (which consent will not be unreasonably withheld or delayed), unless that Commercially Sensitive Information:

#### is required or authorised to be disclosed under Law;

#### is reasonably necessary for the enforcement of the criminal law;

#### is disclosed to the Principal's solicitors, auditors, insurers or advisers;

#### is generally available to the public;

#### is in the possession of the Principal without restriction in relation to disclosure before the date of receipt from the Shortlisted Respondent;

#### is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees;

#### is required to be made available to a court in the course of proceedings to which the Principal or a Principal Associate is a party;

#### is disclosed to the ombudsman or for a purpose in relation to the protection of the public revenue; or

#### is required to be published or disclosed to enable the Principal to comply with the Public Disclosure Obligations under clauses 22.1(a)(i), 22.1(a)(ii), 22.1(a)(iii), 22.1(a)(iv) or 22.1(a)(vi).

### (**Exercise of licence**): Nothing in this Deed prevents the Principal and any sublicensees using or disclosing any information to the extent necessary or desirable for, or in connection with, the exercise of any licence granted under this Deed.

## Restricted disclosure of information

### (**Confidential Information**): Subject to clause 22.2(b) and clause 22.4 and other than where the information is in the public domain, the Shortlisted Respondent must treat as secret and confidential and must not, and must procure that each Shortlisted Respondent Associate does not, without the Principal's written consent, make public or disclose to any person:

#### this Deed;

#### and information provided by:

##### the Principal or any Principal Associate to the Shortlisted Respondent or any Shortlisted Respondent Associate; or

##### the Shortlisted Respondent or any Shortlisted Respondent Associate to the Principal or any Principal Associate;

#### in connection with the Project, whether provided prior to or after the date of this Deed;

#### Deliverables (including the Design Deliverables);

#### Personal Information; or

#### other information in connection with the Project which the Shortlisted Respondent is required to keep confidential in complying with the information privacy principles set out in the *Privacy and Data Protection Act 2014* (Vic) (as in force from time to time) or any other applicable Law,

### (**Confidential Information**).

### (**Disclosure of Confidential Information**): Subject to clause 22.2(c) and without limiting the Shortlisted Respondent's obligations under clause 22.3 in respect of Personal Information, the Shortlisted Respondent may disclose Confidential Information to a Shortlisted Respondent Associate, to the extent necessary for the purpose of undertaking the Project in accordance with clause 22.4 without seeking the Principal's consent to such disclosure.

### (**Public statements**): Subject to clause 22.4, the Shortlisted Respondent must:

#### not make any public disclosures, announcements or statements in relation to the Project or the Principal's or any Principal Associates' involvement in the Project, without the Principal's written consent;

#### comply with any terms and conditions that the Principal imposes on the Shortlisted Respondent in granting its consent under clause 22.2(c)(i);

#### use all reasonable endeavours to agree with the Principal the wording and timing of all public disclosures, announcements or statements to be made by it or any Shortlisted Respondent Associate relating to the Project or the Principal's or any Principal Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and

#### as soon as practicable, give to the Principal a copy of any public disclosure, announcement or statement agreed to or approved by the Principal under this clause 22.2(c)(i) or for which the Principal's consent or approval was not required under clause 22.4.

## Personal Information

### The Shortlisted Respondent 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 Development Phase Activities or to comply with Laws, and then only in accordance with the PSDR, all Laws and Standards; and

### (**records**): keep, and make available to the Principal on request, records detailing the recipient of any Personal Information the Shortlisted Respondent has disclosed, the date of disclosure and the Personal Information that has been disclosed.

## Permitted disclosure without consent

### The Shortlisted Respondent will not be required to obtain the Principal's consent or approval to any disclosure of Confidential Information or the information referred to in clause 22.2(c) to the extent that any disclosure, announcement or statement and the information contained in it is:

### (**required by Law**): required by Law, provided that the Shortlisted Respondent:

#### notifies the Principal of the requirement to make that disclosure prior to such disclosure; and

#### takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;

### (**required for advice**): required to obtain legal or other advice from its advisers provided any such adviser is under a duty of confidentiality;

### (**required by court**): required to be made to a court in the course of proceedings to which the Shortlisted Respondent is a party;

### (**public domain**): in respect of information that is already in the public domain; or

### (**stock exchange**): required by a relevant stock exchange, subject to:

#### such disclosure, announcement or statement not referring to the Principal's or any Principal's Associates' involvement in the Project; and

#### the Shortlisted Respondent having used all reasonable endeavours to obtain the Principal's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

## Privacy

### (**Information Privacy Principles**): The Shortlisted Respondent agrees to, and will ensure that all subcontracts contain terms which require the Subcontractor to, be bound by the Information Privacy Principles and any applicable code of practice defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic) (**Privacy Code**) with respect to any act done, or practice engaged in, by it in connection with this Deed or the subcontract (as the case may be), in the same way as the Principal would be bound by the Information Privacy Principles and any applicable Privacy Code in connection with that act or practice had it been directly done or engaged in by the Principal.

### (**Notice**): The Shortlisted Respondent must immediately notify the Principal if it becomes aware of any breach of clause 22.5(a) by it or any Subcontractor.

### (**Release and indemnity**): The Shortlisted Respondent must release, indemnify and keep indemnified on demand the Principal and any Principal Associate from and against any Claim or Liability which the Principal or any Principal Associate suffers or incurs resulting from any act done or practice engaged in by the Shortlisted Respondent or any Subcontractor in connection with the Project, which would, had that act or practice been done or engaged in by the Principal, have contravened one or more of the Information Privacy Principles or any applicable Privacy Code.

# Shortlisted Respondent warranties and acknowledgements

## General warranties

The Shortlisted Respondent warrants that it has:

### (**skill and competence**): the skill, competence, experience, resources and expertise required to perform the Development Phase Services in accordance with this Deed; and

### (**requisite power**): full power to enter into and perform its obligations under this Deed and when executed this Deed will create legal, valid and binding obligations upon it.

## Development Phase Services Fee warranties

The Shortlisted Respondent warrants that none of the Development Phase Services Fee Components include:

### (**Duplication):** any amount that is or ought to have been included in:

#### another Development Phase Services Fee Component;

#### the Early Delivery Activities Price; or

#### the TOC Estimate in so far as it relates to the Delivery Phase; and

### (**Overhead or profit**): without limiting clause 23.2(a), any corporate overhead or profit other than in accordance with the Development Phase Pricing Schedule,

and the warranty included in this clause 23.2 is repeated on each day of the Development Phase.

## Information Documents acknowledgements

### (**No warranty as to accuracy**): The Shortlisted Respondent acknowledges and agrees that:

#### the Principal and the Principal's Associates make no representation or warranty as to the accuracy or completeness of any Information Documents;

#### neither the Shortlisted Respondent nor any Shortlisted Respondent Associate is entitled rely on the accuracy or completeness of any Information Documents; and

#### the Shortlisted Respondent and its Associates have made, and relied on, their own independent assessment as to the suitability of the Information Documents.

### (**No claim**): Neither the Shortlisted Respondent nor any Shortlisted Respondent Associates will be entitled to make (nor will the Principal, or the Principal's be liable upon) any Claim arising out of or in connection with:

#### any omission in, inaccuracy or incompleteness of any Information Documents; or

#### any failure by the Principal or any Principal's Associate to provide to the Shortlisted Respondent information relevant to this Deed or the Development Phase Services.

### (**Indemnity**): The Shortlisted Respondent releases and indemnifies the Principal from and against any Claim (whether by the Shortlisted Respondent or any Shortlisted Respondent Associate) referred to in clause 23.3(b).

## Principal's reliance on Shortlisted Respondent warranties and acknowledgements

The Shortlisted Respondent acknowledges that the Principal has entered into this Deed in reliance upon the warranties, representations, acknowledgements and agreements given and deemed to be given under this Deed.

## Release

### The Shortlisted Respondent releases the Principal from any Claims arising out of or in connection with any Loss suffered by the Shortlisted Respondent arising from the Shortlisted Respondent not being selected as the Successful Respondent, except for the payment of costs in accordance with clause 16.

# Probity Investigations and Probity Events

## Probity Investigation

***[Drafting Note: To be amended on a project specific basis depending on nature of asset.]***

### (**Requirement for Probity Investigation**): The Shortlisted Respondent agrees that the Principal may conduct an investigation into the character, integrity or honesty of:

#### a Shortlisted Respondent Associate or any person who is proposed to become a Shortlisted Respondent Associate; or

#### a Subcontractor in respect of whom a Probity Event has occurred,

### 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,

### (**Probity Investigation**).

### (**Consents required for Probity Investigation**): The Shortlisted Respondent must procure all relevant consents from people who will be the subject of the Probity Investigation.

## Probity Event

### (**Notice**): The Shortlisted Respondent must give notice to the Principal immediately upon becoming aware that a Probity Event has occurred or is likely to occur. The notice must, at a minimum, describe the Probity Event, when the Probity Event occurred or is likely to occur and the circumstances giving rise to the Probity Event.

### (**Meeting**): Within 10 Business Days after receipt of a notice under clause 24.1(a) or either party becoming aware of a Probity Event (including by way of a Probity Investigation undertaken in accordance with clause 24.1):

#### the Principal and the Shortlisted Respondent must meet and attempt to agree a course of action to address the Probity Event (including conducting a Probity Investigation) and the timeframe in which that will occur; and

#### the Shortlisted Respondent must comply with any agreement made under clause 24.2(b)(i) (if any) including in accordance with any timeframe agreed.

### (**Failure to agree**): If the Shortlisted Respondent and the Principal fail to agree to a course of action under clause 24.2(b)(i), must take any action as required by the Principal address the Probity Event immediately upon being required to do so (including where the Probity Event is in respect of a Subcontractor, removing or not engaging that Subcontractor in respect of the Project) and in accordance with any timeframe determined by the Principal.

## Principal costs of Probity Investigation and Probity Events

### (**Principal costs**): Subject to clause 24.3(b), the Shortlisted Respondent must bear all costs incurred by the Principal in connection with a Probity Event or Probity Investigation.

### (**Shortlisted Respondent not liable**): The Shortlisted Respondent will not be liable for the Principal's costs of any further Probity Investigations required by the Principal if an initial Probity Investigation has already been undertaken in respect of the same person.

# Termination

## Termination triggers

### (**Successful selection**): Notwithstanding any other provision of this Deed, if the Shortlisted Respondent is selected as the Successful Respondent in accordance with this Deed, this Deed will terminate on the date the ITC Delivery Deed is executed by the Principal and the Shortlisted Respondent.

### (**Notified of rejection**):Notwithstanding any other provision of this Deed, if:

#### the Principal’s Representative has not issued an Early Delivery Activities Direction under clause 9.1; and

#### the Principal’s Representative notifies the Shortlisted Respondent under clause 14.4(a)(iii) that the Shortlisted Respondent's Delivery Phase Offer has been rejected,

this Deed will terminate on the date of the Principal’s Representative’s notice under clause 14.4(a)(iii).

## Principal's rights to terminate

The Principal may, upon 10 Business Days' notice to the Shortlisted Respondent, terminate this Deed at any time for any reason, including:

### if, following the Principal’s Representative issuing an Early Delivery Activities Direction under clause 9.1, the Principal rejects the Delivery Phase Offer under clause 14.4(a)(iii); or

### for the Principal’s own convenience.

## Shortlisted Respondent’s obligations upon termination

If the Principal terminates this Deed under clause 25.2, the Shortlisted Respondent must:

### (**cease**): cease performing the Development Phase Services;

### (**make good**): promptly vacate and make good (as reasonably required by the Principal) or otherwise make safe the Site (and any other parcels of land accessed by the Shortlisted Respondent) to the reasonable satisfaction of the Principal;

### (**deliver materials**): immediately deliver to the Principal:

#### all Deliverables prepared or procured by the Shortlisted Respondent or its Associates (whether complete or not) in the format reasonably required by the Principal;

#### all subcontracts entered into with any Subcontractors; and

#### all warranties given by any Subcontractor in relation to the services performed by them for, or materials provided by them which are used on, the Project;

### (**novate subcontracts)**: if the Principal requires any or all subcontracts between the Shortlisted Respondent and its Subcontractors to be novated to the Principal (or any of the Principal's Associates nominated by the Principal), immediately take all steps necessary to effect all such novation; and

### (**co-operate**): co-operate with the Principal and any third parties required by the Principal, and take all other steps reasonably required by the Principal, to ensure that the Principal is able to re-tender or procure the execution of the Works under clause 25.4.

## The Principal's rights upon termination

Without prejudice to any of the Principal's other rights under this Deed, if the Principal terminates this Deed under clause 25.1, the Principal may:

### (**suspend**): decide not to continue with, or otherwise suspend, the Project;

### (**utilise third party**): undertake the Delivery Phase Activities itself or through a third party (including any other tenderer that submitted a tender for the Development Phase Activities);

### (**alter** **procurement method**): change the procurement method for the Project;

### (**negotiate terms**): negotiate different terms for the delivery of the Project, whether with the Shortlisted Respondent or a third party;

### (**perform itself**): where applicable, perform any part of the Development Phase Activities itself or engage a third party contractor to perform the outstanding Development Phase Activities; and

### (**use Deliverables**): without limiting the licence granted under clause 20.1, use the Deliverables for any purpose, including re-tendering or procuring the execution of the whole or any part of the Works.

## Effect of termination

If the Principal terminates this Deed under clause 25.1:

### (**Amounts due and payable**): subject to clauses 16.7(b) and 16.10, the Principal will pay the Shortlisted Respondent all amounts due and payable under this Deed as at the date of termination and all amounts that would have been due and payable had the Shortlisted Respondent been entitled to submit a payment claim on the date of termination;

### (**Entitlement of Shortlisted Respondent**): subject to clause 9.6 and 9.7, the Shortlisted Respondent will have no entitlement to:

#### complete (to the extent not completed in the Development Phase) the design of, commence, construct, commission, complete or handover any part of the Works;

#### payment of any portion of the TOC Estimate; or

#### make any Claim against the Principal for any liabilities incurred by the Shortlisted Respondent arising out of or in connection with the termination other than in respect of its entitlements set out in this clause 25.5; and

### (**Survival of obligations**): no:

#### accrued right or liability of any party; or

#### provision of this Deed, which expressly or impliedly comes into effect on or after termination or is intended to continue after termination,

will be affected.

# Issue resolution procedure

## Early identification and collaborative resolution of issues

The parties agree:

### (**objectives**): to use their best endeavours to adhere to behaviours promoted to:

#### facilitate the avoidance of Issues; and

#### where an Issue does arise between the parties, achieve the expeditious, efficient and cost effective resolution of that Issue;

### (**acknowledgements**): that the achievement of these objectives is best achieved by:

#### notifying each other of Issues as soon as they arise, so as to promote the resolution of such Issues within the shortest possible timeframe;

#### ensuring that all claims and defences are made in good faith, both regarding liability and quantum; and

#### undertaking an honest and early joint assessment of the true merits of the claims and defences so as to avoid claims lingering unresolved and to avoid a claims environment; and

### (**principles of engagement**): that their engagement at each stage of the dispute resolution procedure required by clause 26.2, is to be based on the principle of full and timely disclosure of each party's position on an open and transparent basis.

## Procedure

### (**Code**): The procedure in this clause 26.2 applies to all Claims of any nature whatsoever including regarding questions concerning the existence, meaning or validity of the Invitation for EOI, RFP or this Deed, and any decision of the Principal's Representative which is not final and binding on the parties.

### (**Referral to IRT**): Where a Claim:

#### is made under clauses [#insert applicable Claim clause references where Claim is to be referred to the IRT immediately] and has not been accepted within [5] Business Days of receipt; or

#### is made under clauses [#insert applicable Claim clause references / claim thresholds below which a Claim is subject to usual Deed assessment (e.g. by Principal's Representative) before referral to the IRT] and:

##### the Claim has been determined (or deemed to have been determined) under the provisions of this Deed applicable to that Claim; and

##### within [5] Business Days of such determination a party provides a notification stated to be under this clause 26.2(b)(ii)B that it disagrees with the determination and requires the Claim be referred to the IRT,

##### (each a **Referred Issue**), the Referred Issue is by this clause 26.2(b) referred to the IRT on the date of the expiration of the [5] Business Day period under 26.2(b)(i) or the date of the notification under clause 26.2(b)(ii) (as applicable).

### (**Standstill**): For the period commencing on the date of the referral to the IRT under clause 26.2(b) and ending:

#### [20] Business Days after that date; or

#### if a Bespoke Resolution Procedure is agreed under clause 27.3, [10] Business Days after the conclusion of that procedure,

#### (the **IRT Period**), no party will or is required to take any steps (including submitting any notice, claim or update of any nature whatsoever) that would otherwise apply and the time for taking such steps will not run in respect of the Referred Issue.

### (**Post IRT Procedure**): Where a Referred Issue:

#### is not resolved in the IRT Period;

#### subject to any agreed changes, the outstanding steps (if any) that were suspended during the IRT Period under clause 26.2(c) in respect of the underlying Claim have been completed;

#### the underlying Claim has been determined (or deemed to have been determined) under the provisions of this Deed applicable to that Claim; and

#### if a party wishes to pursue the Referred Issue, within [5] Business Days of such determination that party provides a notification stated to be under this clause 26.2(d)(iv) that it disagrees with the determination and adequately identifying and providing details of the unresolved Issue, (**Unresolved Issue**),

#### the Unresolved Issue must then only be resolved in accordance with the following procedure:

##### (**negotiation**): first, negotiation as required by clause 28;

##### (**mediation**) second, mediation as required by clause 29; and

##### (**arbitration**): third, arbitration in the circumstances stated in clause 31.

# Issue Resolution Team

## Composition

### (**Composition**): The IRT in respect of each Referred Issue under clause 26.2(b) must comprise:

#### the Principal's Representative and the Shortlisted Respondent's Representative;

#### a nominated senior representative of each party with authority to resolve the particular Issue (including on the terms notified by the other party); and

#### a nominated representative of each party that is best and properly placed to speak to the facts and circumstances of the particular Issue,

##### (together the **IRT Representatives**).

### (**Notice**): Each party must notify the other of its nominated representatives under clauses 27.1(a)(ii) and 27.1(a)(iii) within 2 Business Days of the date of the referral under clause 26.2(b).

## Main objectives

1. The main objectives of the IRT Representatives in dealing with Referred Issues are to:

### (**Participate**):participate fully and effectively in good faith in the process;

### (**Resolve**):identify and resolve or mitigate the underlying cause of the Issue on a best for project and value for money basis;

### (**Fairness**):promote the fair resolution of Issues according to the substantial merits of the matter;

### (**Haste**):act as speedily and with as little formality and technicality as practicable, and minimise the cost to the parties;

### (**Utilise expertise**):make appropriate use of the expertise and experience of each IRT Representative;

### (**Proposals**):make and consider proposals for how to resolve the Referred Issue so as to maximise achievement of the Project Objectives;

### (**Consolidate**):agree matters known to be true;

### (**Concentrate focus**):agree questions of liability when the substance of the issue is quantum;

### (**Avoid technical arguments**):avoid reliance on technical arguments unless a party's interests would be prejudiced by the failure to comply with the particular technical requirement; and

### (**Good faith**):seek to ensure that only those aspects of a claim or defence that are made in good faith, have a genuine legal, technical or factual basis, and are for an amount of compensation that is consistent with the amount that could reasonably be expected to be recovered, are pursued.

## Functions and responsibilities

### (**Relationship Principles**): For each Referred Issue under clause 26.2(b), the relevant IRT Representatives must attempt, acting consistently with the applicable Relationship Principles, the objectives in clause 27.2 and on a genuinely collaborative and good faith basis, to:

#### resolve the Referred Issue; or

#### if they cannot resolve the Referred Issue, set up any procedure the IRT considers most suitable to resolve the Referred Issue (**Bespoke Resolution Procedure**).

### (**Recording of agreement**): Any agreement resolving the Referred Issue (in whole or in part) or any Bespoke Resolution Procedure reached between the IRT Representatives will be recorded in writing, signed by or on behalf of each party and will be final and binding on the parties.

### (**Details of 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 Referred Issue;

##### the identification of specific issues for preliminary determination (such as whether condition precedent or time bar requirements have been satisfied);

##### an agreed process for the interim assessment of any relief claimed;

##### seeking a binding or non-binding advisory opinion from agreed counsel;

##### seeking joint technical advice from an independent third party such as a programming expert or a quantity surveyor;

##### referring the Issue to expert determination in accordance with clause 30 as may be adjusted by the IRT Representatives to suit the Referred Issue;

##### referring the Issue directly to mediation under clause 28;

##### referring the Issue directly to arbitration under clause 31; and

#### must specify when the Bespoke Resolution Procedure is taken to be concluded.

# Senior negotiations

### (**Referral**): Where a party provides a notification under clause 26.2(d)(iv), the Unresolved Issue is by this clause 28(a) referred for resolution by negotiation between the Chief Executive Officers or Managing Directors (or equivalent) of the Shortlisted Respondent and the Principal (**Representatives**).

### (**Attempt to resolve Issue**): If an Unresolved Issue is referred to negotiation under clause 28(a), then:

#### the Representatives must meet and attempt in good faith to resolve the Unresolved Issue (in whole or in part) within [5] Business Days after the date on which the notice under clause 28(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.

# Mediation

### (**Referral to mediation**): If an Unresolved Issue which has been referred to the Representatives for negotiation under clause 28(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 28(b)(i) (**Mediation Referral Date**), the Unresolved Issue is by this clause 29(a) submitted to mediation.

### (**Mediator**): If the Parties have not agreed on a mediator within [5] Business Days of the Mediation Referral Date, the mediator shall be the person appointed by the President of the Victorian Chapter of the Resolution Institute (or the person acting in that position at the time, acting on the request of any party.

### (**Date of mediation**): The mediation must take place within [15] Business Days (or such longer period as agreed between the parties) of the Mediation Referral Date.

# Expert determination procedure

## Referral and selection of expert

### (**Expert appointment**): Where the IRT 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.

### (**Rules**): Subject to this clause 30 the expert determination will be conducted in accordance with the rules specified in the Contract Particulars and any agreement between the parties.

### (**Agreement**): Within 5 Business Days after the date on which an Issue is referred to expert determination under clause 27.3(a)(ii), the Principal and Shortlisted Respondent must endeavour to agree on the expert to be appointed to determine the Issue.

### (**Exchange of lists of 3 preferred experts**): If the Principal and Shortlisted Respondent are unable to agree on an expert to determine the Issue within the 5 Business Day period referred to in clause 30.1(c), the Principal and Shortlisted Respondent must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 30.1(g) on or before the date which is 10 Business Days after the date on which the Issue is referred to expert determination under clause 27.3(a)(ii).

### (**Appointment of person who appears on both lists**): If:

#### a person appears on both lists under clause 30.1(d), that person will be deemed to be the expert to determine an Issue; or

#### more than one person appears on both lists, the person given the highest order of priority by the party that made the Claim under clause 26.2 will be deemed to be the expert to determine the Issue.

### (**Appointment if no person appears on both lists**): If no person appears on both lists, the party that made the Claim under clause 26.2(b) must procure:

#### the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline that is the subject of the relevant Issue to nominate the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 30.1(d); or

#### if:

##### there is no governing body for the technical or professional discipline that is the subject of the relevant Issue;

##### such governing body advises that it will not nominate an expert; or

##### there are multiple technical or professional disciplines that are the subject of the Issue,

##### the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 30.1(d),

* 1. within 7 Business Days after the exchange of the lists under clause 30.1(d).

### (**Appropriate skills**): It is the intention of the parties that the expert appointed to determine an Issue will be an independent person with appropriate skills having regard to the nature of the matters in Issue.

### (**No entitlement to challenge appointment**): Neither party will be entitled to challenge the appointment of an expert under this clause 30.1 on the basis that the expert does not satisfy the requirements of clause 30.1(c).

### (**No conflict of interest**): An expert agreed or determined in this clause 30.1 appointed by the parties cannot have any conflict of interest or any relationship with either party or their Associates that a reasonable person may regard as giving rise to the possibility of bias.

### (**Not an arbitration agreement**): Any agreement for expert determination under this Deed will not constitute an arbitration agreement including for the purposes of the *Commercial Arbitration Act 2011* (Vic).

### (**Agreement**): Within 7 Business Days after the expert has notified the Principal and Shortlisted Respondent that they are available to be appointed as the expert in respect of the Issue, the Principal and Shortlisted Respondent must agree on terms on which to enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other terms as the expert may reasonably require.

### (**Expert not available**) If an expert agreed between the parties or otherwise deemed or determined to be appointed in respect of the Issue under clause 30.1(c), 30.1(e) or clause 30.1(f) is not available to be appointed as the expert for that Issue, the parties must appoint a different expert by repeating the process in clause 27.3(a)(ii) save that, if the parties have already exchanged a list of 3 persons in accordance with clause 30.1(d) 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 26.2(b) will be deemed to be the expert.

## Expert finding

### (**Notification**): The determination of the expert(s) must be in writing and will be final and binding on the Principal and Shortlisted Respondent unless:

#### the expert determination includes payment of compensation and the amount claimed, or subsequently determined by the expert to be payable, is equal to or greater than $2,000,000; or

#### 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 30.2 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 30.3, have applied to any Issue referred to expert determination under this clause 30.

## Liability of expert

### (**Liability of expert**): The parties agree:

#### that the expert will have no liability in connection with the expert determination; and

#### to indemnify the expert against any liability in connection with the expert determination,

* 1. except in the case of fraud on the part of the expert, in which case a Claim may be made against the expert by any person who is party to the Issue.

### (**Engagement**): The Principal and the Shortlisted Respondent must jointly engage the expert to provide services in connection with the expert determination process and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

## Costs

1. The Principal and the Shortlisted Respondent must:

### (**costs of Principal and Shortlisted Respondent**): 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 an Unresolved Issue which has been referred to mediation under clause 29(a), remains unresolved (in whole or in part) after the expiration of the period in clause 29(c), either party may refer the Claim to arbitration by notice to that effect to the other party within 30 Business Days after the expiration of the period in clause 29(c) or such later date as the parties may agree.

## Arbitration

### (**ACICA Rules**): Arbitration in accordance with this clause 31 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 31.

### (**Seat**): The seat of the arbitration will be Melbourne, Victoria.

### (**Language**): The language of the arbitration will be English.

## Appointment of arbitrator

1. The parties will endeavour to agree on the person to be appointed as arbitrator, but if no such agreement is reached within 14 Business Days after the Issue is referred to arbitration under clause 31.1, 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 Unresolved Issue;

#### any arbitration conducted in accordance with this clause 31 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 31.4(a)(i) to 31.4(a)(iii).

### (**Evidence in writing**): All evidence in chief must be in writing unless otherwise ordered by the arbitrator.

### (**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 31.4(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 31.4(c)(ii);

#### a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross-examination; and

#### each party is expected to put its case on significant issues in cross‑examination of a relevant witness called by the opposing party or, if it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing party may know the nature of and basis for the challenge to the written evidence of a witness.

### (**Experts**): Unless otherwise ordered, each party may only rely upon one expert witness in connection with any recognised area of specialisation.

## Proportionate liability

1. The arbitrator will have no power to apply or to have regard to the provisions of any proportionate liability Laws which might, in the absence of this clause 31.5, have applied to any Issue referred to arbitration under this clause 31.

## Extension of ambit of arbitration proceedings

### (**Extending issues**): If:

#### an Unresolved Issue is referred to arbitration under this clause 31; and

#### there is some other Unresolved Issue also between the parties to and under this Deed (whenever occurring),

* 1. the arbitrator may, upon application being made to the arbitrator by one or both of the parties at any time before a final award is made in relation to the Issue that has been referred to arbitration, make an order directing that the arbitration be extended so as to include the other Issue.

### (**Arbitrator's order**): An arbitrator may make an order under clause 31.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

## Award final and binding

### (**Final and binding**): Subject to clause 31.7(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 31.

## Continue to perform

1. Notwithstanding the existence of an Unresolved Issue, each party must continue to perform its obligations under the Invitation for EOI, the RFP and this Deed.

## Governing law of arbitration agreement

1. The Law governing this arbitration agreement is the law of Victoria, Australia.

## Interlocutory relief

1. This clause 31 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.

# Notices

## Form of notices

Each communication (including each notice, consent, approval, Direction, requirement, request, Claim, agreement, certification, evidence and demand) under or in connection with this Deed (each, a **Notice** for the purpose of this clause 32) must be:

### (**in writing**): subject to clause 5.1(d), in writing; and

### (**signed**): signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.

## Procedure for sending notices

All Notices must be sent by email or PDCS (except for notices under clauses 25 and 26, which, if sent by email or PDCS, must additionally be delivered by hand or sent by prepaid express post, in which case they will be received in accordance with clause 32.3(a)(i) or 32.3(a)(ii), as the case may be) to the relevant address of the addressee set out in Item 15 (or as otherwise notified by that party to the other party from time to time).

## Receipt of notice

### (**Receipt by addressee**): Subject to clause 32.3(b), a Notice is taken to be received by the addressee in the case of:

#### delivery by hand, on delivery;

#### 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;

#### 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 that is under the control of the addressee; or

##### the time that the communication is first opened or read by the addressee; and

#### PDCS, at the time recorded on the PDCS as being the time at which the communication was uploaded.

### (**Outside business hours**): If a communication is taken to be received on a day that is not a Business Day or at a time that is outside business hours at the local time in the place of receipt, that communication is taken to be received at 9.00 am (local time) on the next Business Day.

### (**PDCS requirements**): The Shortlisted Respondent must ensure that any reports, documents, Notices, instructions consents, approvals, directions or information not received via the PDCS are automatically uploaded to the PDCS.

# General provisions

## Governing law and jurisdiction

This Deed is governed by and will be construed according to the Laws of Victoria and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria and the courts competent to determine appeals from those courts.

## No representation or reliance

### (**No inducement**): Each party acknowledges that no party (nor any person acting on the Principal's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.

### (**No reliance**): Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

## Entire agreement

### To the extent permitted by Law, in relation to its subject matter, the Deed:

### (**entire agreement**): embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and

### (**supersedes**): supersedes any prior written or other agreement of the parties.

## Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by the other party to give effect to this Deed.

## Costs

### (**Preparation and execution)**:Each party must pay its own costs and disbursements in connection with the negotiations, preparation and execution of this Deed.

### (**Delivery and performance fees**): Subject to clause 17, the Shortlisted Respondent must pay all Taxes and other fees payable in respect of the execution, delivery and performance of this Deed.

## Relationship of the parties

### (**No duty of good faith**): The Shortlisted Respondent acknowledges that, except as expressly stated in this Deed, there is no implied duty of good faith on the Principal towards the Shortlisted Respondent.

### (**No partnership or joint venture**): Neither this Deed nor the relationship created by it, is intended to create, and will not be construed as creating, any partnership or joint venture as between the parties.

## Waiver

### (**Required confirmation**): 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.

### (**Failure or delay**):Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this Deed by the Principal 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.

### (**Separate terms**): No waiver of a breach of a term of this Deed by the Principal operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

## Consents and approvals

A consent or approval required under this Deed from the Principal may be given or withheld, or may be given subject to any conditions, as the Principal (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

## Amendments

Unless otherwise expressly provided in this Deed, this Deed may only be varied by a document signed by or on behalf of each party.

## Indemnities

### (**No payment required**): It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

### (**Payment on demand**): A party must pay on demand any amount it must pay under an indemnity in this Deed.

## Assignment

### (**Assignment by Shortlisted Respondent**): The Shortlisted Respondent must not assign, mortgage, novate, charge or otherwise encumber this Deed without the prior consent of the Principal (which may include such terms and conditions as are determined by the Principal).

### (**Assignment by Principal**): The Principal may, in its absolute discretion and at any time, novate or assign this Deed or any payment or other right, benefit or interest under this Deed to any other State Entity, in which case the Shortlisted Respondent must provide to the Principal all necessary assistance and do and execute all things as are deemed necessary or desirable by the Principal to effect such novation or assignment, including executing a deed of novation satisfactory to the Principal.

## Clauses to survive termination

### (**Intended survival**): All provisions of this Deed which, expressly or by implication from their nature, are intended to survive termination, rescission or expiration of this Deed will survive such termination, rescission or expiration, including any provision in connection with:

* + - 1. the Principal's rights to retain, deduct, withhold or set-off and recover amounts;
      2. confidentiality, privacy or intellectual property rights;
      3. any obligation to make any accounts and records or information available to the Principal;
      4. any indemnity or release given under this Deed;
      5. any limitation of liability;
      6. any obligation which this Deed requires a party to undertake after the termination, rescission or expiration of this Deed; and
      7. any right or obligation arising on termination, rescission or expiration of this Deed.

### (**Interpretation of provisions**): No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.

### (**Novation and assignment**): All rights and obligations under this Deed survive the execution and delivery of any transfer, novation or assignment under this Deed.

## Severability

If at any time a provision in this Deed is or becomes illegal, invalid, unenforceable or void in any respect under the law of any jurisdiction that will not affect or impair:

### (**validity of other provision**): the legality, validity, enforceability or voidness in that jurisdiction of any other provision of this Deed; or

### (**validity in** **other jurisdiction)**: the legality, validity, enforceability or voidness under the law of any other jurisdiction of that or any other provision of this Deed.

## Electronic signature

Each party warrants that immediately prior to entering into this Deed, it has unconditionally consented to:

### the requirement for a signature under any law being met; and

### any other party to this Deed executing it,

by any method of electronic signature that other party uses (at that other party's discretion), including signing on an electronic device or by digital signature.

## Counterparts and electronic communication

### (**Counterparts**): This Deed may be executed in any number of counterparts by or on behalf of a party and by the parties in separate counterparts. Each counterpart constitutes an original of this Deed, and all together constitute one agreement. Where this Deed is executed in counterparts, its date is taken to be the date on which the last of the parties to do so executes its counterpart(s).

### (**Electronic communication**): Without limitation, the parties agree that their communication of an offer or acceptance of this Deed, including exchanging counterparts, may be by any electronic method that evidences that party’s execution of this Deed.

**Executed** as a deed.

[Insert signature blocks]

1. – Contract Particulars

| **Item** | **Description** | **Details** | |
| --- | --- | --- | --- |
|  | **Project**  (Clause 1.1) | [Insert name of project] | |
|  | **Date for Delivery Phase Offer**  (Clause 1.1) | [Insert] | |
|  | **Development Phase Budget Estimate**  (Clause 1.1) | $[Insert] excl. GST | |
|  | **Shortlisted Respondent’s Representative**  (Clause 1.1) | [Insert] | |
|  | **Offer Period**  (Clause 1.1) | [Insert] days from the date of submission of the Delivery Phase Offer, as adjusted (if at all) by agreement of the parties or in accordance with clause 14.4(b)(iii) | |
|  | **Principal's Representative**  (Clause 1.1) | [Insert] | |
|  | **Site**  (Clause 1.1) | [To be inserted following selection of Successful Respondent] | |
|  | **Project Management Team – Nominated representatives**  (Clause 5.3(a)) | [Insert number] nominated representatives from each of the parties.  **Principal:**  [Insert positions]  [Insert contact details]  OR  As nominated by the Principal's Representative within 5 Business Days of the Contract Date.]  **Shortlisted Respondent:**  [Insert name]  [Insert position and organisation name]  [Insert contact details] | |
|  | **Project Leadership Team – Nominated senior representatives**  (Clause 5.4(a)) | [Insert number] nominated senior representatives from each of the parties.  **Principal:**  [[Insert positions], [insert agency]  [Insert contact details]  OR  As nominated by the Principal's Representative within 5 Business Days of the Contract Date.]  **Shortlisted Respondent:**  [Insert name]  [Insert position and organisation name]  [Insert contact details] | |
|  | **Novation**  (Clause 8.3) | [Insert name of Subcontractor]  [Insert details of Development Phase Services or Development Phase Deliverables] | |
|  | **ITC Delivery Deed alternative**  (Clause 14.1) | **1****2**  *(Tick alternative 1 if the form of ITC Delivery Deed has been agreed prior to the Development Phase. Tick alternative 2 if the form of ITC Delivery Deed has not been agreed prior to the Development Phase.)* | |
|  | **Timeframe for agreement of the ITC Delivery Deed terms**  (Clause 14.1(d)) | Within 30 days of the commencement of negotiations under clause 14.1(b). | |
|  | **Limitation of liability – Development Phase Services**  (Clause 19.3) | 100% of the Development Phase Services Fee | |
| 1. R | **Rules for expert determination**  (Clause 30.1(b)) | [Insert]  *(If nothing stated, the ADC Rules for Expert Determination published by the Australian Disputes Centre)* | |
|  | **Address for service of notices**  (Clause 32.2) | **Principal** | |
| Attention: |  |
| Address: |  |
| Email: | [insert] |
| **Shortlisted Respondent** | |
| Attention: | [Insert] |
| Address: | [Insert] |
| Email: | [Insert] |

1. – Additional Conditions
2. Corporate Overhead and Profit

The Corporate Overhead and Profit percentage is [##].

1. Reimbursable Cost Multipliers (RCMs)

The parties acknowledge and agree that the reimbursable cost multipliers (**RCMs**) (**Established RCMs**) are the RCMs that will apply for the purposes of this Deed;

**Table 1 – Established RCMs**

| Non-Wages Personnel category | Reimbursable Cost Multiplier |
| --- | --- |
| Full-Time Staff | [to be inserted] |
| Part-Time Staff | [to be inserted] |
| Casual Staff | [to be inserted] |
| Contract Staff | [to be inserted] |
| Fixed-Term Staff | [to be inserted] |
| Overtime | [to be inserted] |

1. Chargeable Rates
2. [***Drafting Note: This Additional Condition may be deleted if the Chargeable Rates to be included in Att. 2 to Schedule 5 have been reviewed and verified by the Principal and are consistent with the principles in Table 2 of section 3 of Att. 1 to Schedule 5.***]

The parties acknowledge and agree that:

* + 1. "Chargeable Rates" as set out in Attachment 2 to Schedule 5 were submitted by the Shortlisted Respondent prior to the Contract Date (**Chargeable Rates**); and
    2. the Principal will verify that the Chargeable Rates are consistent with the requirements for "Chargeable Rates" as set out in Table 2 of section 3 of Attachment 1 to Schedule 5, and do not include any allowance or amount that is included in or covered by the RCM, as set out in Item 1(c) of section 3 of Attachment 1 to Schedule 5 (**CR Principles**). Following the Principal's review:
       1. the Principal may, acting reasonably, determine an adjustment to the Chargeable Rates to the extent necessary to ensure the Chargeable Rates are consistent with the CR Principles (**Verified Rates**);
       2. upon the Principal notifying the Shortlisted Respondent of the Verified Rates, the Chargeable Rates set out in Attachment 2 to Schedule 5 will be deemed to be amended in accordance with the Principal's notice, and the amended rates will apply retroactively from the Contract Date; and
       3. any overpayment or underpayment as a result of the Chargeable Rates set out in Attachment 2 to Schedule 5 being used (rather than the Verified Rates) for the purposes of this Deed will be a debt due and owing from the Shortlisted Respondent to the Principal, or from the Principal to the Shortlisted Respondent (as the case may be).

1. Delivery Phase Key Personnel

Unless otherwise agreed by the Principal, the Shortlisted Respondent's Key Personnel for the Delivery Phase will be the Key Personnel, as set out in Schedule 3.

***[Drafting Note: Insert additional conditions as necessary.]***

1. – Key Personnel

(Clauses 1.1 and 5.5(a))

|  |  |
| --- | --- |
| **Position** | **Personnel** |
| Shortlisted Respondent’s Representative / Project Director | [To be inserted following selection of successful Respondent] |
| Design Manager | [To be inserted following selection of successful Respondent] |
| [Insert] |  |

1. – Development Phase Services and Deliverables Schedule

[***Drafting Note: Parts A and B of this Schedule 4 are included as a reference point only, and will be amended on a project-specific basis. The scope of services and deliverables needs to be tailored based on the Project. A high value, complex procurement may warrant all Shortlisted Respondents performing detailed design work to enable the procuring agency to further evaluate and consider its requirements for the project, while a less complex and lower value project may warrant a more confined set of services.]***

Part A – Development Phase Services and Development Phase Deliverables

* 1. Design Development

| 1. **Development Phase Service** | 1. **Development Phase Deliverable** | 1. **Milestone** [***Drafting Note: The Milestones have been populated based on a 10 week Development Phase. Adjust accordingly if the Development Phase term is longer/shorter.*]** |
| --- | --- | --- |
| * + 1. Design Management Plan | | |
| 1. The Shortlisted Respondent is to prepare and progressively update the Design Management Plan throughout the Development Phase:  * so as to ensure that the Design Management Plan at all times complies with, and enables the Shortlisted Respondent to meet, the requirements of the Design Development Process and this Deed; and * otherwise if requested by the Principal's Representative. | 1. A Design Management Plan which:  * details the Shortlisted Respondent's overarching strategy and approach to the preparation of the Design Deliverables; * meets the requirements set out in Section [#] of the PSDR; and * contains such other information to be included in the Design Management Plan as required under this Deed or reasonably requested by the Principal's Representative. | 1. The Shortlisted Respondent is to submit:  * an outline of the Design Management Plan at the end of Week 2; and * the then current Design Management Plan at the end of Week 7 with the Delivery Phase Offer. |
| * + 1. Design | | |
| 1. ***[Drafting Note: Approach to design development in the Development Phase to be confirmed (including level of design to be achieved during the Development Phase).]***   The Shortlisted Respondent is to undertake a design review of the initial design concept provided by the Principal and prepare a report setting out its recommendations (**Design Report**). | * ***[Drafting Note: Details of the specific design deliverables expected of the Shortlisted Respondent to be confirmed.]*** * A Design Report on the Principal's Reference Design, advising on: * the Shortlisted Respondent's understanding of the scope of the design; * the constructability of the design; * suggestions for improvement of the design from a constructability perspective; and * any additional activities that the Shortlisted Respondent considers will be required in the Delivery Phase in order to finalise the design of the Works. | 1. The Shortlisted Respondent is to submit:  * its Design Report, Urban Design Report and Interim Design Deliverables at the end of Week 5; and[copies of the Design Report, Urban Design Report and all Design Deliverables with the Delivery Phase Offer. |
| 1. The Shortlisted Respondent is to review and consider the relevant urban design requirements as set out in the PSDR and prepare a report setting out its recommendations (**Urban Design Report**). | 1. An Urban Design Report for the Project, advising on:  * the Shortlisted Respondent's understanding of the relevant urban design requirements for the Project; and * how the relevant urban design requirements can be maximised through the design of the Project. |  |
| 1. The Shortlisted Respondent is to progressively develop all Design Deliverables during the Development Phase:  * to contain sufficient detail to demonstrate the design for the Works; and * to allow the Shortlisted Respondent to submit:   + as the interim Design Deliverables, those Design Deliverables, and to the level of development, agreed by the parties at the Document Handover & Alignment Briefing Workshop (as outlined in section 6.2 below) or as otherwise requested by the Principal's Representative (**Interim Design Deliverables**); and   + the complete Design Deliverables as part of the Delivery Phase Offer,  1. in accordance with clause 10, this Development Phase Services and Deliverables Schedule, the PSDR, the Design Management Plan and the Development Phase Program. | The Interim Design Deliverables.   1. The Design Deliverables:  * are to include general arrangements that include the following content as a minimum:   + road horizontal and vertical alignment;   + typical cross sections;   + realigned and upgraded roads impacted by the Works including roads to be permanently truncated;   + extent of earthworks;   + pavement design to be adopted based on Assigned CBR of Type B material;   + no go zones for the protection of large old trees and other native vegetation;   + extent of off structure barriers;   + major drainage infrastructure, including WSUD treatment zones;   + extent of retaining walls and other retaining structures;   + extent of sound attenuation noise walls;   + maintenance access roadways;   + shared use paths;   + major utilities to be protected or relocated; and   + road infrastructure; * are to include other drawings and details that include the following as a minimum:   + a site layout plan showing the location of key elements of the Project;   + elevation plans showing the bridge approaches and structures, noise walls and any retaining structures;   + a materials and finishes schedule for the bridge structures, noise walls and other key elements;   + landscaping preliminary design including planting schedule (must be based on the Principal’s concept design (as applicable));   + typical sections of road formation and roadways;   + structural plans of bridge structures, and retaining structures;   + location and concept design of relocated toilet block; and   + above ground fauna crossings; * are to include all drawings, in a recognised industry standard and provided in both hardcopy and electronic formats; and * that otherwise meet the requirements of the PSDR and this Deed.  1. The hard copy drawings are to be:  * submitted in A3 size conforming to “VicRoads Final Drawing Presentation Guidelines Road Design Guidelines version 2.1, July 2013"; * scale 1:1000 for general arrangements and alignment plans (including drainage); * scale H 1:1000, V 1:200 / 20m for longitudinal section drawings; * scale nominally 1:200 for typical cross section drains; * 1:1000 or 1:500 for detail plans and geometric plans dependent on level of detail to be clearly represented; * 1:200, 1:100 or 1:50 for structure plans, detail and elevations dependent on level of detail to be clearly represented; * include a single roll plot of the entire alignment; * be printed single sided in full colour; and * include a cover page, legend with an index of all drawings.  1. The electronic format drawings are to be:  * pdf layered format, which enables the items identified in it to be switchable as on/off; * submitted in electronic Bentley Systems MicroStation.dgn format; and  1. include the Shortlisted Respondent’s entire model, in all electronic formats, developed to create the design for the Works. |  |

### 

* 1. Programs and Plans

| 1. **Development Phase Services** | 1. **Development Phase Deliverable** | 1. **Milestone** [***Drafting Note: The Milestones have been populated based on a 10 week Development Phase. Adjust accordingly if the Development Phase term is longer/shorter****.*] |
| --- | --- | --- |
| * + 1. Development Phase Plan | | |
| 1. The Shortlisted Respondent is to finalise and progressively update the Development Phase Plan throughout the Development Phase:  * so as to ensure that the Development Phase Plan at all times complies with, and enables the Shortlisted Respondent to meet, the requirements of this Deed; and * otherwise if requested by the Principal's Representative. | 1. A Development Phase Plan which:  * is coordinated and consistent with the Design Management Plan; * details the Shortlisted Respondent's proposed methodology for performing the Development Phase Services (including producing the Development Phase Deliverables) * in accordance with, and so as to meet the requirements of, this Deed; * in respect of each of the Key Personnel, the components of the Development Phase Services that they will perform or otherwise be responsible for; * details the Shortlisted Respondent's proposed procedures for project management, reporting, document control and information flow; * details the Shortlisted Respondent's programming strategy, including its approach to programming, adhering to the Development Phase Program and minimising or otherwise mitigating consequence of any delays; * details the Shortlisted Respondent's risk management strategy, including its approach to:   + proactively identifying all facts, matters or circumstances that could compromise the time, cost or quality outcomes of the Project (including the achievement of any milestone by the relevant milestone date) or that could adversely affect the achievement of the Development Phase Objectives;   + keeping the Principal regularly informed of all such facts, matters or circumstances; and   + avoiding or mitigating any adverse effect of the relevant fact, matter or circumstance and otherwise managing risks that may arise during the Development Phase; * details the Shortlisted Respondent's site management strategy, including managing all sites in connection with the performance of the Development Phase Services; * details the Shortlisted Respondent's approach to, and proposed methodology for:   + collaborative project management;   + performing any Site investigations;   + identifying and managing project risks, interfaces and utilities;   + identifying any potential Early Delivery Activities;   + community and stakeholder management;   + TOC development and estimating; and * the Shortlisted Respondent's People & Recruitment Plan; and * contains such other information to be included in the Development Phase Plan as required under this Deed or reasonably requested by the Principal's Representative.   A proposed update to the Development Phase Budget Estimate (if any), including:   * a detailed breakdown of any proposed changes to the Development Phase Services Fee Components; and * such other information reasonably requested by the Principal's Representative,   which, for the avoidance of doubt, will not replace the Development Phase Budget Estimate stated in Item 3 of Schedule 1 unless agreed by the Principal's Representative. | 1. The Shortlisted Respondent is to submit an updated Development Phase Plan and any proposed update to the Development Phase Budget Estimate at the end of Week 2. |
| * + 1. Development Phase Program | | |
| 1. The Shortlisted Respondent is to finalise and progressively update the Development Phase Program throughout the Development Phase:  * to take into account changes to the performance of the Development Phase Services and any delays that have occurred; * as required to ensure the Development Phase Program at all times complies with, and enables the Shortlisted Respondent to meet, the requirements of this Deed and the Design Development Process; and * otherwise if requested by the Principal's Representative. | A Development Phase Program which:   * identifies the dates for performance of the discrete tasks and activities which form part of the Development Phase Services and the Design Development Process, including the submission of each Development Phase Deliverable; * meets the requirements set out in the PSDR and this Deed; * all information outlined in this requirement is to be set out in a simple program that can be presented in either excel, program or Primavera P6, that follows usual construction programming protocols and requirements; * makes allowance for the review of the Development Phase Deliverables by the Principal in accordance with clauses 3.3(b), 3.3(c) and 14.2(a)(iv); and * contains such other dates and information to be included in the Development Phase Program as reasonably requested by the Principal's Representative. | 1. The Shortlisted Respondent is to submit:  * an updated Development Phase Program at the end of Week 2; and * the then current Development Phase Program as part of the Regular Performance Report. |

* 1. ITC Delivery Deed

| 1. **Development Phase Services** | 1. **Development Phase Deliverable** | 1. **Milestone** [***Drafting Note: The Milestones have been populated based on a 10 week Development Phase. Adjust accordingly if the Development Phase term is longer/shorter.*]** |
| --- | --- | --- |
| * + 1. Delivery Phase Program | | |
| 1. The Shortlisted Respondent is to prepare the Delivery Phase Program:  * in accordance with Section [#] of the PSDR; and * to the satisfaction of the Principal's Representative.   The Shortlisted Respondent is to submit the Delivery Phase Program to the Principal's Representative for review in accordance with clauses 3.3(b) and 3.3(c). | A Delivery Phase Program which, at a minimum, must include (as applicable):   * all details required in accordance with Section [#] of the PSDR; * start-up activities (e.g. management plans, mobilisation activities); * design, manufacture, supply, delivery, construction, testing and commissioning; * all critical path activities and contingencies; * key milestones, including each Date for Completion; * all Approvals throughout the Delivery Phase, including timings and inputs required from the Principal's Representative;   and   * such other dates and information to be included in the Delivery Phase Program as required under this Deed or reasonably requested by the Principal's Representative. | 1. The Shortlisted Respondent is to submit:  * the draft Delivery Phase Program at the end of Weeks 5 and 8; and * the then current Delivery Phase Program with the Delivery Phase Offer. |
| * + 1. Project Plans | | |
| * The Shortlisted Respondent is to prepare the following Project Plans: * Communications and Stakeholder Engagement Management Plan; * Construction Environmental Management Plan; * Construction Management Plan * Health and Safety Management Plan; * Utility Services Management Plan; * Traffic and Disruption Management Plan; * Quality Management Plan; * Sustainability Management Plan; and * Industrial Relations Management Plan; * (each being a **Project Plan** of that name in accordance with the Agreed ITC Delivery Deed) which are required at the commencement of the ITC Delivery Deed and will become the Project Plans under the Agreed ITC Delivery Deed, in each case: * in accordance with Section [#] of the PSDR; and * to the satisfaction of the Principal's Representative. | The Project Plans, which must:   * be in accordance with the requirements set out in the PSDR and the Agreed ITC Delivery Deed; and * contain such other information as required under this Deed or reasonably requested by the Principal's Representative. | 1. The Shortlisted Respondent is to submit:  * outline Project Plans to the Principal's Representative at the end of at the end of Week6; and * the then current Project Plans as part of its Delivery Phase Offer. |
| * + 1. PSDR Amendments Register | | |
| The Shortlisted Respondent is to prepare and progressively update and submit to the Principal's Representative for review in accordance with clauses 3.3(b) and 3.3(c) a register of all Departures proposed by the Shortlisted Respondent under clause 11.2 (**PSDR Amendments Register**). | 1. A PSDR Amendments Register which identifies:  * each Departure proposed by the Shortlisted Respondent under clause 11.2; and * the outcome of any consideration of, comment on, rejection or approval of a Departure by the Principal's Representative or Principal (if any). | 1. The Shortlisted Respondent is to submit the then current PSDR Amendments Register to the Principal's Representative:  * at the end of Weeks 4 and 7; * as part of the Delivery Phase Offer; and * otherwise as requested by the Principal's Representative. |
| * + 1. Subcontract Packaging and Procurement Plan | | |
| The Shortlisted Respondent is to prepare its Subcontract Packaging and Procurement Plan in accordance with requirements of clause 8.2 and to the satisfaction of the Principal's Representative.. | A Subcontract Packaging and Procurement Plan, which must:   * be in accordance with the requirements set out in clause 8.2; and * contain such other information as required under this Deed or reasonably requested by the Principal's Representative. | 1. The Shortlisted Respondent is to:  * submit the Subcontract Packaging and Procurement Plan at the end of Week 5; and * include the then current Subcontract Packaging and Procurement Plan as part of its Delivery Phase Offer. |
| * + 1. Project LIDP and Workforce Development Plan | | |
| The Shortlisted Respondent is to prepare its Project LIDP and Workforce Development Plan (as defined in the Government Policy Requirements). | A Project LIDP [and Workforce Development Plan] in accordance with the Government Policy Requirements and any other requirements specified by the Principal’s Representative. | 1. The Shortlisted Respondent is to submit the Workforce Development Plan and the Project LIDP  * at the end of Week 6; and * as part of its Delivery Phase Offer together with a copy of the acknowledgement letter obtained from ICN. |
| * + 1. Social Procurement Commitment Proposal | | |
| The Shortlisted Respondent is to prepare its Social Procurement Commitment Proposal (as defined in the Government Policy Requirements). | A Social Procurement Commitment Proposal in accordance with the Government Policy Requirements and any other requirements specified by the Principal’s Representative. | 1. The Shortlisted Respondent is to:  * submit the Social Procurement Commitment Proposal at the end of Week 6; and * include the final Social Procurement Commitment Proposal as part of its Delivery Phase Offer. |
| * + 1. Recycled First Plan (Project) | | |
| The Shortlisted Respondent is to prepare its Recycled First Plan (Project), as defined in the Government Policy Requirements. | A Recycled First Plan (Project) in accordance with the Government Policy Requirements and any other requirements specified by the Principal’s Representative. | The Shortlisted Respondent is to:   * submit the Recycled First Plan (Project) at the end of Week 6; and * include the final Recycled First Plan (Project) as part of its Delivery Phase Offer. |

* 1. Cost Planning

| 1. **Development Phase Services** | 1. **Development Phase Deliverable** | 1. **Milestone** [***Drafting Note: The Milestones have been populated based on a 10 week Development Phase. Adjust accordingly if the Development Phase term is longer/shorter****.*] |
| --- | --- | --- |
| * + 1. TOC Estimate | | |
| 1. The Shortlisted Respondent is to prepare and progressively update the TOC Estimate in accordance with clause 12. 2. The Shortlisted Respondent is to prepare and continually review a Cost Plan with the Principal's Representative as the planning and design of the Works proceeds during the Development Phase. | The initial TOC Estimate and each updated TOC Estimate, in each case:   * as required under this Deed and in a form approved by the Principal's Representative; and * containing a detailed breakdown of each TOC Component, in accordance with clause 12.2.   The initial Cost Plan and each updated Cost Plan, in each case:   * including details of each of the Design Deliverables upon which the TOC Estimate is based; * identifying each discrete component of the Estimated Delivery Phase Reimbursable Costs and the corresponding component of the Delivery Phase Activities; * containing copies of all supporting documentation including quotations, prices, estimates, quantities, calculations and the like; * containing details of the conduct and outcome of any competitive tendering processes pursuant to which input prices have been incorporated into the TOC Estimate; * otherwise facilitating the conduct of an independent review or analysis; and * containing such other information to be included in the TOC Estimate as required under this Deed or requested by the Principal's Representative. | The Shortlisted Respondent is to submit:   * the initial TOC Estimate at the end of Week 4; * each updated TOC Estimate at the end of Weeks 6 and 8 and as otherwise required to reflect:   + any review of the TOC Estimate by the Principal in accordance with clauses 3.3(b) and 3.3(c); and   + the development of the Design Deliverables and any other relevant Development Phase Deliverables; * the Cost Plan at the end of Weeks 4 and 8; and * the then current TOC Estimate and Cost Plan with the Delivery Phase Offer. |
| * + 1. Value Management | | |
| 1. The Shortlisted Respondent is to undertake value management activities throughout the Development Phase to identify potential areas for the Principal to realise savings, to assist the Principal in achieving value for money in the execution of the Works and otherwise to maximise the achievement of the Development Phase Objectives. This must include seeking to reduce the level of the Estimated Delivery Phase Risk & Contingency Provisions included in each update of the TOC Estimate to the greatest extent practicable.   The Shortlisted Respondent is to arrange and facilitate regular value management workshops with the Principal throughout the Design Development Process.  The Shortlisted Respondent is to prepare Value Management Reports and submit each Value Management Report to the Principal's Representative for review in accordance with clauses 3.3(b) and 3.3(c). | Each Value Management Report, in each case:   * in a form approved by the Principal's Representative; * containing an executive summary; * containing details of:   + the value management workshops;   + potential areas where savings may be realised;   + changes to the PSDR and Design Deliverables (if any) required to realise those savings;   + recommendations in relation to the above; and   + any reduction in the Estimated Delivery Phase Risk & Contingency Provisions included in the TOC Estimate; and * containing such other information to be included in the Value Management Report as required under this Deed or requested by the Principal's Representative. | The Shortlisted Respondent is to hold value management workshops in accordance with the Development Phase Program.  The Shortlisted Respondent is to submit the Value Management Report at the end of Weeks 4, 8 and with the Delivery Phase Offer. |

* 1. Delivery Phase Offer

| 1. **Development Phase Services** | 1. **Development Phase Deliverable** | 1. **Milestone [*Drafting Note: The Milestones have been populated based on a 10 week Development Phase. Adjust accordingly if the Development Phase term is longer/shorter.*]** |
| --- | --- | --- |
| * + 1. Delivery Phase Offer | | |
| The Shortlisted Respondent is to prepare a Delivery Phase Offer in accordance with the Delivery Phase Offer Form. | 1. A Delivery Phase Offer in the form set out in, and so as to meet the requirements of, Delivery Phase Offer Form. | 1. The Shortlisted Respondent is to submit the Delivery Phase Offer at the end of Week 10. |

* 1. Meetings, workshops and reports

| 1. **Development Phase Services** | 1. **Development Phase Deliverable** | 1. **Milestone[*Drafting Note: The Milestones have been populated based on a 10 week Development Phase. Adjust accordingly if the Development Phase term is longer/shorter.*]** |
| --- | --- | --- |
| * + 1. Meetings | | |
| In accordance with clause 5.3 of this Deed, the Shortlisted Respondent is to facilitate and attend regular PMT meetings.  In respect of each PMT meeting that the Shortlisted Respondent is required to facilitate, the Shortlisted Respondent is to:   * prepare an agenda (Agenda); * take minutes of the meeting; * distribute to each attendee its proposed minutes of the meeting; and * if required the Principal's Representative, update its proposed minutes and recirculate those updated minutes to each attendee of the meeting.   The Shortlisted Respondent is to action all items (including the preparation and submission of any Development Phase Deliverables) raised as action items for the Shortlisted Respondent in each meeting. | An Agenda for each meeting that:   * provides a list of the Shortlisted Respondent's personnel, including Key Personnel, that will attend the meeting; * outlines the topics that the Shortlisted Respondent proposes to discuss at the meeting; * identifies any of the Principal's subject matter experts that the Shortlisted Respondent requests attend the meeting; and   attaches any documents or deliverables that the Shortlisted Respondent proposes to discuss at the meeting. All Development Phase Deliverables arising as an action item for the Shortlisted Respondent from the meetings. | The Shortlisted Respondent is to conduct the PMT meetings at the interval specified in clause 5.3(c).  The Shortlisted Respondent is to circulate:   * Agendas at least 2 Business Days prior to the relevant meeting; and * proposed minutes for each meeting promptly after conclusion of the relevant meeting (and update the proposed minutes promptly upon directed to do so by the Principal's Representative), and in any case within 2 Business Days.   The Shortlisted Respondent is to complete all action items by the time agreed at the relevant meeting. |
| * + 1. Workshops | | |
| 1. The Shortlisted Respondent is to participate in the following technical and commercial workshops during the Development Phase:  * PDP Launch Workshop; * Document Handover & Alignment Briefing; * Development Phase Plan review / Scope Alignment and TOC Approach; * Initial Shared Understanding Workshop; * Ways of Working Workshops; * Performance Report Presentation and Development Phase Plan Review / Scope, Program and TOC Review; * ITC Delivery Contract Review Workshops; * Risk and Opportunities Workshops; * Adjustment Event Workshops; * Alignment Workshops; and * Project Solution / Approach Finalisation Workshops.  1. The Shortlisted Respondent is to prepare an agenda for each workshop (**Agenda**). | 1. The Shortlisted Respondent is to provide an Agenda for each workshop that:  * provides a list of the Shortlisted Respondent's personnel, including Key Personnel, that will attend the workshop; * outline the topics that the Shortlisted Respondent proposes to discuss at the workshop; and * identifies any of the Principal's subject matter experts that the Shortlisted Respondent requests attend the workshop.  1. The Shortlisted Respondent is to, and must ensure that its Key Personnel, participate in the workshops. | 1. Agendas at least 2 Business Days prior to the relevant workshop. 2. Workshops as follows:  * PDP Launch Workshop and Document Handover & Alignment Briefing in Week 1; * Development Phase Plan Review / Scope Alignment and TOC Approach in Week 2; * Initial Shared Understanding Workshop in Week 2; * Ways of Working Workshops in Weeks 3 and 6; * Performance Report Presentation and Development Phase Plan Review / Scope, Program and TOC Review in Weeks 4, 6, 8 and 10; * ITC Delivery Contract Review Workshop in Weeks 4 and 8; * Risk and Opportunities Workshops and Adjustment Event Workshops in Weeks 5 and 9; * Alignment Workshops in Weeks 4 and 5; and * Project Solution / Approach Finalisation at Weeks 7 and 8. |
| * + 1. Regular Performance Report | | |
| 1. The Shortlisted Respondent is to:  * prepare   + fortnightly status updates (**Status Updates**); and   + monthly reports regarding the Shortlisted Respondent's performance under this Deed (**Regular Performance Reports**),   in the form as required by the PSDR (if any) or as otherwise requested by the Principal's Representative from time to time; and   * if this Deed is a Shared Reporting Contract provide Shared Reporting Information to the Principal upon request and within the time requested by the Principal. | Status Updates, which include at a minimum:   * detailed particulars on the progress of the Development Phase Services , including key activities, the status of all Development Phase Deliverables, the status of all Approvals and any deviations from the Development Phase Program; * detailed particulars of any risks, opportunities, issues or matters which, in the Shortlisted Respondent's opinion, are significantly impacting, or have the potential to significantly impact, the Development Phase Services (in terms of time, cost or quality, including any issues that impact the preparation of the Delivery Phase Offer) and the preventative and remedial action that has been, is being or is proposed to be taken in respect of such risks, opportunities, issues or matters; * as attachments, the then current:   + TOC Estimate;   + PSDR Amendments Register; and   + register of documents submitted by the Shortlisted Respondent for review in accordance with clauses 3.3(b) and 3.3(c); and * such other information to be included in the Status Updates as requested by the Principal's Representative.  1. Regular Performance Reports, which include at a minimum:  * all details required in the Status Updates; * any details required by the PSDR; * detailed particulars of all:   + payment claims, payment statements and all amounts paid to date;   + amounts forecast for the next month (against the Development Phase Budget Estimate, Development Phase Plan and Development Phase Program);   + written notices given and received under clause 15 in respect of departures from the Development Phase Program, any suspension or matters impacting progress;   + other Claims made by the Shortlisted Respondent (including in respect of the resolution of ambiguities, discrepancies or inconsistencies under clause 1.3);   + calls, attendances, recommendations and actions taken in respect of non-complying Development Phase Services;   + any occurrence that may give rise to a claim under an insurance policy required by this Deed and subsequent developments concerning the claim; and   + disputes under clause 26;   1. as attachments, the then current Cost Plan and Value Management Report; and * such other information to be included in the Regular Performance Reports as required under this Deed or requested by the Principal's Representative.   Shared Reporting Information (if applicable). | The Shortlisted Respondent is to submit:   * the Status Updates at the end of Weeks 2 and 6; * Regular Performance Report at the end of Weeks 4 and 8; and * the then current Regular Performance Report with the Delivery Phase Offer.   If this Deed is a Shared Reporting Contract, the Shared Reporting Information must be provided to the Principal upon request and within the specified timeframe specified by the Principal. |
| * + 1. Regular Performance Report |  |  |
| 1. During the course of the Development Phase, the Shortlisted Respondent will need to undertake other incidental activities as required from time to time and as may be directed by the Principal's Representative. | As may be directed by the Principal's Representative. | As may be directed by the Principal's Representative. |

Part B - Project-specific Development Phase Services and Development Phase Deliverables

***[Drafting Note: This Part B sets out some optional Development Phase Services and Development Phase Deliverables that the Principal may require on Project-specific basis. For example, this might include:***

* ***providing constructability input;***
* ***engaging with utilities (noting that utility works should be dealt with as Early Works);***
* ***seeking approval for technical non-conformances;***
* ***assisting with any ongoing approval processes being conducted by the State;***
* ***obtaining approvals for the Delivery Phase, resolving interface issues; and***
* ***performing site investigations.***

***The example below is an example only and will be completed on a Project-specific basis.]***

* 1. Site Matters

| 1. **Development Phase Service** | 1. **Development Phase Deliverable** | 1. **Milestone** |
| --- | --- | --- |
| * + 1. Site Investigations | | |
| 1. The Shortlisted Respondent is to perform the site investigations set out in [the PSDR / Attachment [#]]. 2. The Shortlisted Respondent is to prepare a Site Investigation Report in a form satisfactory to the Principal's Representative and submit the Site Investigation Report to the Principal's Representative. | A Site Investigation Report, reflecting the site investigations carried out by the Shortlisted Respondent during the Development Phase and containing the following information in relation the Site:   * a site plan which identifies the discrete features of the Site including the location of existing infrastructure and services; * site dilapidation reports; * details of any flora and fauna located at the Site (including the location of such flora and fauna and the extent to which such flora and fauna is protected or otherwise); * geotechnical and hydrogeological information; * heritage information; * native title information; * details of any contamination in, on, under or emanating from the Site; * details of any planning issues presented by the Project; * details of any other issues affecting the Principal's ability to procure the execution of the Delivery Phase Activities and delivery of the Works on the Site or the Shortlisted Respondent's ability to carry out the Delivery Phase Activities and deliver the Works on the Site; and * such other information to be included in the Site Investigation Report as required under this Deed or requested by the Principal's Representative. | The Shortlisted Respondent is to carry out the site investigations in accordance with the Development Phase Program.  The Shortlisted Respondent is to submit the Site Investigation Report within [10] Business Days of completing the site investigation activities set out in [the PSDR / Attachment [#]]. |

1. – Development Phase Pricing Schedule
   1. Definitions

In this Development Phase Pricing Schedule the following words have the following meanings:

* + - 1. **Development Phase Services Corporate Overhead and Profit** means the Shortlisted Respondent’s corporate overhead and profit for the Development Phase Services calculated in accordance with section 2.3;
      2. **Development Phase Services Fee Component** means each of:
         1. the Development Phase Services Reimbursable Costs; and
         2. the Development Phase Services Corporate Overhead and Profit; and
      3. **Development Phase Services Reimbursable Costs** means the amount calculated in accordance with section 2.2.
  1. Development Phase Services Fee
     1. Development Phase Services Fee

The Development Phase Services Fee is calculated as the aggregate of the Development Phase Services Fee Components.

* + 1. Development Phase Services Reimbursable Costs

The Development Phase Services Reimbursable Costs payable by the Principal to the Shortlisted Respondent are those costs and expenses calculated in accordance with Attachment 1 to this Schedule 5.

* + 1. Development Phase Services Corporate Overhead and Profit

The Development Phase Services Corporate Overhead and Profit payable by the Principal to the Shortlisted Respondent is calculated as an amount equal to the Development Phase Reimbursable Costs multiplied by the percentage for corporate overhead and profit specified in Schedule 2.

1. to Schedule 5 - Development Phase Services Reimbursable Costs
   1. Definitions
2. In this Attachment 1:
3. **Casual Staff** means an employee engaged as such who is paid a casual loading for each hour worked in lieu of entitlements including annual leave, personal leave, notice of termination and redundancy benefits;
4. **Contract Staff** means a person engaged under a contract for services rather than a contract of service or employment contract;
5. **Fixed-Term Staff** means an employee engaged for a specific period or task in accordance with an approved employment contract between the Shortlisted Respondent and the employee, who is entitled to a fixed payment for a standard number of hours;
6. **Full-Time Staff** means an employee who is engaged to work an average of 40 ordinary hours per week or any other amount specified by a contract of employment or agreement for a full time employee;
7. **Non-Wages Personnel** means any Full-Time Staff, Part-Time Staff, Casual Staff, Contract Staff or Fixed-Term Staff, or any other person employed or engaged by the Shortlisted Respondent to perform an element of the Development Phase Services, other than Wages Personnel;
8. **Part-Time Staff** means an employee who is engaged to work fewer than Full-Time Staff ordinary hours;
9. **Reimbursable Cost Multiplier** or **RCM** means the reimbursable cost multipliers set out in Additional Condition 1 in Schedule 2; **Total Fixed Remuneration** or **TFR** means the full time equivalent salary or contract amount payable to each Non-Wages Personnel by their employer which for:
   * + 1. Full-Time Staff and Part-Time Staff, is exclusive of any employment on cost, superannuation, allowance or accrual;
       2. Casual Staff, is exclusive of any employment on cost, superannuation, allowance or accrual other than the applicable casual loading for annual leave, personal leave, notice of termination and redundancy benefits;
       3. Contract Staff, is the cost or rate as set out in the applicable contract for services and exclusive of any other on cost, superannuation, allowance or accrual; and
       4. Fixed-Term Staff, is exclusive of any employment on cost, allowance or accrual,
10. on the basis stated in the applicable letter of engagement; and
11. **Wages Personnel** means any person employed by the Shortlisted Respondent to perform an element of the Development Phase Services and governed by a relevant industrial instrument or agreement and not employed or engaged under a contract for services, contract of service or employment contract.
    1. General
       * 1. Subject to specific exclusions contained in this Deed including those exclusions identified in section 3 of this Attachment 1, Development Phase Services Reimbursable Costs are those costs and expenses which are both:
            1. directly, reasonably and actually incurred by the Shortlisted Respondent in performing the Development Phase Services (excluding any corporate overhead component not specific to the Development Phase Services and any profit or mark up of any kind) in accordance with this Deed; and
            2. identified as Development Phase Services Reimbursable Costs in section 3 of this Attachment 1, or which this Deed otherwise expressly provides will be Development Phase Services Reimbursable Costs.
         2. It is a fundamental underlying principle of this Deed that:
            1. except for the Development Phase Services Corporate Overhead and Profit, the Shortlisted Respondent will not derive any mark up, overhead, profit or unreasonable advantage from the utilisation of its people, plant, equipment or resources for the performance of the Development Phase Services; and
            2. the Shortlisted Respondent can only recover a maximum of 100% of any bona fide specific cost or expense directly, reasonably and actually incurred by it in performing the Development Phase Services.

* 1. Development Phase Services Reimbursable Costs

1. Table 1 of this Attachment 1 identifies the Development Phase Services Reimbursable Costs, including certain exclusions.

**Table 1** **– Development Phase Services Reimbursable Costs**

| **Item** | **Cost** | **Description** | **Reimbursable Cost** |
| --- | --- | --- | --- |
|  | Non-Wages Personnel | The Shortlisted Respondent's costs and expenses in respect of Non-Wages Personnel.   1. Reimbursable costs for Non-Wages Personnel will be calculated as follows:   Reimbursable Costs for Non-Wages Personnel = ∑ (Chargeable Rate x Applicable RCM x Actual Hours),  where:   * 1. **Chargeable Rate** is the chargeable rate for each Non-Wages Personnel engaged by the Shortlisted Respondent to perform the Development Phase Services,:      1. being the "Chargeable Rate" set out in Attachment 2 to Schedule 5 for the relevant Non-Wages Personnel; or      2. where there is no "Chargeable Rate" set out in Attachment 2 to Schedule 5 for the relevant Non-Wages Personnel, determined based on the applicable Non-Wages Personnel category set out in Table 2 of this Attachment 1 for the relevant Non-Wages Personnel category;   2. **Applicable RCM** is the applicable RCM for the relevant Non-Wages Personnel category; and   3. **Actual Hours** is, for all Non-Wages Personnel categories, the actual number of hours that each Non-Wages Personnel under the Non-Wages Personnel category spent performing the Development Phase Services to a maximum of:      1. 40 hours per week and 2,080 hours per annum; and      2. for overtime is the number of actual overtime hours spent performing the Development Phase Services as pre-approved by the Principal's Representative. For the purposes of this Item 1 of this Attachment 1, a reference to a 'week' is a period of seven consecutive days.   **Table 2 - Chargeable Rates**   |  |  | | --- | --- | | **Non-Wages Personnel category** | **Chargeable Rate for Non-Wages Personnel** | | Full-Time Staff | The actual Total Fixed Remuneration (**TFR**) for each person in the Full-Time Staff category divided by 2,080 hours per annum. | | Part-Time Staff | The actual TFR for each person in the Part-Time Staff category divided by 2,080 hours per annum, or the equivalent annualised amount where the actual TFR is not, or will not be, an annual amount. | | Casual Staff | The actual TFR for each person in the Casual Staff category divided by 2,080 hours per annum, or the equivalent annualised amount where the actual TFR is not, or will not be, an annual amount. | | Contract Staff | The actual TFR for each person in the Contract Staff category divided by 2,080 hours per annum, or the equivalent annualised amount where the actual TFR is not, or will not be, an annual amount. | | Fixed-Term Staff | The actual TFR for each person in the Fixed-Term Staff category divided by 2,080 hours per annum, or the equivalent annualised amount where the actual TFR is not, or will not be, an annual amount. | | Overtime | Where overtime is approved by the Principal's Representative in accordance section 5(a)(i) of this Attachment 1, the actual overtime cost payable to each Non-Wages Personnel converted to an equivalent $/hour rate, or another basis as approved by the Principal's Representative. |  1. The average annual increase to the total annual Reimbursable Costs of all Non-Wages Personnel (including superannuation and salary packaged benefits) must not exceed 2.5% of the total annual Reimbursable Costs of all Non-Wages Personnel (including superannuation and salary packaged benefits), unless approved by the Principal's Representative on a value for money basis. Any such annual increases may only be effective from 1 July. 2. The RCMs are, unless otherwise determined by the Principal's Representative, fixed for the Development Phase and have been calculated on the basis of the following principles: 3. the employment-related on-costs incorporated into the RCMs have been calculated by reference to payment of the following expenses: 4. an annual leave accrual and capped at an entitlement of 20 days per annum; 5. a sick and personal leave accrual based on the Shortlisted Respondent’s long term (5 year) actual historical sick and personal leave liability, capped at 10 days per annum; 6. a public holidays accrual capped at the number of days gazetted as Victorian public holidays between Monday to Friday; 7. a long service leave accrual based on the Shortlisted Respondent’s long term (10 year) actual historical long service leave liability; 8. a workers compensation accrual based on the actual premium payable demonstrated by the latest premium notice. This accrual will not be reviewed during the Development Phase regardless of whether there are any actual changes to the premium; 9. a payroll tax accrual based on the effective payroll tax rate as prescribed in accordance with the *Payroll Tax Act 2007* (Vic); and 10. a superannuation accrual based on an employee's actual statutory entitlement; 11. the RCMs for Casual Staff are limited to the recovery of an accrual for: 12. superannuation; 13. workers compensation; and 14. payroll tax; and 15. the RCMs for Overtime are limited to the recovery of an accrual for: 16. workers compensation; and 17. payroll tax. | Yes |
|  | Wages Personnel | The Shortlisted Respondent's costs and expenses in respect of Wages Personnel.  Reimbursable Costs for Wages Personnel will be calculated in accordance with:   1. the relevant industrial instrument or agreement by which a Wages Personnel person is employed by the Shortlisted Respondent, as validated by a financial auditor appointed by the Principal; and 2. any relevant policies approved by the Principal's Representative (including those referred to in section 5 of this Attachment 1),   as the case may be for the actual hours worked by each Wages Personnel performing the Development Phase Services. | Yes |
|  | Subcontractors | The costs of work performed by the Shortlisted Respondent's Subcontractors, and the provision of equipment and utilities in connection with the Development Phase Services from sources other than the Shortlisted Respondent, incurred in accordance with the relevant subcontract or agreement. | Yes |
|  | Specialist groups | Subject to Items 1 and 2 of this Attachment 1, the costs charged by any specialist group of the Shortlisted Respondent when their services are used by the Shortlisted Respondent for the purposes of the Development Phase Services. | Yes |
|  | Safety | All personal protective or site safety equipment, occupational health and safety requirements and the cost or expense to provide and maintain a safe working environment and to take all practicable steps to ensure the safety of all persons performing or affected by any aspect of the Development Phase Services. | Yes |
|  | Training and inductions | All Project-related training costs and the cost of Site inductions (including occupational health and safety inductions) for the purposes of the Development Phase Services approved by the Principal's Representative. | Yes |
|  | Fringe benefits | Any salary related fringe benefits (excluding any associated tax) included in the TFR.  All fringe benefits:   1. must be transparent and disclosed to the Principal's Representative; and 2. must not be beyond industry reasonable benefit limits. | Yes |
|  | PLT, PMT and Key Personnel | The following costs or expenses:   1. any costs associated with the Shortlisted Respondent's representatives attending a PLT meeting; 2. PLT costs and expenses; or 3. where: 4. a PMT representative of the Shortlisted Respondent; 5. a PLT representative of the Shortlisted Respondent; or 6. any Key Personnel,   is to be removed or replaced, the costs of the replacement person (including any costs incurred in familiarising the new person with the Development Phase Services while the person to be replaced is still concurrently working on the Project. | No |
|  | Industrial agreements | Any costs incurred as a result of negotiation of industrial agreements or attendance at industrial agreement meetings. | No |
|  | Redundancy of Non-Wages Personnel and Wages Personnel | Any costs arising out of or in connection with redundancy of Non-Wages Personnel, or any redundancy payments to Wages Personnel above the rates prescribed by the applicable industrial agreement. | No |
|  | Severance payments | Any severance payments to Non-Wages Personnel or Wages Personnel in lieu of the notice period required under the relevant agreement. | No |
|  | Bonuses | Any and all costs or expenses (including legal costs and expenses) arising out of or in connection with bonuses payable to any Shortlisted Respondent's personnel, except to the extent approved under section 5Schedule 11.1(a)(ix) of this Attachment 1). | No |
|  | Excess employment payments | Any and all costs or expenses (including legal costs and expenses) arising out of or in connection with payments in excess of an employee's contract of employment or statutory award or enterprise bargaining agreement. | No |
|  | Excess employment entitlements | Any and all costs or expenses (including legal costs and expenses) arising out of or in connection with employee's employment entitlements increasing beyond accruals in an RCM, including provisions for increase in leave entitlements due to increases in salary or leave escalation. | No |
|  | Leave escalation | Any and all costs or expenses (including legal costs and expenses) arising out of or in connection with any leave escalation or additional net accrual for increasing an employee's employment entitlements beyond the accrual in the employment related on-costs. | No |
|  | Handling fees and mark up | Any costs or expenses arising out of or in connection with reimbursement for a handling fee or mark up on disbursements and Subcontractors. | No |
|  | Living allowances | Living away from home allowances or any other living allowances, other than expressly approved by the Principal's Representative. | No |
|  | Travel, relocation or accommodation | Any:   1. costs arising out of or in connection with specialised personnel travel, relocation or accommodation, except where approved by the Principal's Representative; 2. travel or accommodation costs for short-term personnel for non-specialist work; or 3. travel or accommodation costs for short-term personnel for an appointment for a period longer than 6 months. | No |
|  | Medical conditions and examinations | Any costs associated with pre-existing medical conditions and medical examinations for Shortlisted Respondent's employees nominated for the Project. | No |
|  | Site costs | Any site costs incurred by the Shortlisted Respondent necessary to perform the Development Phase Services, including site investigations and any other costs, approved by the Principal's Representative. | Yes |
|  | Related Entity transaction | The cost of any transaction with a Related Entity will only be a Development Phase Services Reimbursable Cost if the transaction is:   1. based on the audited actual cost basis in accordance with this Deed; 2. treated as an external supply; 3. competitively market tested or validated by alternative appropriate methods which may include the Principal's estimator; and 4. approved by the Principal's Representative.   For the purposes of this Item 21, **Related Entity** means a related entity of a party as that term is defined under section 9 of the *Corporations Act 2001* (Cth) and includes a subsidiary and a related party as those terms are defined in the *Corporations Act 2001* (Cth). | Yes |
|  | Insurance | The cost of providing the insurances required to be provided by the Shortlisted Respondent under this Deed, excluding:   1. the cost of providing workers compensation insurance (which is included in the RCMs); and 2. the difference in condition, difference in cover or difference in limit premiums or costs between the insurance required by the Contract and insurance effected by the Shortlisted Respondent.   If any of the insurances referred to in this Deed are not specific to this Deed, the Principal's Representative must determine the extent that the cost of that insurance should be apportioned for the purpose of being a Development Phase Services Reimbursable Cost. | Yes |
| Any deductible or excess (up to the maximum amount of the deductible or excess required under this Deed) payable by the Shortlisted Respondent in relation to any insurances referred to in this Deed and the cost of preparing any claims, except in the case specified directly below. | Yes |
| Any deductible or excess payable by the Shortlisted Respondent in relation to any claim on the public liability insurance policy required under this Deed involving third party personal injury or death, and the cost of preparing any such claim. | No |
|  | Taxes, fees and charges | All taxes, duties, excises, levies, assessments and other charges of any kind levied by any relevant authority on, or in connection with, the Development Phase Services, as approved by the Principal's Representative. | Yes  (excluding any tax equalisation payment or the cost to prepare tax equalisation tax returns) |
|  | Parent Company Guarantee | Any costs or expenses arising out of or in connection with providing and maintaining the Parent Company Guarantee in accordance with the Program Participation Agreement. | No |
|  | Allowances | Any allowances approved under section 5 of this Attachment 1. | Yes |
|  | Team building and coaching | The costs of Project specific team building between the Shortlisted Respondent and Principal's Representative, as pre-approved by the Principal's Representative. This excludes team building between only the Shortlisted Respondent's employees. | Yes |
|  | Photocopying and printing | All costs associated with producing, copying and binding all drawings, test reports, and other documents produced as part of the Development Phase Services. | Yes |
|  | Change in Control | Any and all costs or expenses in relation to a Change in Control as defined in and to the extent permitted by the Program Participation Agreement. | No |
|  | Profit, overhead or unreasonable advantage | Any contribution to corporate overhead costs or expenses or any profit or unreasonable advantage from the utilisation of people, equipment or resources (other than Corporate Overhead and Profit). | No |
|  | Supplemental insurance | Any costs incurred by the Shortlisted Respondent in providing any difference in cover of insurance to supplement the insurances referred to in this Deed. | No |
|  | Legal expenses | Reasonable legal costs incurred with the prior written approval of the Principal's Representative. | Yes |
|  | Internal legal expenses | All reasonable internal wages for legal personnel to negotiate and draft the Agreed ITC Delivery Deed in accordance with clause 13 of this Deed, provided those costs are approved in advance by the Principal's Representative. | Yes |
|  | Claims by an Authority | Any legal costs incurred by the Shortlisted Respondent in defending any claim brought against the Shortlisted Respondent by an Authority by reason of an alleged breach of any Legislative Requirement, except where the Principal determines otherwise, having regard to the nature of the breach and the effect of the breach on the Project, the Development Phase Services and the Principal. | No |
|  | Issues | Any costs or expenses arising out of or in connection with any steps to resolve an Issue in accordance with clause 20. | No |
|  | Fines and penalties | Any fine, penalty or sanction imposed by a court or other authority or under any Legislative Requirement upon the Shortlisted Respondent. | No |
|  | Indemnities | Any amount payable by the Shortlisted Respondent under an indemnity given under this Deed. | No |
|  | Termination | Any and all costs, losses, damages and expenses suffered or incurred by the Shortlisted Respondent arising out of or in connection with a termination under clause 25. | No |
|  | GST | Goods and services tax. | No |
|  | Input tax credit | Any amount paid or payable by or on behalf of the Shortlisted Respondent to a supplier to the extent that the Shortlisted Respondent is entitled to claim and retain an input tax credit in respect of that payment | No |
|  | Tax-related fines and penalties | Any penalties or fines in respect of the matters referred to in Item 39 of this Attachment 1. | No |
|  | Corporate, personal income or capital gains tax | Any corporate or personal income tax or capital gains tax imposed on the Shortlisted Respondent. | No |
|  | Interest | Any interest accruing on amounts payable by the Shortlisted Respondent to the Principal under this Deed. | No |
|  | Allowance-related costs | Any costs incurred by the Shortlisted Respondent for allowances other than on an exceptions basis in accordance with the policies approved by the Principal's Representative. | No |
|  | Business and professional development | Any costs or expenses arising out of or in connection with business development and professional development which is not specific to the Project. | No |
|  | Corporate executive support | Any costs or expenses arising out of or in connection with senior executives performing corporate support, corporate governance, corporate risk review or internal audit functions or activities. | No |
|  | Corporate training | Any costs or expenses arising out of or in connection with all corporate training, including cost of training and cost of time of attending the training, other than Project related training covered by item 6 | No |
|  | Corporate or Project entertainment | Any costs or expenses arising out of or in connection with corporate or Project entertainment. | No |
|  | Donation and sponsorship | Donation or sponsorship costs. | No |
|  | Finance, administration and cashflow fees | Any costs or expenses arising out of or in connection with finance, administration and cashflow fees, charge and costs including offsite administration costs | No |
|  | Corporate IT costs | The following information technology (**IT**) costs:   1. IT support for personnel at the Shortlisted Respondent's corporate head office, including corporate software and systems; 2. IT support staff or system administrators from the Shortlisted Respondent's corporate head office; or 3. software development costs associated with corporate software. | No |
|  | Professional library | Any costs or expenses arising out of or in connection with professional library (including periodicals, books and publications). | No |
|  | Peer review | Any and all costs or expenses arising out of or in connection with peer review services or activities for the Project. | No |
|  | Other Principal's Representative-approved costs | Any other items, costs or expenses that the Principal's Representative determines are Development Phase Services Reimbursable Costs for the purposes of the Development Phase Services, and which the Principal's Representative has approved. | Yes |
|  | Costs prior to the Contract Date | Any cost or expense incurred by the Shortlisted Respondent prior to the Contract Date, including formulation and execution of this Deed. | No |
|  | Other costs incurred in performing services | Any costs incurred by the Shortlisted Respondent in performing any services:   1. which are not bona fide specific costs or expenses directly, reasonably and actually incurred by the Shortlisted Respondent in performing the Development Phase Services; 2. which are not directly referable to Development Phase Services; 3. which do not otherwise form part of the Development Phase Services; or 4. which have not been incurred in accordance with the requirements on this Deed. | No |
|  | General cost exclusion | Any costs incurred by the Shortlisted Respondent, or to be incurred by the Shortlisted Respondent:   1. which were excluded from the Development Phase Services Reimbursable Costs under this Deed as part of the Shortlisted Respondent's Project Proposal; or 2. specifically excluded under this Deed as being a Development Phase Services Reimbursable Cost. | No |
|  | Kilometre reimbursement | Any costs or expenses arising out of or in connection with kilometre reimbursement unless in accordance with an award or policy approved by the Principal's Representative. | No |
|  | Fraudulent act or omission | Any costs incurred as a result of any fraudulent act or omission on the part of the Shortlisted Respondent or any of the Shortlisted Respondent’s officers, employees, agents, contractors, consultants or advisers of or to the Shortlisted Respondent. | No |

* 1. Discounts, credits and rebates
     + 1. Any cash, trade and industry discounts and rebates obtained by the Shortlisted Respondent in respect of the Development Phase Services must be transferred to the Principal and credited against the Development Phase Services Fee, including any annual or company discounts from Subcontractors, vendors, bulk discounts and company/inter-company discounts and rebates.
       2. Any entitlement to tax credits, rebates, exemptions or concessions and the like or minimisation of customs duty received, collected or credited by the Shortlisted Respondent in respect of the Development Phase Services must be transferred to the Principal and credited against the Development Phase Services Fee. All other entitlements to credits or rebates received, collected or credited by the Shortlisted Respondent in respect of the Development Phase Services must be transferred to the Principal and credited against the Development Phase Services Fee.
  2. Principal's Representative approval of policy and procedures

1. Unless the Principal's Representative has expressly approved the item, cost or expense prior to the Shortlisted Respondent incurring the item, cost or expense, there will be no payment of:
   * + 1. the following items, costs and expenses as Development Phase Services Reimbursable Costs until the Principal's Representative has approved a policy or procedure for the purposes of the relevant Development Phase Services:
          1. any overtime costs or time in lieu;
          2. any training costs, but excluding site safety inductions;
          3. any motor vehicle costs or kilometre reimbursements;
          4. any allowances;
          5. any specialist Non-Wages Personnel travel, relocation or accommodation costs or expenses;
          6. any recruitment or relocation costs for specialist staff, subject to Item 18 of this Attachment 1;
          7. any legal and litigation expenses;
          8. any travel expenses; and
          9. bonuses to any Shortlisted Respondent's personnel;
       2. any information technology costs as Development Phase Services Reimbursable Costs;
       3. any costs of Subcontractors as Development Phase Services Reimbursable Costs unless the subcontract has been approved by the Principal's Representative in accordance with clause 8 of this Deed; and
       4. any costs or expenses arising from or in connection with Project branding or marketing.
2. to Schedule 5 - Schedule of Rates

|  |  |  |  |
| --- | --- | --- | --- |
| **Personnel category** | **Resource type** | **Resource name** | **Chargeable Rate (excl. on-costs and GST)**  **(Per/Hour)** |
| Full-Time Staff | [Insert design personnel type 1 e.g. Senior Designer - Full-time] | [Insert name] | $[insert] |
|  |  |  |
| Part-Time Staff |  |  |  |
|  |  |  |
| Casual Staff |  |  |  |
|  |  |  |
| Contract Staff |  |  |  |
|  |  |  |
| Fixed-Term Staff |  |  |  |
|  |  |  |

1. – Delivery Phase Pricing Schedule
   1. Definitions

In this Delivery Phase Pricing Schedule, capitalised words have the meanings given to them in clause 1.1 and the following words have the following meanings:

* + - 1. **Delivery Phase Corporate Overhead and Profit** has the meaninggiven to the term “Corporate Overhead and Profit” in the Agreed ITC Delivery Deed;
      2. **Estimated Delivery Phase Corporate Overhead and Profit** means the Shortlisted Respondent's estimate of the Corporate Overhead and Profit (as defined in the Agreed ITC Delivery Deed) calculated in accordance with section 2(e);
      3. **Estimated Delivery Phase Reimbursable Costs** means the Shortlisted Respondent's estimate of the Reimbursable Costs (as defined in the Agreed ITC Delivery Deed) likely to be directly, reasonably and actually incurred in performing the Delivery Phase Activities;
      4. **Estimated Delivery Phase Risk & Contingency Provisions** means the Shortlisted Respondent's estimate of the Risk & Contingency Provisions (as defined in the Agreed ITC Delivery Deed) that may arise in performing the Delivery Phase Activities;
      5. **Target Outturn Cost** or **TOC** means the target outturn cost to be specified in the Agreed ITC Delivery Deed, calculated as the aggregate of the TOC Components;
      6. **TOC Component** has meaning given in the section 2 of this Delivery Phase Pricing Schedule; and
      7. **TOC Estimate** means the estimated target outturn cost to be developed by the Shortlisted Respondent under this Deed, being the aggregate of the Development Phase Services Fee, Early Delivery Activities Price, the Estimated Delivery Phase Reimbursable Costs, the Estimated Delivery Phase Risk & Contingency Provisions and the Estimated Delivery Phase Corporate Overhead and Profit, prepared and updated in accordance with clause 12.2.
  1. Composition of TOC Estimate

The TOC Estimate is the sum of:

* + - 1. the Development Phase Services Fee;
      2. the Early Delivery Activities Price; and
      3. the Estimated Delivery Phase Reimbursable Costs;
      4. the Estimated Delivery Phase Risk & Contingency Provisions; and
      5. the Estimated Delivery Phase Corporate Overhead and Profit, being an amount equal to the Estimated Delivery Phase Reimbursable Costs multiplied by the Delivery Phase Corporate Overhead and Profit percentage set out in the Agreed ITC Delivery Phase Contract,

(each, a **TOC Component**).

1. – Form of Early Delivery Activities Direction

[insert date]

[insert Shortlisted Respondent addressee]

[insert Shortlisted Respondent]

[insert Shortlisted Respondent address]

[insert Shortlisted Respondent contact details]

Dear [insert]

**[Project name]**

**Early Delivery Activities Direction (no. [insert])**

**1. Background**

### We refer to the ITC Development Deed between [#] (**ITC Development Deed**).

### Unless otherwise defined, capitalised terms used in this Early Delivery Activities Direction have the meaning given in the ITC Development Deed.

### This Early Delivery Activities Direction is issued pursuant to clause 9.1(a) of the ITC Development Deed.

**2. Early Delivery Activities**

### The Shortlisted Respondent is directed to:

#### perform the Early Delivery Activities in accordance with the Agreed ITC Delivery Deed;

#### commence the Early Works on the Early Delivery Activities Commencement Date; and

#### complete the Early Works on or before the Early Delivery Activities Completion Date.

### The Principal will pay the Shortlisted Respondent for the Early Delivery Activities in accordance with clause 9.5 of the ITC Development Deed.

### The consent of the parties to the terms of the Early Delivery Activities Direction is indicated by the signatures below, and this Early Delivery Activities Direction is valid and binding in accordance with the ITC Development Deed if signed by both parties.

### The Early Delivery Activities Scope, the Early Delivery Activities Commencement Date and the Early Delivery Activities Completion Date are set out in Attachment A to this Early Delivery Activities Direction.

Dated [insert date]

**[*Drafting note: Insert signature blocks*]**

**Attachment A to Early Works Notice – Early Delivery Activities Particulars**

* 1. General
     1. Early Works

The Shortlisted Respondent will perform the Early Delivery Activities as set out specifically below. However, the Shortlisted Respondent acknowledges that the works listed below:

### are not a definitive description of the works; and

### will not limit or affect the Shortlisted Respondent’s general obligation to perform the Early Delivery Activities and to do all things that might reasonably be expected of the Shortlisted Respondent from time to time as necessary or appropriate to secure the proper and timely performance of the Early Delivery Activities in accordance with the ITC Development Deed and the Agreed ITC Delivery Deed.

* + 1. Key terms for Early Delivery Activities

The following key terms will apply to the Early Delivery Activities.

|  |  |  |
| --- | --- | --- |
| **No.** | **Term** | **Details** |
| 1 | Early Delivery Activities Commencement Date | [insert] |
| 2 | Early Delivery Activities Completion Date | [insert] |

* 1. Early Delivery Activities Scope

[Insert]

***[Drafting note:*** ***Insert scope of Early Delivery Activities and Early Works (including any deliverables). This will include detailed information regarding the particular items of Early Delivery Activities to be performed, the requirements of those Early Delivery Activities and any further information regarding the scope, requirements, performance and any other special conditions relating to the Early Delivery Activities.]***

1. – Early Delivery Activities Proposal

**Early Delivery Activities Proposal**

(Clause 9.2)

To: [Principal's Representative]

**EARLY DELIVERY ACTIVITIES PROPOSAL**

**ITC Development Deed for the [Insert project details] (Deed)**

[***Drafting Note: This notice must be given within 10 Business Days (or such longer period agreed to by the Principal's Representative acting reasonably and having regard to the nature of the proposed Early Delivery Activities) after receipt of a notice of any proposed Early Delivery Activities from the Principal's Representative under clause 9.2(a).]***

The Shortlisted Respondent refers to the Principal's Representative's Early Delivery Activities notice dated [insert date direction communicated to Shortlisted Respondent] concerning [insert proposed Early Delivery Activities].

The Shortlisted Respondent submits this Early Delivery Activities Proposal in accordance with clause 9.2(b) of this Deed.

### The effect that the proposed Early Delivery Activities will have on the current approved Development Phase Program and Delivery Phase Program is [Insert details (including the effect on each Date for Practical Completion and Date for Close-out) and any program savings or delays for the Project.]

### The detailed estimate to implement the Early Delivery Activities, based on the assumptions made by the Shortlisted Respondent in developing the TOC to the extent applicable, is [insert:

1. detailed estimate to implement the Early Delivery Activities supported by measurements or other evidence of cost, which must be based on the assumptions made by the Shortlisted Respondent in developing the TOC to the extent applicable; and
2. the effect (if any) the proposed Early Delivery Activities will have on the Estimated Delivery Phase Reimbursable Costs, Estimated Delivery Phase Risk & Contingency Provisions and Estimated Delivery Phase Corporate Overhead and Profit included in the current TOC Estimate].

### The likely changes to, or additional, permits and approvals required to implement the Early Delivery Activities are [insert details of any likely changes to, or additional, permits and approvals required to implement Early Delivery Activities].

### [Insert any other matters as relevant including responding to any specific requests in the Principal’s Representative’s notice, including with respect to compliance with Government Policy Requirements].

[Shortlisted Respondent's Representative signature]

**[Shortlisted Respondent's Representative full name]**

**[Shortlisted Respondent]**

Date: [insert]

1. – Form of Proposed Technical Departures

**Proposed Technical Departure**

(Clause 11.2)

To: [Principal's Representative]

**PROPOSED TECHNICAL DEPARTURE**

**ITC Development Deed for the [insert project details] (Development Deed)**

The Shortlisted Respondent submits this Technical Departure Proposal in accordance with clause 11.2(b) of this Deed.

The Shortlisted Respondent proposes the following Departure(s) to the PSDR:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item** | **Relevant section** | **Existing requirement** | **Proposed Departure** | **Reason for the proposed Departure** | **Time, cost or quality impacts of the proposed Departure (if any)** |
| 1. | [insert] | [insert the nature of the existing requirement] | [insert full details of the proposed departure, including proposed drafting] | [insert detailed reasons for the proposed Departure, including how the Departure better facilities the achievement of the Development Phase Objectives)] | [insert time, cost or quality impact during the Delivery Phase and whole of life.] |
| 2. | [insert] |  |  |  |  |

[Shortlisted Respondent's Representative signature]

**[Shortlisted Respondent's Representative full name]**

**[Shortlisted Respondent]**

Date: [insert]

1. – Government Policy Requirements

[***Drafting Note: This Schedule is intended to set out any clauses relating to applicable Victorian Government Procurement Policies.*]**

1. – Principal Contractor appointment and arrangements

***[Drafting note: arrangements for the appointment of Principal Contractor to be considered on a Project-specific basis, having regard to the number of Shortlisted Respondents performing Early Works].***

### (**Performance of construction work**): This Schedule 11 applies where the Early Delivery Activities include construction work (as defined in the OHS Legislation) to be performed at the Site.

### (**Appointment**): To the extent the Principal is the "owner" of the Site (or any part thereof) for the purposes of Part 5.1 of the OHS Regulations, the Principal hereby appoints the Shortlisted Respondent as the Principal Contractor in respect of any Early Delivery Activities performed at the Site for the period the Shortlisted Respondent undertakes such work and authorises the Shortlisted Respondent to manage and control the Site to the extent necessary to discharge the duties imposed on a Principal Contractor under the OHS Legislation.

### (**Shortlisted Respondent responsibilities**): The Shortlisted Respondent:

#### accepts its appointment as Principal Contractor;

#### acknowledges that it has management and control of the Site for the period of appointment as Principal Contractor; and

#### must comply with all obligations imposed on a Principal Contractor by the OHS Legislation at its own cost.

### **(Appointment regardless of validity)**: Regardless of whether the Principal Contractor appointment under this Schedule 11 is valid for the purpose of any applicable OHS Legislation, the Shortlisted Respondent agrees to comply with all obligations imposed on a Principal Contractor under any applicable OHS Legislation as if the Shortlisted Respondent had been validly engaged as the Principal Contractor in respect of the relevant Early Delivery Activities.

### (**Principal not owner**):To the extent the relevant Early Delivery Activities are to be performed at a workplace where the Shortlisted Respondent is not the "owner" for the purposes of Part 5.1 of the OHS Regulations, the Shortlisted Respondent agrees that, upon request by the Principal's Representative, it will accept from the owner an appointment as the Principal Contractor and will discharge the duties imposed on a Principal Contractor under the OHS Legislation, provided the Shortlisted Respondent is granted authorisation to manage and control the Site to the extent necessary to discharge the duties imposed on a Principal Contractor under the OHS Legislation.

### (**New Regulations**):The Shortlisted Respondent agrees that if the New WHS Regulations are enacted in Victoria and supersede the OHS Regulations, and the New WHS Regulations provide for the appointment of a Principal Contractor for the relevant Early Delivery Activities, the Site or the Project in accordance with the New WHS Regulations, then, if required to maintain the Shortlisted Respondent's appointment as Principal Contractor, the Principal or other owner will appoint the Shortlisted Respondent as Principal Contractor within the meaning of the New WHS Regulations, and the Shortlisted Respondent agrees to accept such appointment.

1. – Agreed ITC Delivery Deed

***[Drafting Note: This Annexure will attach either:***

* ***if the*** ***ITC Delivery Deed has been agreed prior to commencing the Development Phase, the agreed form of ITC Delivery Deed (this could reference the version provided as part of the Project RFP if there are no changes); or***
* ***if the ITC Delivery Deed has not been agreed prior to commencing the Development Phase, the form of ITC Delivery Deed or Commercial Principles that have been agreed in principle.]***

1. – PSDR

See attached.

**[*Drafting Note: Please note that the attached is a draft PSDR that will be updated by the Principal during the Development Phase in accordance with clause 11.1(a), [including to incorporate the Project-specific PSDR.*]**