

Project Agreement

West Gate Tunnel

The Treasurer of Victoria for and on behalf of the Crown in right of the
State of Victoria

State

Transurban WGT Co Pty Ltd

Project Co

[Redactions made to the Project Documents generally fall into one or more of the following categories:

- ***redactions made in accordance with the Confidential Information Schedule of the Project Agreement;***
- ***redactions of information which may prejudice the commercial position of the State in relation to future claims and tender processes;***
- ***redactions of commercially sensitive information of counterparties and third parties (including amounts payable and intellectual property); and***
- ***redactions of information for safety and security reasons.]***

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List of Exhibits

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Exhibit B - Lease

Exhibit BA - Lease (NewCo)

Exhibit C - Construction Licence

Exhibit D - Maintenance Licence

Exhibit E - Independent Reviewer and Environmental Auditor Deed of Appointment

Project Agreement made on

Parties **The Treasurer of Victoria for and on behalf of the Crown in right of the State of Victoria (State)**

Transurban WGT Co Pty Ltd (ACN 617 420 023) (Project Co)

Background

- A Transurban Limited submitted a proposal for the Project (the **Proposal**) to the State on 12 March 2015.
- B On 30 April 2015, the State announced that the Proposal had progressed to Stage Three of the Market Led Proposal Guidelines.
- C On 8 December 2015, the State announced that the Proposal had progressed to Stage Four of the Market Led Proposal Guidelines.
- D This Agreement sets out the terms on which:
- a) Project Co agrees to deliver the Project;
 - b) the Treasurer of Victoria enters into this Agreement on behalf of the Crown in right of the State of Victoria pursuant to the State's powers; and
 - c) the risks associated with the Project are allocated as between the State and Project Co.

Operative provisions

PART A - GENERAL

1. Definitions

In this Agreement, unless the context otherwise requires:

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

Access Delay Period has the meaning given in clause 6.3(i)(i).

Access Delay Project Activities has the meaning given in clause 6.3(i)(ii).

Accident Towing Licence Event means where either:

- (a) the Minister fails to authorise sufficient licences under the *Accident Towing Services Act 2007 (Vic)* to enable the relevant West Gate Tunnel agency (as defined in the *Accident Towing Services Act 2007 (Vic)*) to perform its obligations, exercise its rights or carry out its functions under the *Accident Towing Services Act 2007 (Vic)*, the Project Legislation, regulations made under those Acts or this Agreement (including the towing of vehicles and removal of debris arising out of or in connection with breakdowns and accidents to a Safe Location); or
- (b) VicRoads fails to issue a licence authorised by the Minister for the purposes described in paragraph (a) in circumstances where the proposed licensee has met all relevant requirements of the *Accident Towing Services Act 2007 (Vic)*, the *Road Management Act 2004 (Vic)* and the regulations made under those Acts.

Accommodation Works means all works necessary to ensure that:

- (a) the amenity and functionality of; or
- (b) access to and egress from,

any property (including any property located outside the Construction Areas and any structure on any property) that is affected by the D&C Activities, is maintained (during the carrying out of the D&C Activities) and reinstated (following the carrying out of the relevant D&C Activities) to at least the standard that it was in immediately prior to the date of this Agreement including:

- (c) construction of fences to separate the property located outside of the Construction Areas from the property located within the Construction Areas;
- (d) landscaping and reinstatement works; and
- (e) all works described in section 5.1(k)(vi) of Part A of the PSR.

Accounts and Records has the meaning given in clause 51.1(a).

Account Bank Deed means the document entitled "Account bank deed - WGT and NewCo" dated on or about the date of this Agreement between the State, Project Co, NewCo and the Commonwealth Bank of Australia as the account bank, pursuant to which the account bank, amongst other things, undertakes not to exercise a right of set-off or combination accounts.

Accreditation means:

- (a) accreditation under Division 4 of Part 3 of the Rail Safety National Law; and
- (b) any other approval that is required for a Rail Transport Operator to conduct any rail transport operations.

Actual Costs means the actual costs incurred by Project Co in connection with the West Gate Tunnel.

Actual Revenue means the actual revenue derived by Project Co in connection with the West Gate Tunnel.

Additional Land Parcels means the additional parcels of land as set out in Table H15.2 and Table H15.3 of Part H15 and Part K22 of the PSR.

Additional MOFF Area means a part of the Maintenance Area upon which an Additional MOFF is located.

Additional MOFF means a Maintained Off-Freeway Facility identified in Part B of the Pre-Agreed Modification Schedule.

Additional State Contribution Schedule means Schedule 38.

Adjusted Net Operating Cashflow means at any time, the projected net operating cashflow to be derived by Project Co in connection with the West Gate Tunnel from that time until the Final Expiry Date, calculated as:

- (a) Projected Revenue; less
- (b) projected costs as set out in the Notional Cost Profile, as adjusted to take into account changes in the projected costs set out in the Notional Cost Profile, or new projected costs to be included in the Notional Cost Profile, arising from the relevant Relief Event (other than an event described in paragraph (d) of the definition of Relief Event).

Adjustment Event has the meaning given in the Adjustment Events Schedule.

Adjustment Events Schedule means Schedule 42.

Adjustment Trigger has the meaning given in clause 8.2(a) of the Western Distributor Commitment Deed.

Agreed Exceptions has the meaning given in the PSR.

Agreement means this project agreement and includes all schedules, exhibits, attachments and annexures to it.

Air Space:

- (a) in respect of Category 1 Rail Land that is subject to a Rail Projects Agreement, has the meaning given to that term in the Infrastructure Lease;
- (b) in respect of Category 1 Rail Land that is subject to the Interstate Infrastructure Lease, has the meaning given to that term in the Interstate Infrastructure Lease; and
- (c) in respect of Category 2 Rail Land, has the meaning given to that term in the relevant Category 2 Lease (as applicable).

Alternate Traffic Control Room means the alternative traffic control room where the backup system referred to in section 1.6 of Part D1 of the PSR is located, which at the date of this Agreement, is at 49 Balston St, Southbank.

Amended Outstanding Close-Out Costs has the meaning given in clause 21.2(c)(ii)B.

Annual KPI Report has the meaning given in section 4(a)(ii) of Part B of Schedule 3.

Anticipated Transition Services Period has the meaning given in clause 28.4(e)(iii).

Apprentice means a person whom an employer has undertaken to train under a Training Contract.

Alternative Approval means a planning permit, approval or other authorisation or an exemption from the need for any planning permit, approval or other authorisation, which legally entitles Project Co and its Associates to carry out the Project Activities impacted by the PSA Event.

Alternative Approval Event means:

- (a) an Alternative Approval is procured by the State; and
- (b) the Alternative Approval requires an additional or modified condition or requirement to be satisfied which is not imposed by the Planning Scheme Amendment or otherwise required by the State Project Documents.

Approval means the Key Approvals, any licence, permit, authorisation, consent, assessment, approval, determination, certificate, accreditation, registration, clearance, permission or the like (as amended or substituted from time to time) which is required to be issued by or obtained from any Authority or any other person or in accordance with any Law, which must be obtained or satisfied in connection with the Project (including for the continuous passage of vehicles after the West Gate Tunnel Opening Date).

Approval Suspension Period has the meaning given in clause 13.7(c).

Approved Project means any form of the Project that is permitted by and will comply with the Key Approvals.

APRA means the Australian Prudential Regulation Authority.

ARTC means Australian Rail Track Corporation Ltd (ABN 75 081 455 754), in its capacity as lessor and manager of Victoria's interstate track and related assets.

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

As-Built Records means the as-built information required to be provided in relation to the Works in accordance with section 11 of Part F.6 of the PSR.

Assessment Periods means the assessment periods referred to in each KPI as set out in Part C of Schedule 3.

Asset Management System has the meaning given in the PSR.

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

- (a) in the case of Project Co, includes:
- (i) the Project Co Representative;
 - (ii) any Group Member or Consortium Member (other than Project Co) and their respective officers, agents, advisers, consultants, contractors and employees; and
 - (iii) the Equity Investors, any Subcontractors (that are not Consortium Members) and their respective officers, agents, advisers, consultants, contractors and employees,

each acting in connection with the Project, but does not include the State or any of its Associates, the Independent Reviewer and Environmental Auditor or any Handover Reviewer; and

- (b) in the case of the State, means:
- (i) any officer, agent, adviser, consultant, contractor or employee of the State;
 - (ii) the Project Proponent;
 - (iii) the State Representative;
 - (iv) during the D&C Phase only, the Port Lessor, the Port Lessee and the Port Manager;
 - (v) during the D&C Phase only, VicTrack in its capacity as a counterparty to the West Gate Tunnel Project Rail Licence;
 - (vi) during the D&C Phase only, each Category 1 Rail Interface Party to the extent of the Category 1 Rail Interface Party's role under the relevant Rail Projects Agreement and Interstate Infrastructure Lease;

- (vii) the Road Interface Parties; and
- (viii) any other person to whom the State delegates a right, power, function or duty in accordance with this Agreement,

each acting in connection with the Project, but does not include Project Co or its Associates, the Independent Reviewer and Environmental Auditor or any Handover Reviewer.

Assumed Transport Network Enhancement means a transport network enhancement referred to in the Assumed Transport Network Enhancements Schedule.

Assumed Transport Network Enhancements Schedule means Schedule 29.

AS5100 (2004) means AS 5100 (SET)-2004, Bridge Design Set, published by Standards Australia in 2004.

AS5100 (2017) means AS/(NZS) 5100:2017 Series – Bridge Design, as amended or updated from time to time.

AS5100 (2017) Requirement means a requirement or obligation to comply with AS5100 (2017) in carrying out the Project Activities except to the extent set out in clause 2.22(c).

Australian Privacy Principles means the Australian Privacy Principles set out in the *Privacy Act 1988* (Cth).

Authority means:

- (a) any government or any governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; and
- (b) any person having jurisdiction over, or ownership of, the Utility Infrastructure Works.

Availability Fee Letter means the letter dated on or about the date of this Agreement between Funding Co and Project Co.

B2B Integration Systems means the systems in use by Project Co at the relevant time that allow the secure transfer of transactions files between Project Co and Foreign Toll Operators to allow interoperable tolling utilising the MOU file standards.

Bank Bill Rate in a period means:

- (a) the rate (expressed as a yield per centum per annum to maturity rounded upwards to two decimal places) which is the buying rate for bank accepted Bills quoted at approximately 10:10am (Melbourne time) on page "BBSY" of the Reuters Monitor System on that day, having a term closest to that period; or
- (b) if that rate is no longer available or if, in the reasonable opinion of the State Representative, that rate becomes an inappropriate rate to benchmark the Overdue Rate for the purposes of this Agreement or becomes incapable of application, the Bank Bill Rate means the rate reasonably determined by the State Representative to be the appropriate equivalent rate, having regard to prevailing market conditions.

Base Case Financial Model has the meaning given in clause 50.1 and as updated from time to time in accordance with clause 50.

Base Case Projected Revenue means the projected revenue to be derived by Project Co in connection with the West Gate Tunnel as set out in the Base Case Financial Model.

Base Case Net Operating Cashflow means the projected net operating cashflow to be derived by Project Co in connection with the West Gate Tunnel as set out in the Base Case Financial Model, calculated as:

- (a) Base Case Projected Revenue; less
- (b) projected costs as set out in the Notional Cost Profile.

Beneficiaries has the meaning given in clause 52.5.

Best D&C Practices means, subject to clause 2.22(a), design, construction, commissioning and repair practices which are carried out:

- (a) with the skill, care and diligence which may reasonably be expected of a skilled professional carrying out design, construction, commissioning and repair work similar to the D&C Activities (other than the OpCo D&C Phase IRS Activities);
- (b) in a manner which is safe to all people and the Environment;
- (c) with the intent of ensuring reliable, long term and safe operation of the West Gate Tunnel;
- (d) by trained and experienced personnel utilising high quality, safe and proper equipment, tools, procedures and industry standards;
- (e) with an adequate number of personnel, materials, resources and supplies;
- (f) using new and high quality fixtures, fittings, finishes and materials which are free from defects and appropriate for the environment in which they are intended to be used under normal conditions and reasonably anticipated abnormal conditions; and
- (g) in a manner which, at all times, remains consistent with the overall road network standards and are in accordance with the PSR.

Best Industry Practices means Best D&C Practices and Best O&M Practices (or either as the context requires).

Best O&M Practices means, subject to clause 2.22(a), maintenance, management, operation, repair and refurbishment activities which are carried out:

- (a) with the skill, care and diligence which may reasonably be expected of a skilled professional carrying out maintenance, management, operation, repair and refurbishment activities similar to the O&M Activities or the OpCo D&C Phase IRS Activities (as applicable);
- (b) in a manner which is safe to all people and the Environment;
- (c) with the intent of ensuring reliable, long term and safe operation of the West Gate Tunnel;
- (d) by trained and experienced personnel utilising high quality, safe and proper equipment, tools, procedures and industry standards;
- (e) with an adequate number of personnel, materials, resources and supplies;

- (f) using new and high quality fixtures, fittings, finishes and materials which are free from defects and appropriate for the environment in which they are intended to be used under normal conditions and reasonably anticipated abnormal conditions and with a design life equal to or greater than the items being repaired or replaced; and
- (g) with a commitment to continually meeting advancements in technology and improving the standards and quality of the O&M Activities including ensuring that:
 - (i) the Relevant Infrastructure remain consistent with those of the overall privately operated road network in Victoria and are in accordance with the PSR; and
 - (ii) advancements in technology which Project Co must implement to enable it to comply with the requirements of the State Project Documents are promptly responded to and incorporated into the O&M Activities no later than the time when the relevant component of the Relevant Infrastructure is due to be repaired or replaced,

provided that nothing in this paragraph (g) requires Project Co to:

- (iii) replace or materially modify any part of the Relevant Infrastructure earlier than the time it would otherwise be required to be replaced or modified in order to comply with the requirements of the State Project Documents; or
- (iv) replace or materially modify any part of the Relevant Infrastructure where:
 - A. such replacement or modification would adversely impact on the integrity, consistency or efficiency of the operation or maintenance of the Relevant Infrastructure or that part of the Relevant Infrastructure; or
 - B. it would not be reasonable to expect that a reasonable and competent concessionaire maintaining a road similar to the Freeway to Best O&M Practices (within the meaning of paragraphs (a) to (f) of this definition) would replace or modify that part of the Relevant Infrastructure having regard to the impact of such replacement or modification on the Relevant Infrastructure or the Project Activities.

Bid D&C Program means the program for the D&C Activities (other than the OpCo D&C Phase IRS Activities) contained in Part K of the PSR as at the date of this Agreement.

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

Business Day means a day in Melbourne that is not:

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

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

Business Management Strategy has the meaning given in the PSR.

Category 1 Rail Interface Party, Category 2 Rail Interface Party, Category 3 Rail Interface Party and Category 4 Rail Interface Party means those parties so identified in section 2 of Schedule 24.

Category 1 Rail Land means the land so described in section 3 of Schedule 24, but excludes the relevant Air Space.

Category 2 Lease means a lease between VicTrack and a Category 2 Rail Interface Party.

Category 2 Rail Land means the land so described in section 3 of Schedule 24, but excludes the relevant Air Space.

Category 3 Rail Land means the land so described in section 3 of Schedule 24.

Category 4 Common Roads and Tracks has the meaning given in the WGT Rail Licence.

Category 4 Rail Land means:

- (a) the land so described in section 3 of Schedule 24;
- (b) all Air Space above any:
 - (i) Category 1 Rail Land; or
 - (ii) Category 2 Rail Land; and
- (c) Category 3 Rail Land which has become Category 4 Rail Land pursuant to clause 6.6(b)(i)D.

Catastrophic Event means any event which requires urgent action to minimise a serious risk of:

- (a) harm to the health or safety of any person;
- (b) harm to the Environment;
- (c) harm to the Site;
- (d) harm to the structural integrity of any part of the Relevant Infrastructure; or
- (e) damage to or destruction of any other property (not comprising the Relevant Infrastructure).

Category of Works means each category of activities referenced in the column titled 'Category of Works' set out in the table in Annexure 1 of the Change Compensation Principles.

CE Payment Date means the date which is 20 Business Days after the end of each Financial Year.

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

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

Certificate of West Gate Tunnel Completion means a certificate substantially in the form required by the Schedule of Certificates and Notices certifying that West Gate Tunnel Completion has been achieved.

Certified Design Documentation means Design Documentation which:

- (a) is developed in accordance with section 2.4 of the Design Review Section; and
- (b) otherwise meets the requirements of the State Project Documents.

Certified Lease Survey Plan has the meaning given in clause 6.9(a).

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

Change Compensation Principles means Schedule 4.

Change in Control means where, at any time, any person or Entity alone or together with any Associate or Associates ceases to or commences to, directly or indirectly, have Control of an Entity. For the purposes of this definition, "Associate" or "Associates" has the meaning given in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Corporations Act).

Change in Federal Environmental Law means:

- (a) a change in a Federal Environmental Law existing at the date of this Agreement;
- (b) the enactment or making of a new Federal Environmental Law after the date of this Agreement; or
- (c) a change in the way a Federal Environmental Law is applied, or in the interpretation of a Federal Environmental Law, after the date of this Agreement,

which requires a change to the Freeway or the O&M Activities.

Change in Law means any one or more of the following:

- (a) a change in, or repeal of, an existing Law;
- (b) the enactment or judicial determination of a new Law; or
- (c) a change in the way a Law is applied or interpreted as a result of a decision of a court of competent jurisdiction,

introduced or made after the date of this Agreement but does not include:

- (d) a change in the way a Law is applied or interpreted due to:
 - (i) a failure of Project Co or any of its Associates to comply with that Law or an applicable Standard;
 - (ii) an illegal act or omission of Project Co or any of its Associates; or
 - (iii) any breach of the State Project Documents by Project Co;
- (e) a Change in Policy;
- (f) any new Approval or change in an Approval resulting from an act or omission of Project Co or any of its Associates (other than an act or omission of Project Co which is authorised or permitted under a State Project Document);

- (g) any new Law or change in existing Law relating to Taxes including the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and the GST Law;
- (h) any new Law or change in any existing Law which was not in force at the date of this Agreement but which:
 - (i) had been published in the Government Gazette by way of bill, draft bill or draft statutory instrument or otherwise specifically referred to prior to the date of this Agreement;
 - (ii) is contained or referred to in the PSR, Project Information or any Project Document;
 - (iii) a party exercising Best Industry Practices would have reasonably foreseen or anticipated prior to the date of this Agreement; or
 - (iv) is substantially the same as a Law in force prior to the date of this Agreement;
- (i) the designation of the Relevant Infrastructure or any part of the Relevant Infrastructure as vital critical infrastructure by order of the Governor in Council in accordance with section 74E of the *Emergency Management Act 2013* (Vic);
- (j) any new Law or change in existing Law relating to Part IVAA (Proportionate Liability) of the *Wrongs Act 1958* (Vic) or its application which limits or eliminates the impact of that Part or any legal risk allocation under clause 61.12, whether or not it has any application; or
- (k) any new law or change in any existing law relating to:
 - (i) physical change to the transport network, other than a physical change to either or both the Relevant Infrastructure or CityLink; and
 - (ii) the introduction of the Australian Building and Construction Commission or the Building Code 2013 (Cth), 'Supporting Guidelines for Commonwealth Funding Entities' (1 February 2013).

Change in Mandatory Requirements means a Change in Law or Change in Policy.

Change in Policy means any one or more of the following:

- (a) the introduction of a new Standard; or
- (b) a material change in a Standard,

introduced or made after the date of this Agreement but does not include:

- (c) a Change in Law;
- (d) a new Standard or a change to a Standard, that was not in force at the date of this Agreement but which:
 - (i) the State has expressly notified Project Co of prior to the date of this Agreement;
 - (ii) was contained or referred to in any Project Document or Project Information;

- (iii) a party performing activities similar to the Project Activities in accordance with Best Industry Practices would have reasonably foreseen or anticipated prior to the date of this Agreement;
 - (iv) is substantially the same in effect as a Standard in force prior to the date of this Agreement; or
 - (v) is substantially the same in effect as any other requirement with which Project Co was required to comply with under the State Project Documents prior to the date of the new or changed Standard, including any obligation to comply with Best Industry Practices;
- (e) any new Standard or change in any existing Standard relating to the introduction of the Australian Building and Construction Commission or the *Building Code 2013* (Cth), 'Supporting Guidelines for Commonwealth Funding Entities' (1 February 2013); or
- (f) a new Standard or a change in a Standard in response to:
- (i) the failure of Project Co or its Associates to comply with a Law, Standard or Approval; or
 - (ii) any breach of the State Project Documents by Project Co.

For the avoidance of doubt (but without limiting clause 2.22(f)), paragraph (d) of this definition does not include AS5100 (2017).

Change in Tolling Law means a Change in Law which:

- (a) prevents, hinders or disrupts the ability of Project Co to levy and collect tolls, fees and charges as permitted by the State Project Documents; or
- (b) removes the offence of failing or refusing to pay the toll for the use of the Freeway.

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

CityLink means the land declared under section 61 of the *Melbourne City Link Act 1995* (Vic) to be a road and includes any part of that land.

CityLink Access Deed means the deed entitled "CityLink Access Deed" entered into between the D&C Subcontractor and the CityLink Parties on or about the date of this Agreement.

CityLink Amendments Schedule means Schedule 41.

CityLink and ESEP Concession Amending Deeds means the:

- (a) amending deed to the CityLink Concession Deed to be entered into between the State and the CityLink Parties, in the form contained on the USB as physically attached at Schedule 1 to the CityLink Option Deed;
- (b) amending deed to the ESEP Deed to be entered into between the State and Clepco; and
- (c) amending deed to the agreement entitled 'City Link and Extension Projects Integration and Facilitation Deed' to be entered into between the State, the CityLink Parties and Clepco,

each as agreed or amended in accordance with the CityLink Option Deed.

CityLink Concession Deed means the deed entitled the "Agreement for the Melbourne City Link" between the State and the CityLink Parties made with effect as at and from 20 October 1995.

CityLink Concession Period has the meaning given to the term 'Concession Period' in the CityLink Concession Deed.

CityLink Construction Land means the areas of the CityLink Leased Area required for the purposes of undertaking the CityLink Returned Works.

CityLink Handover means the discharge by the CityLink Parties of their obligations under clause 3.4 of the CityLink Concession Deed.

CityLink Leased Area has the meaning given to the term "leased land" under the Melbourne *City Link Act 1995* (Vic).

CityLink Maintenance Land means the areas of the CityLink Leased Area required for the purposes of undertaking the Project Activities during the O&M Phase.

CityLink Option Deed means the deed entitled "CityLink Option Deed" entered into between the State, the CityLink Parties and Clepco on or about the date of this Agreement.

CityLink Parties means the Company and TIML in its capacity as trustee for the CityLink Trust.

CityLink Project has the meaning given to 'Project' in the CityLink Concession Deed.

CityLink Project Documents has the meaning given to the term 'Project Documents' in the CityLink Concession Deed.

CityLink Returned Works has the meaning given in section 2 of Part LH20 of the PSR (D&C) (as that term is defined in the D&C Subcontract).

CityLink Trust has the meaning given to "Trust" in the CityLink Concession Deed.

CityLink Tulla Widening Project means the project known by that name for the widening of the CityLink Tullamarine freeway between the CityLink tunnels and Melbourne Airport being undertaken by the State, VicRoads, the CityLink Parties and their respective Associates.

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

- (a) in connection with the Project Documents, the Relevant Infrastructure or the Project; or
- (b) at Law or for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief.

Clepco means City Link Extension Pty Ltd (ABN 40 082 058 615).

Close-Out means the stage when:

- (a) the balance of the Works not completed as part of:
 - (i) West Gate Tunnel Completion; and
 - (ii) Tolling Completion,

have been completed, including correcting all Defects in the Works and any Returned Facility:

- (iii) specified in the Certificate of West Gate Tunnel Completion and the Certificate of Tolling Completion;
 - (iv) notified by Project Co to the State in accordance with clause 22.1(b) prior to the relevant Date for Close-Out; or
 - (v) notified by the State to Project Co in accordance with clause 22.1(d) prior to the relevant Date for Close-Out; and
 - (vi) all Returned Facilities have achieved Handback; and
- (b) Project Co has done everything which this Agreement requires Project Co to do as a condition precedent to Close-Out.

Close-Out Bond has the meaning given in clause 21.2(a)(v).

CLUT Deed of Accession means a deed substantially in the form set out in Schedule 10 of the D&C Subcontract, under which TIML, in its capacity as trustee for the CityLink Trust, agrees to accede to the D&C Subcontract.

CLUT Works Loan Agreement means the agreement entitled "CLUT Works Loan Agreement" to be entered into between Project Co and TIML, in the form contained on the USB as physically attached at Schedule 1 to the CityLink Option Deed, as amended in accordance with the CityLink Option Deed.

CMR Modification has the meaning given in clause 34.7(a).

Commonwealth means the Commonwealth of Australia.

Company means CityLink Melbourne Limited (ABN 65 070 810 678).

Compensable Enhancement means, subject to clause 38.2, a material circumstance or material event that occurs or takes place after the date of this Agreement which is a consequence of the exercise by the State of any right or power of the type referred to in clause 26.3, including connections to the Freeway to which clause 26.4 applies, an increase of the capacity of a Principal Road Interface or an upgrade to a Principal Road Interface carried out to a standard higher than the requirements of clause 26.1(a)(iii).

Compensable Enhancement Amount has the meaning given in clause 38.3(a).

Compensable Extension Event means each of the following events:

- (a) breach by the State or the Project Proponent of any State Project Document;
- (b) any act or omission of:
 - (i) the State in its capacity as counterparty to the State Project Documents; or
 - (ii) any of the State's Associates, except to the extent Project Co has not complied with its obligations in accordance with clauses 10.7, 10.8 and 10.12 in respect of any Interface Parties and that non-compliance has caused or contributed to the act or omission of that Associate,

other than any such act or omission which:

- (iii) is authorised or permitted under a State Project Document or a Road Interface Agreement;
- (iv) gives rise to a Modification; or
- (v) is contemplated by clause 9.1 (other than any such act or omission which would be a breach of a State Project Document),

except where such act or omission is expressly deemed to be a Compensable Extension Event;

- (c) cessation or suspension of any part of the D&C Activities (or a material change in the way the D&C Activities are carried out) because of:

- (i) a Commonwealth or State government direction;
- (ii) an order of a court or tribunal of competent jurisdiction; or
- (iii) a requirement of Law,

in connection with a Heritage Claim or Native Title Claim (as the case may be), to the extent that the cumulative cessation or suspension (or the impact of a material change to the D&C Activities) exceeds 10 Business Days;

- (d) industrial action in respect of the Works or the OpCo D&C Phase IRS Activities which directly affects the Project and which:

- (i) is the direct result of an act or omission of the State or its Associates (excluding the Interface Parties) in relation to the Project not being an act or omission authorised or permitted in accordance with any Project Document; and
- (ii) occurs only at the Construction Areas or otherwise only in respect of the Project;

- (e) the carrying out of Omitted Works by the Omitted Works Contractor;

- (f) a Key Approval Event, other than where the Key Approval Event gives rise to a Modification;

- (g) a court makes a Final Court Ruling:

- (i) relating solely to Laws which is in the legislative power of the State to change; and
- (ii) which has not been made as a result (in whole or in part) of a breach by Project Co or its Associates of the Project Documents or some other wrongful act or omission by Project Co or its Associates,

which prohibits or prevents Project Co from undertaking all, or substantially all, of the Project Activities in the manner contemplated by this Agreement in all material aspects;

- (h) Coode Road is not permanently closed or truncated (to the extent required in order for the D&C Activities to be performed in accordance with this Agreement) by 1 March 2019 ; and

- (i) any other event expressly deemed to be a Compensable Extension Event in this Agreement.

Concept Design means the concept design for the Works (other than the Tolling Works) set out in Parts K3 to K5 and K19 of the PSR.

Concession Enhancement Payment Deed means the agreement entitled “Concession Enhancement Payment Deed” to be entered into between Project Co, the Company and Clepco in the form contained on the USB as physically attached at Schedule 1 to the CityLink Option Deed, as amended in accordance with the CityLink Option Deed.

Condition Precedent means a condition precedent set out in the Conditions Precedent Schedule.

Condition Precedent Deadline means, in connection with a Condition Precedent, the date specified next to that Condition Precedent in the Conditions Precedent Schedule, or such other date as the parties may agree.

Condition Review Date has the meaning given in clause 28.4(d).

Conditions Precedent Schedule means Schedule 2.

Confidential Information means in respect of a party (**Discloser**), information about or pertaining to the business, operations or affairs of the Discloser that is provided by the Discloser or its Associates (or in the case of Project Co, a Related Body Corporate of Project Co) to the other party (**Recipient**) or its Associates in accordance or in connection with this Agreement (whether prior to or after the date of this Agreement) or which otherwise comes to the knowledge of the Recipient or its Associates in connection with this Agreement, and which a reasonable person would (having regard to the nature of that information) consider confidential, and:

- (a) in the case of the State, includes:
 - (i) the Project Documents;
 - (ii) the Project Information;
 - (iii) Project Co Material other than to the extent it is Project Co OHS Material;
 - (iv) the State Project Documents; and
 - (v) any other information in connection with the Project which Project Co is required to keep confidential to comply with any Information Privacy Principles or any applicable Law; and
- (b) in the case of Project Co, includes:
 - (i) Project Co OHS Material; and
 - (ii) the information described in the Confidential Information Schedule,

but in all cases excludes any of the information described above:

- (c) which is in or becomes part of the public domain other than through breach of this Agreement or an obligation of confidence owed from one party to the other; or
- (d) which the Recipient can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Discloser or its Associates (or the information otherwise coming to the Recipient's knowledge), unless such knowledge arose from a disclosure of information which the Recipient ought

reasonably to have known was in breach of an obligation of confidentiality or was itself the subject of confidentiality obligations.

Confidential Information Schedule means Schedule 15.

Consolidated Handover means the occurrence of Handover and CityLink Handover on or around the same date.

Consortium means:

- (a) Project Co;
- (b) New Co until the earlier of:
 - (i) the Date of Tolling Completion; and
 - (ii) the Date of Parliamentary Support (CityLink);
- (c) the D&C Subcontractor up to the end of the D&C Phase; and
- (d) OpCo,

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

Construction Access Agreement has the meaning given in the D&C Subcontract.

Construction Areas means the Licensed Construction Areas and the Other D&C Access Areas.

Construction Documentation means the IFC Design Documentation which Project Co is entitled to use for construction purposes in accordance with section 2.5 of the Design Review Section and which meets the requirements set out in section 2 of Part F6 of the PSR.

Construction Licence means any licence granted in accordance with clause 6.5 in connection with any of the Works, in the form set out in Exhibit C.

Construction Records means those documents described in section 10 of Part F6 of the PSR.

Construction Site means:

- (a) the Construction Areas; and
- (b) Extra Construction Land.

Construction Bond means any Performance Bond provided by the D&C Subcontractor in favour of Project Co.

Contamination means a condition of land, air, soil or water including groundwater resulting from past or present Pollution and which shares any of the characteristics of Pollution.

Contamination Modification Event means:

- (a) where, without limiting paragraphs (b), (c) or (d):
 - (i) to the extent that a Contamination Notice relates to groundwater Contamination on, in, over or under or that emanated or is emanating to or from any part of the Construction Area, Maintenance Area or Leased Area;

- (ii) the Contamination Notice relates to groundwater Contamination which is disturbed, exacerbated or interfered with in the carrying out of the Project Activities that Project Co is not required to Manage in accordance with clause 7.2(a); and
 - (iii) satisfaction of the requirements of the Contamination Notice is required for Project Co to comply with the State Project Documents or in order to permit, or minimise any delay to, the carrying out of the Project Activities, in whole or in part;
- (b) where:
 - (i) a Contamination Notice relates to that part of the mass of Contamination on, in, over or under or that emanated or is emanating to or from any part of the Construction Area, Maintenance Area or Leased Area that neither Project Co nor any of its Associates has:
 - A. caused or contributed to;
 - B. disturbed, exacerbated or interfered with; or
 - C. failed to mitigate, minimise or avoid to the extent a prudent, experienced and competent contractor in the circumstances would mitigate, minimise or avoid such Contamination,and that, but for the issuance of the Contamination Notice, Project Co is otherwise not required to Manage in accordance with the State Project Documents; and
 - (ii) satisfaction of the requirements of the Contamination Notice is required for Project Co to comply with the State Project Documents or in order to permit, or minimise any delay to, the carrying out of the Project Activities, in whole or in part;
- (c) where:
 - (i) Project Co is required under the Port Land Deed or the WGT Road Licence to comply with a clean up notice or pollution abatement notice issued pursuant to a Government Legal Requirement which relates to that part of the mass of Contamination that neither Project Co nor any of its Associates has:
 - A. caused or contributed to;
 - B. disturbed, exacerbated or interfered with; or
 - C. failed to mitigate, minimise or avoid to the extent a prudent, experienced and competent contractor in the circumstances would mitigate, minimise or avoid such Contamination,and that, but for the issuance of the clean up notice or pollution abatement notice (as applicable) pursuant to a Government Legal Requirement, Project Co is otherwise not required to Manage in accordance with the State Project Documents; and
 - (ii) satisfaction of the requirements of the clean up notice or pollution abatement notice is required for Project Co to comply with the State Project Documents or in order to permit, or minimise any delay to, the carrying out of the Project Activities, in whole or in part; or

- (d) where, without limiting paragraph (b), to the extent that a Contamination Notice received after the Date of West Gate Tunnel Completion relates to Contamination on, in, over or under or that emanated or is emanating to or from any part of any Additional MOFF Area that neither Project Co nor any of its Associates has:
- (i) caused or contributed to;
 - (ii) disturbed, exacerbated or interfered with; or
 - (iii) failed to mitigate, minimise or avoid to the extent a prudent, experienced and competent contractor in the circumstances would mitigate, minimise or avoid such Contamination in carrying out its obligations in respect of maintenance of the relevant Additional MOFF Area.

Contamination Notice means a clean up notice or pollution abatement notice issued, under the *Environment Protection Act 1970* (Vic) or any other Law which requires a person to take measures to restore the Environment to a specified condition or to remove, disperse, abate, destroy, dispose of, neutralise, remediate, treat, contain or otherwise test, monitor, record or manage or assess any Contamination or any damage caused by or risk of harm arising from any Contamination in, on, under or emanating to or from the Site or any other land within the vicinity of the Site used or occupied by Project Co or its Associates for the Project.

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

Contract Particulars means Schedule 1.

Contract Works Insurance (Delay in Start-up) means the Insurance policy set out in Part A, section (d) of the Insurance Schedule.

Contract Works Insurance (Material Damage) means the Insurance policy set out in Part A, section (a) of the Insurance Schedule.

Contract Works Insurance (Public and Product Liability) means the Insurance policy set out in Part A, section (b) of the Insurance Schedule.

Control means:

- (a) control of, or having the capacity to control the composition of the board or partnership committee, or decision making, directly or indirectly, in relation to the financial and operating policies;
- (b) being in a position to cast, or control the casting of, more than [not disclosed]% of the maximum number of votes that may be cast at a general meeting or similar; or
- (c) having a relevant interest (as defined in section 608 of the Corporations Act but as if a reference in that section to "securities" were a reference to Securities as defined in this Agreement) in more than [not disclosed]% of the Securities,

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

Controlling Entity means, in relation to a Change in Control of a Consortium Member, the person or Entity to whom Control will pass.

Cordon Price or Restriction means any Relevant Price or Restriction that relates to:

- (a) the use of vehicles within; or
- (b) the entry or exit of vehicles to or from,

the area contained within the shaded green portion and within the green boundary line on the map as set out in Schedule 16, or parts thereof.

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

COTS Software means computer software, in which the Intellectual Property Rights are owned by a person other than Project Co or a member of the Transurban Group, that is generally commercially available on commercial terms to members of the public who are willing to pay the appropriate licensing fee, other than any software which forms part of the Subcontractor Material, the Existing Tolling Software or the Firmware.

Counterparty Details means, in connection with each person (other than the State, the Project Proponent, the Commonwealth Bank of Australia, Independent Payment Certifier, a Utility and the Independent Reviewer and Environmental Auditor) who is a party to a State Project Document:

- (a) a certified copy of its constitution (or other constituent documents);
- (b) in the case of a trustee who enters into the State Project Documents on behalf of a trust, a certified copy of the relevant trust deed;
- (c) a certified copy of any powers of attorney under which the person executed each State Project Document; and
- (d) a certified copy of the extract of minutes or circular resolution evidencing the resolutions of its board of directors, authorising the entry into, delivery and observance of obligations in accordance with each State Project Document to which it is a party.

Critical Systems means each of the Operations Management and Control System, Asset Management System and the RSS (as defined in the PSR) and Tolling System.

D&C Activities means all things which Project Co is, or may be, required to carry out or do:

- (a) in connection with the Works; or
- (b) to otherwise comply with its obligations under the State Project Documents during the D&C Phase,

but excludes the O&M Activities.

D&C Direct Deed means the document entitled "D&C Direct Deed - West Gate Tunnel" between the State, Project Co, TIML, the D&C Subcontractor and the Parent Guarantor in respect of the D&C Subcontractor.

D&C Early Activities has the meaning given in the Western Distributor Commitment Deed.

D&C Phase means the period commencing on the date of this Agreement and ending on the on the expiry of the Last DLP (as defined in the D&C Subcontract).

D&C Phase Insurances means the Insurances referred to in Part A of the Insurance Schedule.

D&C Program means a program of the D&C Activities (other than the OpCo D&C Phase IRS Activities) containing the details required by the PSR or which the Independent Reviewer and

Environmental Auditor otherwise reasonably requires, as prepared and updated in accordance with this Agreement.

D&C Program Activity Item means the activity items that:

- (a) are allocated to a Category of Works; and
- (b) are included in the:
 - (i) the Bid D&C Program; or
 - (ii) a D&C Program which has been submitted for review in accordance with the Review Procedures and has not been rejected in accordance with section 4.2 of the Review Procedures.

D&C Rectification Period means, in respect of any part of the Works, the period which commences on the date of this Agreement and expires on the expiry of the Defects Liability Period (as defined in the D&C Subcontract) which is applicable to that part of the Works.

D&C Subcontract means the agreement between Project Co, the State, NewCo and the D&C Subcontractor to carry out the D&C Activities (other than the OpCo D&C Phase IRS Activities and the Tolling Works) including that agreement as acceded to by TIML pursuant to the CLUT Deed of Accession and any other contract between Project Co and a Subcontractor to carry out the D&C Activities (other than the OpCo D&C Phase IRS Activities and the Tolling Works).

D&C Subcontract Price means the contract price for the delivery of the Works identified as such in the D&C Subcontract.

D&C Subcontractor means, as at the date of this Agreement, the party specified in item 2 of the Contract Particulars and any person who in addition or substitution is engaged by Project Co to carry out all, or substantially all, of the D&C Activities (other than the OpCo D&C Phase IRS Activities).

Date for Close-Out means the date specified in item 3 of the Contract Particulars as adjusted (if at all) in accordance with this Agreement.

Date for Tolling Completion means the date specified in item 4 of the Contract Particulars as adjusted (if at all) in accordance with this Agreement.

Date for West Gate Tunnel Completion means the date specified in item 5 of the Contract Particulars as adjusted (if at all) in accordance with this Agreement.

Date of Handback means the date specified in Project Co's notice in accordance with clause 20.3(c)(ii).

Date of Close-Out means the date upon which the Independent Reviewer and Environmental Auditor signs the Certificate of Close-Out.

Date of Parliamentary Support (CityLink) means the date when all of the following have occurred:

- (a) the CityLink and ESEP Concession Amending Deeds have been signed and tabled in each House of Parliament;
- (b) the Revocation Period has ended without any revocation (whether in whole or in part) of the CityLink and ESEP Concession Amending Deeds; and
- (c) all conditions precedent to the CityLink and ESEP Concession Amending Deeds have been satisfied or waived.

Date of Tolling Completion means the date upon which the Independent Reviewer and Environmental Auditor signs the Certificate of Tolling Completion.

Date of West Gate Tunnel Completion means the date upon which the Independent Reviewer and Environmental Auditor signs the Certificate of West Gate Tunnel Completion.

Day 1 Clauses has the meaning given in clause 3.1.

Day 1 Uninsurable Risk means:

- (a) war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection, military commotion or other like hostilities;
- (b) chemical, nuclear or biological contamination;
- (c) ionising radiation or contamination by radioactivity; and
- (d) any act of terrorism, except to the extent a declaration is made under the *Terrorism Insurance Act 2003* (Cth),

save to the extent caused or contributed to by Project Co or any of its Associates.

DCOM Interface Deed means the document entitled “DCOM Interface Deed - West Gate Tunnel” between the D&C Subcontractor, OpCo and Project Co.

Deed of Accession means a deed substantially in the form set out in the Utilities Schedule, under which Project Co agrees to accede to a Utility Agreement.

Default Termination Event means any of the following events:

- (a) **(abandonment)**: Project Co permanently abandons, either wholly or substantially, the D&C Activities or the O&M Activities;
- (b) **(Project Co or Group Member Insolvency Event)**: an Insolvency Event occurs in relation to:
 - (i) Project Co; or
 - (ii) Funding Co, Transurban Holdings Limited or Transurban Holding Trust , where such event occurs at any time before the Date of West Gate Tunnel Completion;

and, in the case of an Insolvency Event under paragraph (a)(iv) or (a)(vii) of the definition of Insolvency Event, Project Co has not remedied the event within 10 Business Days of the occurrence of that Insolvency Event, provided that where Funding Co has taken steps to enforce its rights under the Finance Documents in respect of such an Insolvency Event, Project Co will not have the benefit of the 10 Business Days period to remedy the Insolvency Event and the Default Termination Event will arise immediately upon Funding Co taking those steps.

- (c) **(assignment, transfer or disposal)**: Project Co breaches its obligations under clause 49.1(a)(i) and does not rectify such breach within 90 days of the State giving Project Co a notice which contains details of the breach;
- (d) **(Share Capital Dealing)**: subject to clause 49.4(b), Project Co breaches its obligations under clause 49.2(a) and does not rectify such breach within 90 days of the State giving Project Co a notice which contains details of the breach;

- (e) **(unremedied Major Default)**: a Major Default is capable of remedy and Project Co fails to remedy the Major Default within the period set out in the Major Default Notice (as extended, if at all, in accordance with clause 41.2(f));
- (f) **(Major Default not capable of remedy)**: a Major Default is not capable of remedy and Project Co fails to diligently comply with any reasonable requirements of the State to overcome the consequences of the Major Default within the time stated in the notice given by the State in accordance with clause 41.1(b)(ii)B (as extended, if at all, under clause 41.2(f));
- (g) **(failure to achieve West Gate Tunnel Completion by the Sunset Date)**: Project Co fails to achieve West Gate Tunnel Completion by the Sunset Date; and
- (h) **(deemed Default Termination Event)**: any other event which is expressly deemed to be a Default Termination Event in accordance with this Agreement.

Default Termination Payment means the Termination Payment for a Termination for a Default Termination Event in accordance with the Termination Payments Schedule.

Defect means:

- (a) any defect, damage, fault or omission (including shrinkage, expansion, fading or settlement) in:
 - (i) the Relevant Infrastructure; or
 - (ii) any Returned Facility,(including any Settlement Defect) although excluding any such things which would have been accommodated in accordance with Best Industry Practices; or
- (b) any other aspect of:
 - (i) the Relevant Infrastructure or the Project Activities; or
 - (ii) any Returned Facility,

which is not in accordance with the requirements of this Agreement.

Deliverable means any tangible and intangible information, document, report, software (including source and object code), data or other materials provided or required to be provided by or for Project Co or any of its Associates to the State in accordance with the State Project Documents.

Design and Development Overlay means Design and Development Overlay Schedules 13 and 14 of the Maribyrnong Planning Scheme and Design and Development Overlay Schedules 15 and 16 of the Hobsons Bay Planning Scheme, as gazetted by Amendment GC65 on 7 December 2017.

Design Documentation means all Deliverables produced as a part of or relating to the design of any Works (including all draft and final design standards, design reports, durability reports, drawings, specifications, manuals, designs, models, samples, patterns and calculations) in computer readable and written forms, or stored by any other means, which Project Co or any of its Associates creates, or are required to, or must necessarily, create, in carrying out the D&C Activities.

Design Management Plan means the plan relating to the design of the Works in accordance with section 2.1(c) of the Project Plans and O&M Manuals Section.

Design Review Process means the process for the development of the design of the Works to be implemented in accordance with the Design Review Section.

Design Review Section means Part F5 of the PSR.

Designated Investor means Transurban Holdings Limited.

Detailed Design Package has the meaning given in the PSR.

Direct Interface Agreement means any arrangement entered into by the D&C Subcontractor with any Direct Interface Party during the D&C Phase, including in relation to access periods, occupations and other site access conditions for the purpose of the Rail Interface Works.

Direct Interface Party means any:

- (a) Category 1 Rail Interface Party; and
- (b) Category 2 Rail Interface Party.

Dispute has the meaning given in clause 43.1(a).

Distribution means, without double counting, any:

- (a) dividend, return of capital, or other distribution or payment (in cash or in kind) in connection with the share capital or, units or partnership interest of a Group Member or shareholder loans (or other loans in the nature of equity funding) to, or for the benefit of, a Group Member;
- (b) release by a Group Member of any actual or contingent liability of any Equity Investor (or any Related Body Corporate of an Equity Investor); or
- (c) payment, loan or transfer of any assets or provision of any other benefit by a Group Member to any Equity Investor (or any Related Body Corporate of any Equity Investor) which is not on arm's length commercial terms.

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

Early Termination Payment means the Termination Payment for a Termination for an Early Termination Event in accordance with the Termination Payments Schedule.

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

Election Date means, for each Pre-Agreed Modification, the relevant date specified as the "Election Date" in the Pre-Agreed Modification Schedule, or such other date as may be agreed by the parties.

Enforcement Payments Schedule means Schedule 40.

Engineering Cadets means those persons who are combining formal university training in an engineering or related discipline with practical work experience.

Enterprise-wide Subcontract means a Subcontract entered into between a member of the Transurban Group and a Subcontractor who is not a member of the Transurban Group for both:

- (a) the performance of all or part of the O&M Activities that are the subject of a Service Agreement; and
- (b) the supply of goods or services, or granting of rights used to supply those goods or services for at least one other toll road operated by a member of the Transurban Group, such other toll road not being limited to CityLink.

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

Environment means the physical factors of the surroundings of humans and other life forms, including the land, soil, plants, habitat, waters, atmosphere, climate, sounds, odours, tastes, biodiversity and the social factor of aesthetics.

Environmental Effects Statement means the environment effects statement prepared under the *Environment Effects Act 1978* (Vic) for the West Gate Tunnel.

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

Environmental Management Plans means the plans relating to environmental management prepared and updated by Project Co in accordance with the Project Plans and O&M Manuals Section.

Environmental Management System has the meaning given in the PSR.

Environmental Requirements means:

- (a) all Laws relating to the Environment and the conditions and requirements of any Approval relating to the Environment;
- (b) the conditions and requirements identified:
 - (i) in Part H21 of the PSR; and
 - (ii) without limiting clause 8.3(b), the Incorporated Document; and
- (c) all environmental safeguards and measures reasonably necessary to avoid, reduce, minimise or mitigate the environmental impacts of the Project Activities, having regard to those Environmental Requirements set out in paragraph (a).

EPA means the Environment Protection Authority established under the *Environment Protection Act 1970* (Vic).

Equity Documents means:

- (a) the Equity Subscription Deed;
- (b) the Project Co Equity Note Deed Poll; and
- (c) any other document which the parties agree is an Equity Document for the purposes of this Agreement.

Equity Investor means:

- (a) a person identified in the Ownership Schedule as at the date of this Agreement (subject to any replacements in accordance with clause 49);

- (b) each other person who has provided or has agreed to provide:
 - (i) equity funding at the times and in the amounts set out in the Base Case Financial Model (whether by way of subscription for units or shares or provision of unitholder or shareholder loans); and
 - (ii) any other equity, financial arrangement, security or option issued by or provided to a Group Member which does not constitute a Refinancing; or
- (c) any person who replaces or is added, in accordance with clause 49, to the persons referred to in paragraph (a) or (b),

provided that:

- (d) the Company and Clepco in their respective capacities as counterparties to the Concession Enhancement Payment Deed, and TIML (in its capacity as trustee for the CityLink Trust) in its capacity as a counterparty to the CLUT Works Loan Agreement; and
- (e) the State,

are not Equity Investors for the purposes of this Agreement.

Equity Subscription Deed means the document entitled "Equity Subscription Deed" between the State, TIML in its capacity as responsible entity of the Transurban Holding Trust, TIML in its capacity as trustee for the CityLink Trust, Transurban Holdings Limited and Project Co.

Escrow Agreement means Attachment 1 to the Post Close IP Deliverables Schedule.

ESEP Deed means the deed entitled 'Agreement for the Exhibition Street Extension Project' dated 22 April 1998 between the State and Clepco, including all exhibits to that deed.

ETR Act means the *Education and Training Reform Act 2006* (Vic).

Existing Structural Asset has the meaning given in the PSR.

Existing Tolling Software means all Third Party Software forming part of the Tolling System (as defined in the CityLink Concession Deed) as at the date of this Agreement, together with any update, upgrade or new release of that Third Party Software (including in connection with the Tolling Works), subject to clause 52.2(m) of Schedule 33.

Expert Determination Agreement means Schedule 14.

Expiry Date has the meaning given in clause 4.2.

Explanation has the meaning given in clause 23.2(c)(i)A.

Extension Event means each of the following events:

- (a) a Compensable Extension Event;
- (b) a Force Majeure Event; and
- (c) a Rebuilding Event,

occurring between:

- (d) in connection with an M80 Interface Design Activity, Financial Close and the date of achievement of the relevant M80 Interface Design Activity Milestone;

- (e) in connection with West Gate Tunnel Completion, Financial Close and the Date of West Gate Tunnel Completion;
- (f) in connection with Tolling Completion, Financial Close and the Date of Tolling Completion; and
- (g) in connection with Close-Out, Financial Close and the Date of Close-Out.

Extra Construction Land means:

- (a) CityLink Construction Land; and
- (b) all other areas upon which the D&C Activities (other than D&C Activities relating solely to design) are being carried out or materials are being prepared or stored, excluding the Construction Areas and the CityLink Leased Area.

Extra Maintenance Land means:

- (a) CityLink Maintenance Land; and
- (b) all other areas upon which the O&M Activities are being carried out or materials are being prepared or stored during the O&M Phase, excluding the Maintenance Areas and Leased Area.

Facility Owner means the owner of, or the entity entitled to exercise control with respect to, a Returned Facility and includes, where applicable, a responsible road authority (as defined in the Road Management Act).

FCC has the meaning given in the PSR.

Federal Environmental Law means a Law of the Commonwealth which expressly requires or necessitates the installation, modification or enhancement of air filtration or Contamination control measures for the purposes of the Project (or projects similar to the Project).

FFP Warranty means the warranty given by Project Co in accordance with clause 5.3.

Final Court Ruling means a decision of a court:

- (a) from which no appeal can be taken and in respect of which no application for special leave to appeal can be made; or
- (b) in respect of which the relevant appeal or special leave application period has expired without an appeal being taken or an application for special leave to appeal being made.

Final Expiry Date means 13 January 2045.

Final Payment Certificate (State Works) has the meaning given in the D&C Subcontract.

Final Skills Guarantee Performance Report has the meaning given in clause 57.2(d)(ii).

Finance Direct Deed means the document entitled "Finance Direct Deed Funding Co" between the State, Project Co, Funding Co, NewCo, the Company and Clepco.

Finance Documents means:

- (a) the WGT Co Loan Facility Agreement;
- (b) the Funding Co Security;

- (c) the Finance Direct Deed;
- (d) the NewCo Loan Facility Agreement; and
- (e) any other document which the parties agree is a Finance Document for the purposes of this Agreement.

Finance System means the system in use by Project Co at the relevant time that supports the settlement process between the operators of toll road assets and retailers of toll account and pass products, together with the maintenance of general ledger accounts for asset and retail operations.

Financial Close means when the last Condition Precedent to be satisfied (or waived in accordance with clause 3.3) has been satisfied (or waived in accordance with clause 3.3) as set out in a notice given by the State to Project Co in accordance with clause 3.2(c).

Financial Model means a financial model based on the then current Base Case Financial Model and updated in accordance with clause 50.2.

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

Financial Year (D&C) means each 12 Month period commencing on 1 January and ending on 31 December.

Firmware means any computer software permanently embedded within physical assets (including field devices and devices forming part of the RSS) by being recorded in non-volatile memory.

Fit For Purpose means:

- (a) fit for its intended purposes, functions, uses and requirements, including the carrying out of the O&M Activities during the O&M Phase; and
- (b) otherwise meets the requirements,

as specified in, or reasonably inferred from, the PSR and:

- (c) in the case of the West Gate Tunnel (excluding the Tolling Works and the Remaining Works) and the Maintained Off-Freeway Facilities, as determined by reference to the purposes, functions, uses and requirements (including Laws and Standards) which are current and apply as at the Date of West Gate Tunnel Completion;
- (d) in the case of the Tolling Works, as determined by reference to the purposes, functions, uses and requirements (including Laws and Standards) which are current and apply as at the Date of Tolling Completion;
- (e) in the case of the Returned Facilities, as determined by reference to the purposes, functions, uses and requirements (including Laws and Standards) which are current and apply as at Handback;
- (f) in the case of the Temporary Works, as determined by reference to the purposes, functions, uses and requirements (including Laws and Standards) which are current and apply as at completion of the relevant package of works; and
- (g) in the case of the Remaining Works, as determined by reference to the purposes, functions, uses and requirements (including Laws and Standards) which are current and apply as at the Date of Close-Out.

FMS has the meaning given in the FMS Agreement.

FMS Agreement means the document entitled 'West Gate Tunnel and CityLink FMS Operating Agreement' between the State, Project Co and the CityLink Parties dated on or about the date of this Agreement, including the Interface Protocol, Mutual Device Control Schedule and Key Operating Principles (each as defined in and updated in accordance with the FMS Agreement).

FMS Devices has the meaning given in the FMS Agreement.

FMS Failure means a failure by the State to deliver and maintain the level of functionality in its FMS and FMS Devices which is required by the FMS Agreement or which could reasonably be inferred as being required from the terms of the FMS Agreement, including the Interface Protocol and the Mutual Device Control Schedule (each as defined in the FMS Agreement).

FMS Reference Documents means the VicRoads Managed Motorways Framework and any Reference Documents to the extent that they relate to the operation of the FMS.

Force Majeure Event means each of the following events:

- (a) earthquake, tropical cyclone, natural disaster, landslide, seismic activity, tsunami or mudslide;
- (b) a flood which might, at the date of this Agreement, be expected to occur less frequently than once in every 100 years;
- (c) war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection, military commotion or other like hostilities;
- (d) chemical, nuclear or biological contamination;
- (e) ionising radiation or contamination by radioactivity;
- (f) fire or explosion caused by events referred to in paragraph (a) or (c); or
- (g) an act of terrorism,

which:

- (h) occurs at or directly in the vicinity of the Key Off-Site Areas, Construction Areas, Maintenance Areas, CityLink Maintenance Land, Leased Areas, CityLink Construction Land or Key Operational Areas; and
- (i) prevents Project Co from carrying out all or a material part of the Project Activities in accordance with the State Project Documents or prevents the State from carrying out all or a material part of its obligations in accordance with the State Project Documents.

Force Majeure Termination Event means:

- (a) a Force Majeure Event which prevents Project Co from carrying out all or a material part of the Project Activities in accordance with the State Project Documents for a continuous period exceeding 6 months;
- (b) on or after the Date of West Gate Tunnel Completion, a State Force Majeure Termination Event;

- (c) prior to the Date of West Gate Tunnel Completion, a Force Majeure Event which prevents the State from carrying out all or a material part of its obligations under the State Project Documents for a continuous period exceeding 6 months; and
- (d) any event expressly deemed to be a Force Majeure Termination Event in accordance with this Agreement.

Foreign Toll Operator means any entity (other than Project Co) operating a toll road in Australia.

Franchise Agreement means:

- (a) Franchise Agreement - Train, dated 2 October 2017 entered into between Public Transport Victoria and Metro Trains Melbourne Pty Ltd ACN 136 429 948, which comprises, amongst others, the Franchise Agreement - Train Projects Module and the Franchise Agreement - Train Infrastructure Module, as amended by the Amendment Deed (No. 1) Franchise Agreement - Train dated 28 November 2017; and
- (b) Franchise Agreement - Tram, dated 2 October 2017 entered into between Public Transport Victoria and KDR Victoria Pty Ltd ACN 138 066 074, which comprises, amongst others, the Franchise Agreement - Tram Projects Module and the Franchise Agreement - Tram Infrastructure Module, as amended by Amendment Deed (No. 1) Franchise Agreement - Tram dated on or about 28 November 2017, and Amendment Deed (No. 2) Franchise Agreement - Tram dated on or about the date of this Agreement.

Freeway means the primary road connecting the West Gate Freeway with the Port of Melbourne, CityLink and the central city, including the upgraded section of the West Gate Freeway between the M80 Interchange and Williamstown Road, and includes all Lanes, Ramps, road tunnel ventilation systems and stacks, signage, barriers, and other physical infrastructure required for the road completed in accordance with this Agreement, on or in the Leased Area, other than the Tolling Back Office System, OMCS Back Office and the Asset Management System.

Funding Co means Transurban Funding Pty Ltd (ACN 609 949 337).

Funding Co Security means the document entitled "General Security Deed" between Project Co and Funding Co.

Government Directed Benefit means:

- (a) a change in the infrastructure, management or operation of all or any part of the Melbourne transportation network (including the public transport network), the implementation of a policy that affects the whole or any part of that network, or the exercise of any right or power to which clause 26.3 applies; or
- (b) the acceleration or early adoption or implementation of such a change or such a thing,

the adoption, implementation, exercise or acceleration of which:

- (c) is specifically for the purpose of redressing (in whole or in part) the Relevant Effect of a Key Risk Event;
- (d) occurs after that Key Risk Event; and
- (e) Project Co cannot transparently demonstrate to the State has been fully factored into the Base Case Financial Model (as at the date of this Agreement).

Government Legal Requirement has the meaning given in the Port Land Deed.

Government Party or Parties means all and any of the State, and any Authority.

Greater Melbourne Area means the geographical area within the map entitled 'Enlargement 2' as set out in Schedule 32.

Groundwater Management Plan has the meaning given in section 4.1(d) of Part C of the PSR.

Groundwater Settlement Date means the date on which the D&C Subcontractor is no longer required to comply with its obligations under clause 7.5(a) of the D&C Subcontract.

Group means:

- (a) Project Co;
- (b) any wholly owned subsidiary of Project Co and NewCo; and
- (c) NewCo,

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

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

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

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

GST Law has the meaning given in the GST Act.

Handback means where Project Co has done everything that this Agreement requires to enable Project Co to hand back the relevant Returned Facility to the State or Facility Owner in accordance with clause 20.3.

Handover means the stage when Project Co has done everything that this Agreement requires to enable Project Co to handover the Relevant Infrastructure in the Handover Condition in accordance with clause 28.6.

Handover Bond has the meaning given in clause 28.4(i)(ii).

Handover Bond Reference Amount has the meaning given in clause 28.4(e)(iv).

Handover Condition has the meaning given in clause 28.3.

Handover Matters Agreement Notice has the meaning given in clause 28.5(d)(i).

Handover Matters Disagreement Notice has the meaning given in clause 28.5(d)(ii).

Handover Matters Notice has the meaning given in clause 28.5(c).

Handover Reviewer means a person with suitable expertise and experience appointed as the independent reviewer for Handover in accordance with clause 28.4(a).

Handover Services has the meaning given in clause 28.4(e)(i).

Hazardous Substance means any substance which would or might reasonably be expected to cause damage or injury to any person, any property or the Environment.

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

House of Parliament means each of the Legislative Assembly and the Legislative Council of the Parliament of Victoria.

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

IFC Design Documentation means design documentation issued for construction in accordance with section 2.5 of the Design Review Section.

Incident means any event which:

- (a) involves personal injury, death or significant damage to or destruction of the Relevant Infrastructure or other property in connection with delivery of the Project;
- (b) poses a serious risk to:
 - (i) the health or safety of any person;
 - (ii) the Environment;
 - (iii) the Freeway; or
 - (iv) the structural integrity of any part of the Relevant Infrastructure,or poses a serious risk of damaging or destroying the Relevant Infrastructure or any other property;
- (c) prevents or hinders the Freeway or any part of it from being open to the public for the safe, continuous and efficient passage of vehicles; or
- (d) requires an urgent response to prevent any occurrence which could:
 - (i) cause personal injury or significant damage to or destruction of the Relevant Infrastructure or other property; or
 - (ii) compromise the health or safety of any person or property.

Incorporated Document means the 'West Gate Tunnel Project Incorporated Document dated December 2017' incorporated by the Planning Scheme Amendment in the Schedule to Clause 52.03 and the Table to Clause 81.01 of the Melbourne, Hobsons Bay, Maribyrnong, Port of Melbourne, Brimbank and Wyndham Planning Schemes in relation to the Project or the Project Activities as at the date of this Agreement, as amended or substituted from time to time.

Indemnified Persons has the meaning given in clause 52.4(f).

Independent Payment Certifier has the meaning given in the D&C Subcontract.

Independent Payment Certifier Deed of Appointment means the document entitled "Independent Payment Certifier Deed of Appointment – West Gate Tunnel" between the State, TIML, Project Co, the D&C Subcontractor and the Independent Payment Certifier.

Independent Reviewer and Environmental Auditor means the entity appointed as the Independent Reviewer and Environmental Auditor under the Independent Reviewer and Environmental Auditor Deed of Appointment, as replaced (if at all) under clause 9.7.

Independent Reviewer and Environmental Auditor Deed of Appointment means the document entitled "Independent Reviewer and Environmental Auditor Deed of Appointment -

West Gate Tunnel" between the State, Project Co and the Independent Reviewer and Environmental Auditor.

Index means each index set out in the Indexes Schedule.

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

Indexes Schedule means Schedule 20.

Indirect or Consequential Loss means any:

- (a) loss of opportunity, profit, anticipated profit, business, business opportunities, revenue or any failure to realise anticipated savings;
- (b) penalties payable by the State or any of its Associates under agreements other than any State Project Document; or
- (c) penalties payable by Project Co or any of its Associates under agreements other than any State Project Document.

Industrial Special Risks Insurance means the Insurance policy for industrial special risks set out in Part B, section (a) of the Insurance Schedule.

Industrial Waste means any waste arising from commercial, industrial or trade activities and any waste containing substances or materials which are potentially harmful to any person, any property or the Environment.

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

Information Protection Agreement means an agreement between Project Co and VicRoads relating to disclosure to Project Co of information collected or received by VicRoads in relation to its registration or licensing functions and activities.

Infrastructure Lease means any of:

- (a) the Franchise Agreement - Train Infrastructure Module included in the Franchise Agreement;
- (b) the Franchise Agreement - Tram Infrastructure Module included in the Franchise Agreement; and
- (c) the Infrastructure Lease - V/Line entered into between Public Transport Victoria and V/Line Pty Ltd dated 8 September 2014 as amended and restated.

Initial WGT Traffic Management Plan means the plan of that name attached to the WGT-M80 Interface Agreement as at the date of this Agreement.

Input Tax Credit has the meaning given in the GST Act and where appropriate includes amounts accounted for in the same way as input tax credits in any calculation of Notional GST.

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

- (a) subject to paragraph (b) in the case of a trust, in relation to an Entity:
 - (i) **(liquidator, administrator or receiver appointed)**: a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of the Entity or any asset of the Entity;

- (ii) **(distress or execution)**: a distress, attachment or other execution is levied or enforced upon or against any assets of the Entity and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days;
 - (iii) **(winding up)**: an order is made for the administration, dissolution or winding up of the Entity, or an application to the courts is made (and is not stayed or dismissed within 20 Business Days after being made) or a resolution is passed for the administration, dissolution or winding up of the Entity other than for the purposes of a Solvent reconstruction or amalgamation on terms approved by the State Representative;
 - (iv) **(cessation of business)**: the Entity ceases, or threatens to cease, to carry on its business or payment of its debts generally, other than for the purposes of a Solvent reconstruction or amalgamation on terms approved by the State Representative;
 - (v) **(arrangement or compensation)**: the Entity enters, or resolves to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a Solvent reconstruction or amalgamation on terms approved by the State Representative;
 - (vi) **(inspector)**: an inspector is appointed under any companies legislation to investigate all or any part of the affairs of the Entity in relation to a possible contravention by the Entity of that legislation and the appointment:
 - A. is not withdrawn within 10 Business Days; and
 - B. in the reasonable opinion of the State Representative, may have a material adverse effect;
 - (vii) **(insolvency)**: the Entity is unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable Law (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute); or
 - (viii) **(deregistration)**: for a registered corporation under the Corporations Act, a step taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration; and
- (b) in relation to a trust:
- (i) **(application to court)**: an application or order is sought or made (and is not stayed or dismissed within 20 Business Days after being sought or made) in any court for the property of the trust to be brought into court or administered by the court or brought under its control; or
 - (ii) **(assets insufficient)**: the assets of the trust are not sufficient to satisfy the trustee's debts (excluding debts which are the subject of a good faith dispute) 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.

Insurance Schedule means Schedule 12.

Insurances means the insurances required to be effected and maintained in accordance with this Agreement.

Insured means any person entitled to coverage under any of the Insurances as referred to in the Insurance Schedule.

Integration Services means the integration of the B2B Integration Systems and the Finance System with the Tolling Back Office System.

Intellectual Property Rights includes:

- (a) all copyright and analogous rights;
- (b) 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
- (c) 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 Agreement and whether existing in Australia or otherwise.

Interface Party or **Interface Parties** has the meaning given in clause 10.7(a).

Interim Skills Guarantee Performance Report has the meaning given in clause 57.2(d)(i).

Interstate Infrastructure Lease means the Interstate Infrastructure Lease entered into between Public Transport Victoria and Australian Rail Track Corporation Ltd dated 20 October 2000 as amended and restated.

IREA Cap means \$[not disclosed].

IRS Agreement means the document entitled 'Incident Response Services Agreement' to be entered into between OpCo and VicRoads in accordance with the OSA Direct Deed.

Key Approval means each of the following Approvals procured by the State in relation to the West Gate Tunnel:

- (a) the Planning Scheme Amendment or, in the circumstances of a PSA Event, an Alternative Approval;
- (b) the Minister's Assessment;
- (c) the Works Approval;
- (d) the Project CHMP;
- (e) a declaration under the Relevant Legislation that the Project is a declared project to which the Relevant Legislation applies; and
- (f) the designation by the Victorian Minister of Planning of the Project Area for the Approved Project under the Relevant Legislation.

Key Approval Event means:

- (a) legal action being taken in connection with a Key Approval;
- (b) any review or revocation of, or change to, a Key Approval (other than a PSA Event); or

- (c) any review or revocation of, or change to, an Approval (other than a Key Approval) or a new Approval, consequent on the circumstances specified in paragraphs (a) and (b),

but does not include:

- (d) legal action being taken, or any review or revocation of, or change to a Key Approval, for any breach or alleged breach (which is later established to be a breach) of a Key Approval by Project Co or any of its Associates; or
- (e) any amendment to the Key Approvals after the date of this Agreement as a direct consequence of the State making the Additional Land Parcels available to Project Co in accordance with clauses 6.2(d) and 6.2(e), including the amendment of the Project CHMP under clause 8.1(g).

Key Off-Site Areas means:

- (a) the precast yards leased by Project Co for the purposes of the Project; and
- (b) any area where a tunnel boring machine to be used in the carrying out of the D&C Activities is being fabricated, transported, assembled or delivered, other than the Construction Areas.

Key Operational Areas means:

- (a) the Burnley site office encompassing all of the land in Crown Allotment 1C of 39A, Parish of Jika Jika, City of Richmond as shown on OP 121635-A; and
- (b) 49 Balston Street, Southbank VIC 3006.

Key People means:

- (a) the people specified in item 6 of the Contract Particulars; and
- (b) the people notified to, and approved by, the State in accordance with clause 10.1(b), to be employed or engaged in the roles specified in item 6 of the Contract Particulars,

as replaced (if at all) in accordance with clause 10.1(a)(v).

Key Risk Event means:

- (a) each of the following events:
 - (i) an act or omission of the State which prevents, hinders or disrupts the ability of Project Co or its Associates to levy and collect tolls, fees and charges as permitted by the State Project Documents;
 - (ii) a date on or prior to the Date of Tolling Completion has not been fixed by Order of the Governor in Council published in the Government Gazette or otherwise in accordance with the Project Legislation, as the day on which tolling of the Freeway is to commence;
 - (iii) the Freeway has not been declared to be a road under section 193 of the Relevant Legislation by the Date of West Gate Tunnel Completion, or the declaration is revoked in whole or in part in respect of a part of the Leased Area after the Date of West Gate Tunnel Completion without the agreement of Project Co;

- (iv) the Governor in Council has not declared Project Co to be the "West Gate Tunnel Corporation" under the Project Legislation by the Date of West Gate Tunnel Completion;
 - (v) the Governor in Council has not declared OpCo to be the "West Gate Tunnel operator" under the Project Legislation by the later of the Date of West Gate Tunnel Completion and 20 Business Days after a request from Project Co; and
 - (vi) the State fails to cause to be prescribed any of the matters which it must use reasonable endeavours to cause to be prescribed as listed in clause 31.2 or 31.3 by the Date of Tolling Completion;
- (b) the cessation or suspension of any part of the O&M Activities, or a change in the way the O&M Activities are carried out, because of a government direction or a requirement of Law in connection with a Heritage Claim or Native Title Claim (as the case may be) (other than an event described in paragraph (s));
 - (c) a Key Approval Event;
 - (d) a Project Specific Change in Mandatory Requirement (other than an event described in paragraph (a) or (h));
 - (e) the first set of minimum requirements for civil debt recovery approved by the Minister and published in the Government Gazette for the purpose of the Project Legislation, is different to the minimum requirements for civil debt recovery set out in Schedule 35, and that difference is not immaterial;
 - (f) any subsequent minimum requirements for civil debt recovery approved by the Minister and published in the Government Gazette, after the first such publication, for the purpose of the Project Legislation are different to the minimum requirements for civil debt recovery in place immediately prior to the publication of the revised minimum requirements, and that difference is not immaterial;
 - (g) an Accident Towing Licence Event;
 - (h) each of the following events:
 - (i) a Project Specific Change in Mandatory Requirements which is a Change in Tolling Law; and
 - (ii) the use of the Freeway by autonomous vehicles (including vehicles without drivers) is permitted, but there is no Change in Law to enable Project Co or its Associates to levy and collect tolls and charges in respect of such use (including the ability of Project Co or its Associates to request, and expect, service of an infringement notice in relation to the evasion of tolls and the enforcement of the offence the subject of that infringement notice), in the same manner as prior to the use of the Freeway by autonomous vehicles;
 - (i) a Change in Mandatory Requirements which implements or changes a Road Network Price or Restriction;
 - (j) a Change in Federal Environmental Law;
 - (k) a Force Majeure Event that is a Day 1 Uninsurable Risk or an Uninsurable Risk;
 - (l) where the State steps-in as a result of a Catastrophic Event;
 - (m) a court makes a Final Court Ruling;

- (i) relating solely to Laws which it is in the legislative power of the State to change; and
 - (ii) which has not been made as a result (in whole or in part) of a breach by Project Co or its Associates of the Project Documents or some other wrongful act or omission by Project Co or its Associates,

which prohibits or prevents Project Co from undertaking all, or substantially all, of the Project Activities in the manner contemplated by this Agreement;
- (n) the offence of failing or refusing to pay the toll for the use of the Freeway is not enforced, or recovery procedures are not pursued, by the State or its Authorities, in each case in a manner which in substance achieves a similar outcome to that which would reasonably be expected by an operator of a private tollway in Victoria, having regard to the enforcement and recovery procedures and practices implemented by the State and its Authorities in relation to the offence of failing or refusing to pay the toll for the use of private tollways prior to the date of this Agreement and the enforcement and infringement regime implemented by the Project Legislation as at the Project Legislation Commencement Date;
- (o) a single Contamination Modification Event or series of Contamination Modification Events related to, or a consequence of, a single event giving rise to the series of Contamination Modification Events (other than an event described in paragraph (s));
- (p) subject to clause 34.12(b), the State issues a notice pursuant to clause 34.4(b)(v) in relation to a Latent Condition Event;
- (q) the State fails to provide support to the Freeway as required under clause 26.1;
- (r) a Change in Law, an Act of Prevention (as that term is defined in the CityLink Concession Deed), a breach by the State of the CityLink Concession Deed, or the State directs a Variation (as that term is defined in the CityLink Concession Deed) under the CityLink Concession Deed without the agreement or consent of the CityLink Parties, which prevents the CityLink Parties from affording the lower of:
 - (i) the level of support that the CityLink Parties had been providing prior to the Change in Law, Act of Prevention (as that term is defined in the CityLink Concession Deed), breach by the State of the CityLink Concession Deed or Variation (as that term is defined in the CityLink Concession Deed) (as applicable); and
 - (ii) a level of support to the Freeway that is consistent with the level of support that the State must afford to the Freeway in accordance with clause 26.1;
- (s) each of the following events:
 - (i) a single Contamination Modification Event or series of Contamination Modification Events related to, or a consequence of, a single event giving rise to the series of Contamination Modification Events; or
 - (ii) the cessation or suspension of any part of the O&M Activities, or a change in the way the O&M Activities are carried out, because of a government direction or a requirement of Law in connection with a Heritage Claim or Native Title Claim (as the case may be),

in relation to any part of the Additional MOFF Areas; and

- (t) any other event which is expressly deemed to be a Key Risk Event in this Agreement.

Key Risk Event Notice has the meaning given in clause 27.1.

Key Subcontract means:

- (a) the D&C Subcontract;
- (b) the Operating Services Agreement; and
- (c) any Subcontract in respect of the Project Activities as specified in item 7 of the Contract Particulars,

as replaced in accordance with clause 10.1(a)(iv).

Key Subcontractor means:

- (a) the D&C Subcontractor;
- (b) OpCo; and
- (c) any Subcontractor who is engaged to perform the Project Activities as specified in item 8 of the Contract Particulars,

as replaced in accordance with clause 10.1(a)(iv).

Key Subcontractors (D&C) means:

- (a) SICE in respect of the ITS / motorway network communications system / plant management and control system– cabling and equipment design (Transurban);
- (b) Visionstream in respect of the ITS – cabling and equipment design (VicRoads);
- (c) Freyssinet Australia – Freyssinet International Joint Venture in respect of the precast segmental erection;
- (d) Aurecon Jacobs Joint Venture as lead design consultant; and
- (e) Kapsch in respect of the RSS.

KPI means a key performance indicator as set out in Part C of Schedule 3.

KPI Assessment System has the meaning given in clause 32.1(a).

KPI Audit Notice has the meaning given in clause 32.4(b).

KPI Auditor has the meaning given in clause 32.4(c)(i).

KPI Auditor's Report has the meaning given in clause 32.4(d).

KPI Benchmark means the performance benchmarks in respect of each KPI as set out in Part C of Schedule 3.

KPI Data means the data contemplated under clauses 32.3(a)(iii) and 32.3(a)(iv).

KPI Event means, in respect of a KPI, a failure to meet the KPI Benchmark for that KPI, measured at the time and in the manner set out in Part C of Schedule 3.

KPI Liability has the meaning given in section 2 of Part B of Schedule 3.

KPI Points means the points accrued by Project Co in accordance with Part C of Schedule 3 in respect of each KPI Event.

KPI Points Cap(s) has the meaning given in section 3 of Part B of Schedule 3.

KPI Regime means the regime for the measurement of Project Co's performance and the associated rights and obligations of the parties in respect of the KPIs and the applicable KPI Benchmarks as set out in clause 32 and Schedule 3.

Land Availability Plans means the land availability plans set out in:

- (a) the Property Schedule; and
- (b) in respect of the Additional Land Parcels, Table H15.2 and Table H15.3 of Part H15 and Part K22 of the PSR,

as amended from time to time in accordance with clause 6.3.

Lane means a lane of the Freeway and includes any shoulder used as an emergency stopping lane.

Latent Condition Event means the discovery or encountering of any latent defect in, or any other physical condition of, any Existing Structural Assets forming part of the Relevant Infrastructure except to the extent:

- (a) that the defect or condition:
 - (i) was assumed or foreseen by Project Co; or
 - (ii) should have been assumed or foreseen by a prudent, competent and experienced operation and maintenance service provider exercising Best O&M Practices,

to arise, or to be likely to arise, during the O&M Phase; or

- (b) that the defect or condition:
 - (i) was required to be rectified; or
 - (ii) would have been required to be rectified if Project Co had properly carried out all such testing and investigations required by the PSR in accordance with the Agreement,

as part of Project Co's obligations during the period up to or as a condition of West Gate Tunnel Completion, including:

- (iii) sections 3.1 and 4 of Part B of the PSR;
- (iv) to comply with Best D&C Practices in carrying out the D&C Activities; and
- (v) to comply with the FFP Warranty.

Law means:

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

- (b) all other statutes, regulations, by-laws, ordinances and subordinate legislation of the Commonwealth, the State or an Authority; and
- (c) Approvals (including any conditions or requirements under them).

LCA Plan has the meaning given in the Construction Licence.

Lease means the lease of the part of the Leased Area for the West Gate Tunnel to be granted by the State to Project Co, in the form set out in Exhibit B.

Lease (NewCo) means the lease of the part of the Leased Area for the West Gate Tunnel to be granted by the State to NewCo, in the form set out in Exhibit BA.

Leased Area means the subdivided stratum (limited in height and depth) which is described in:

- (a) prior to the Lease and the Lease (NewCo) being granted, the Lease Plan; and
- (b) on and from the date the Lease and the Lease (NewCo) is granted, the West Gate Tunnel Lease Plan or the West Gate Tunnel Lease (NewCo) Plan, as applicable (or as otherwise determined in accordance with clauses 6.9(f) to 6.9(g)).

Lease Plan means the Proposed Leased Area Plans set out in the Property Schedule, which identifies the land to be leased to Project Co and NewCo in accordance with the Lease and the Lease (NewCo) respectively, as amended from time to time as a result of the application of the Lease Principles and to become the West Gate Tunnel Lease Plan and the West Gate Tunnel Lease (NewCo) Plan respectively.

Lease Principles means the lease principles contained in Part H16 of the PSR.

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

- (a) actual, prospective or contingent; or
- (b) currently ascertainable or not,

and whether under this Agreement, any other Project Document or arising at Law.

Licensed Construction Areas means that part of the subdivided stratum (limited in height and depth) which is:

- (a) included in the Land Availability Plans; and
- (b) identified in the LCA Plan as amended from time to time in accordance with the Construction Licence.

Licensed Maintenance Areas means those areas which form a part of the Project Land that are Crown land or land owned in fee simple by the Project Proponent over which Project Co requires access for the Permitted Use (as that term is defined in the Maintenance Licence), and which are identified in the Licensed Maintenance Area Plan (limited in height and depth where such limitation is shown on the Licensed Maintenance Area Plan), as amended from time to time in accordance with the Maintenance Licence.

Licensed Maintenance Area Plan has the meaning given in the Maintenance Licence.

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

LIDP Monitoring Table means the table included in the VIPP Schedule.

Low Impact Lane Closure means a lane closure that complies with Schedule 11.

LUA means a land use activity agreement entered into in accordance with the TOS Act.

M80 Contract means the contract entitled "M80 Ring Road Upgrade Design and Construct Contract CN8676" to be entered into by VicRoads and the M80 Contractor.

M80 Contractor means the contractor to be engaged by the State or VicRoads to carry out the M80 Upgrade Project and including that contractor's associates and subcontractors appointed in respect of the M80 Upgrade Project.

M80 Interface Design Activities has the meaning given in Part H24 of the PSR.

M80 Interface Site has the meaning given to the term 'Interface Site' as set out in the WGT-M80 Interface Agreement.

M80 Interface Works has the meaning given in the Pre-Agreed Modification Schedule in respect of the Pre-Agreed Modification relating to the M80 Upgrade Project.

M80 Interface Design Activity Milestones means the following milestones:

| Name and Description of M80 Interface Design Activity Milestone | M80 Interface Design Activity Milestone Date |
|---|--|
| Preliminary Design | |
| Civil Ramps E | 9 April 2018 |
| Drainage Ramps E | 23 April 2018 |
| Ramp B/K Bridge | 16 April 2018 |
| Ramp F/L Bridge | 30 April 2018 |
| Ramp E Bridge | 7 May 2018 |
| Draft Certified Design | |
| Civil Ramps E | 13 August 2018 |
| Drainage Ramps E | 27 August 2018 |
| Ramp B/K Bridge | 13 August 2018 |
| Ramp F/L Bridge | 7 September 2018 |
| Ramp E Bridge | 14 September 2018 |
| IFC Design | |
| Civil Ramps E | 27 September 2018 |
| Drainage Ramps E | 18 October 2018 |
| Ramp B/K Bridge | 11 October 2018 |
| Ramp F/L Bridge | 18 October 2018 |

| | |
|---------------|------------------|
| Ramp E Bridge | 16 November 2018 |
|---------------|------------------|

M80 Interface Design Activity Milestone Dates means the date attached to the relevant M80 Interface Design Activity Milestone.

M80 Traffic Management Plan means the initial and any subsequent M80 traffic management plan prepared in accordance with clause 13.2 (and finalised in accordance with clause 13.2(c)(v)).

M80 Upgrade Project means the design and construction upgrade of the M80 Ring Road from Princes Freeway to Western Highway to provide additional lanes in each direction, structure widening and strengthening, braided ramps, managed motorway infrastructure, traffic barriers, retaining walls, landscaping, urban design and associated works, in accordance with the M80 Contract as at the date of this Agreement. Unless otherwise agreed by Project Co, it does not include any amendments, modifications or supplements to those works or activities after the date of this Agreement.

Maintained Off-Freeway Facilities has the meaning given in the PSR.

Maintenance Areas means the Licensed Maintenance Areas and the Other Maintenance Access Areas.

Maintenance Licence means any licence granted in accordance with clause 6.5(b) in connection with any of the Maintained Off-Freeway Facilities in the form set out in Exhibit D.

Maintenance Principles has the meaning in the PSR.

Major Default means any of the following events:

- (a) **(abandonment)**: Project Co displays an intention to wholly or substantially abandon the D&C Activities or the O&M Activities;
- (b) **(Insolvency Event of Consortium Member)**: an Insolvency Event occurs in relation to a Consortium Member (other than Project Co and, after the Date of West Gate Tunnel Completion, the D&C Subcontractor) and that Consortium Member is not replaced within 6 months (or such longer period agreed) by a party approved by the State;
- (c) **(fraud)**: Project Co or any of its Associates engages in fraud, collusion or dishonest conduct in carrying out their obligations under the Project Documents;
- (d) **(Independent Reviewer and Environmental Auditor Notice)**: the Independent Reviewer and Environmental Auditor notifies the State and Project Co:
 - (i) subject to clause 23.2(ib), that Project Co is not diligently pursuing:
 - A. the Remediation Plan under clause 23.2(f)(i)A; or
 - B. the amended Remediation Plan under clause 23.2(i)(ii)A;
 - (ii) subject to clause 23.2(ib), that the D&C Program is not consistent with the Remediation Plan;
 - (iii) subject to clauses 23.2(g) and 23.2(ia) that:
 - A. the Explanation is not satisfactory under clause 23.2(e)(ii); or

- B. the Remediation Plan does not address its concerns under clause 23.2(f)(ii);
- (iv) subject to clause 23.2(ia), under clause 23.2(i)(i)B, that the amended Explanation is not satisfactory; or
- (v) subject to clause 23.2(ia), under clause 23.2(i)(ii)B, that the amended Remediation Plan is not satisfactory;
- (e) **(fails to provide Explanation or Remediation Plan)**: Project Co fails to provide an Explanation or Remediation Plan within 20 Business Days of receipt of the Non-Compliance Notice;
- (f) **(breach of obligations)**: Project Co or any of its Associates:
 - (i) breaches a material obligation under clause 10 or clause 49 (except for clauses 49.1(a)(i) or 49.2(b)); or
 - (ii) breaches an obligation under clause 59.1(b)(ii) in relation to a Probity Event;
- (g) **(insurance breach)**: a breach by Project Co of a material obligation under clauses 40.1, 40.2, 40.7 or 40.16;
- (h) **(failure to provide bond)**: Project Co fails to procure:
 - (i) a Close-Out Bond in accordance with clause 21.2(b);
 - (ii) an O&M Bond in accordance with clause 25.6(h); or
 - (iii) a Replacement O&M Bond in accordance with clause 25.6(j);
- (i) **(default by Project Co)**: Project Co defaults:
 - (i) in a material respect; or
 - (ii) in a persistent or repeated fashion which has a material adverse effect on Project Co's ability to carry out the Project Activities which has not been remedied within 20 Business Days of the State giving Project Co a notice which contains details of the breach,

in the due observance and performance of:
 - (iii) any of its obligations under any State Project Document, other than under clause 23.1 or clause 23.2; or
 - (iv) any of its obligations under any Finance Document or Equity Document to the extent such default entitles a financier or equity provider to refuse to provide funding under the Finance Document or Equity Document;
- (j) **(material breach by Project Co)**: any breach by Project Co of a State Project Document, other than a breach of clause 23.1 or clause 23.2, which has a material adverse effect on Project Co's ability to deliver the Project;
- (k) **(persistent breach)**: prior to the Date of West Gate Tunnel Completion only, Project Co defaults in the due observance and performance of any of its obligations under any State Project Document in a persistent or repeated fashion (which does not have a material adverse effect on Project Co's ability to carry out the Project Activities) and:

- (i) Project Co fails to provide to the State, within 20 Business Days of the State giving Project Co a notice which contains details of the breach:
 - A. a plan and program for the remediation of the breach that is satisfactory to the State (acting reasonably); or
 - B. a commercial proposal to seek relief from the obligation to remediate part or all of the breach that is satisfactory to the State (acting reasonably and having regard to Best Industry Practices and the standards and practices in use on other privately operated roads in Australia); or
 - (ii) having provided to the State a plan, program or commercial proposal of the type referred to in paragraph (k)(i) of this definition that is satisfactory to the State, fails to comply with that plan, program or commercial proposal;
- (l) **(KPI Liability Cap):** if it is reported in any Quarterly KPI Report or Annual KPI Report that in any full Financial Year after the Date of West Gate Tunnel Completion, Project Co has accrued KPI Points in excess of the maximum annual KPI Points Cap (**KPI Cap Default**) and:
- (i) Project Co fails to provide to the State, within 20 Business Days after the occurrence of the KPI Cap Default:
 - A. a plan and program that is satisfactory to the State (acting reasonably) for the remediation of, or to prevent the reoccurrence of, the events or circumstances that gave rise to the KPI Cap Default; or
 - B. a Modification Proposal in accordance with clause 32.11 in respect of the events or circumstances that gave rise to the KPI Cap Default;
 - (ii) having provided to the State a plan and program of the type referred to in paragraph (l)(i)A of this definition that is satisfactory to the State, Project Co fails to diligently pursue the implementation of that plan and program;
 - (iii) having provided to the State a Modification Proposal under clause 32.11 in respect of which the State issues a Modification Order, Project Co fails to comply with its obligations in relation to that Modification Order; or
 - (iv) having provided to the State a Modification Proposal under clause 32.11, the State elects not to issue a Modification Order, other than where the State has failed to comply with its obligations under clause 32.11(c);
- (m) **(Enterprise-wide Subcontract warranty):** a breach by Project Co of the warranty in clause 10.3B(a);
- (n) **(Post Close IP Deliverables):** a breach by Project Co of clause 3.5; or
- (o) **(deemed Major Default):** any other event which is expressly deemed to be a Major Default in accordance with this Agreement.

Major Default Notice has the meaning given in clause 41.1(b).

Manage means:

- (a) other than in relation to groundwater Contamination:

- (i) to take measures to restore the Environment to the condition required by Law and this Agreement, including the PSR, the Project Plans, the Environmental Requirements and the Groundwater Management Plan;
 - (ii) to remove, disperse, abate, destroy, dispose of, neutralise, remediate, treat or contain; or
 - (iii) to test, monitor, record, manage or assess; and
- (b) in relation to groundwater Contamination:
- (i) to take measures to minimise, manage or mitigate an impact;
 - (ii) to remove, disperse, abate, destroy, dispose of, neutralise, remediate, treat or contain, to the extent groundwater Contamination enters the excavated works; and
 - (iii) to test, monitor, record, manage or assess.

Marine Transit Insurance means the Insurance policy set out in Part A, section (f) of the Insurance Schedule.

Market Led Proposal Guidelines means the guidelines entitled "Market-led Proposal Guidelines" issued by the Department of Treasury and Finance.

Material has the meaning given in clause 52.5.

Material Subcontract means any:

- (a) Subcontract for all or part of the D&C Activities (other than the Tolling Works):
 - (i) the value of the works under which exceeds \$[not disclosed];
 - (ii) which, when aggregated with the value of the works under each other Subcontract for the D&C Activities (other than the Tolling Works) previously entered into by the same Subcontractor (other than the Subcontract in accordance with subparagraph (a)(i)), will result in the total value of those contracts exceeding \$[not disclosed]; or
 - (iii) irrespective of the value of the works, with a Key Subcontractor (D&C),
each a **Material Subcontract (D&C)**;
- (b) Subcontract for all or part of the Tolling Works (other than a Service Agreement):
 - (i) the value of the works under which exceeds \$[not disclosed]; or
 - (ii) which, when aggregated with the value of the works under each other Subcontract for the Tolling Works previously entered into by the same Subcontractor (other than the Subcontract in accordance with subparagraph (b)(i)), will result in the total value of those contracts exceeding \$[not disclosed],
each a **Material Subcontract (Tolling Works)**;
- (c) Subcontract (other than an Enterprise-wide Subcontract and a Service Agreement) for all or part of the O&M Activities:
 - (i) the annual value of which exceeds \$[not disclosed] (Indexed); or

- (ii) which, when aggregated with the annual value of each other Subcontract for O&M Activities which remains in effect and which was entered into by the same Subcontractor in the preceding 12 month period (other than a Subcontract referred to in subparagraph (c)(i)), will result in the total annual value of those contracts exceeding \$[not disclosed] (Indexed),

each a **Material Subcontract (O&M)**; or

- (d) any other Subcontract (irrespective of the value of the works), which relates to the carrying out of the D&C Activities referred to in Schedule 6, whether or not Project Co is a party.

Material Subcontract (O&M – CityLink/WGT) means a Material Subcontract (O&M) under which the Subcontractor provides operation, maintenance, repair and/or tolling goods or services (which may include the provision of licensed materials) in relation to the Project and the CityLink Project only.

Minister's Assessment means the assessment by the Victorian Minister for Planning under the *Environment Effects Act 1978* (Vic) in relation to the Environmental Effects Statement.

Model Litigant Guidelines means the Victorian Model Litigant Guidelines, as amended from time to time.

Model Variation Event has the meaning given in clause 50.3.

Modification means:

- (a) any change to:

- (i) the Relevant Infrastructure; or
- (ii) the Project Activities,

including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Relevant Infrastructure, the Project Activities or any change to or from them including as a result of any Pre-Agreed Modification Election Notice;

- (b) without limiting clause 34:

- (i) a Project Specific Change in Mandatory Requirements; or
- (ii) where Project Co is required to comply with a Change in Policy in accordance with clause 34.7(c), a Change in Policy,

that will or is likely to have an adverse impact on Projected Revenue; and

- (c) a deemed Modification in accordance with clause 34.11.

Modification Estimate has the meaning given in clause 34.3(c)(i).

Modification Order means a direction issued by the State under clause 34.1 which requires Project Co to proceed with a Modification.

Modification Proposal has the meaning given in clause 34.6(a).

Modification Quote means the quote prepared by Project Co in accordance with clause 34.3(c).

Modification Request has the meaning given in clause 34.2.

Month means a calendar month.

Monthly D&C Phase Progress Report means the monthly progress report to be provided by Project Co during the D&C Phase in accordance with section 14.7 of Part F6 of the PSR.

Monthly O&M Phase Progress Report means the monthly progress report to be provided by Project Co during the O&M Phase in accordance with section 13.1 of Part F7 of the PSR.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth) and any corresponding or similar rights granted under any other laws anywhere in the world.

MOU has the meaning given in the PSR.

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

Negative Pre-Agreed Modification means a Pre-Agreed Modification set out in Part B of the Pre-Agreed Modification Schedule.

Net Operating Cashflow means, at any time, the projected net operating cashflow to be derived by Project Co in connection with the West Gate Tunnel from that time until the Final Expiry Date, calculated as:

- (a) Projected Revenue; less
- (b) projected costs as set out in the Notional Cost Profile.

Network Tolling Agreement means the agreement of that name between Project Co and the Company and OpCo, dated on or around the date of this Agreement.

New D&C Program Activity Item has the meaning given in clause 15(d)(ii).

New WGT Subcontract has the meaning given in clause 28.7(b)(ii)B or clause 28.7(c)(ii), as the context requires.

New WHS Regulations means any work health and safety regulations replacing or amending the *Occupational Health and Safety Regulations 2017* (Vic) in line with the model Work Health and Safety Regulations as endorsed by the Workplace Relations Ministerial Council (Cth) in December 2009.

NewCo means West Gate Tunnel Leasehold Co. Pty Ltd (ACN 622 944 709).

NewCo Equity Note Deed Poll means the deed poll so entitled issued by NewCo and dated on or around the date of this Agreement.

NewCo Loan Facility Agreement means the agreement so entitled between NewCo, Funding Co and the State dated on or around the date of this Agreement.

NewCo Sub-Lease means the sub-lease entered into between NewCo and Project Co in respect of that part of the Leased Area the subject of the Lease (NewCo) in the form of Schedule 43.

NewCo Works Loan Agreement means the agreement so entitled between Project Co and NewCo dated on or around the date of this Agreement.

Non-Compliance Notice has the meaning given in clause 23.2(b).

Non-Conformance has the meaning given in clause 22.3(a).

Non-Conformance Register has the meaning given in clause 22.3(e).

Notional Cost Profile means the notional cost profile as set out in the Base Case Financial Model.

Notional Debt Profile means the notional debt profile set out in the Base Case Financial Model.

Notional Tax Profile means the notional tax profile set out in the Base Case Financial Model.

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

O&M Activities means all things and tasks which Project Co is required to carry out to discharge its operation, maintenance, repair and tolling obligations in accordance with the State Project Documents, including:

- (a) the operation, maintenance, repair and tolling of the West Gate Tunnel;
- (b) the maintenance and repair of the Maintained Off-Freeway Facilities; and
- (c) the Handover Services,

which for the avoidance of doubt does not include the OpCo D&C Phase IRS Activities.

O&M Bond has the meaning given in clause 25.6(g).

O&M Manuals means each of the operation and maintenance manuals to be prepared and updated by Project Co as described in the Project Plans and O&M Manuals Section.

O&M Non-Conformance means, during the O&M Phase and in connection with the O&M Activities, a failure by Project Co to comply with its obligations under the State Project Documents, other than to the extent such failure is permitted or excused pursuant to a State Project Document.

O&M Phase means the period commencing on the Date of West Gate Tunnel Completion and ending on the Expiry Date.

O&M Phase Insurances means the Insurances referred to in Part B of the Insurance Schedule.

O&M Site means:

- (a) the Leased Area;
- (b) the Maintenance Areas; and
- (c) the Extra Maintenance Land.

OHS Accreditation Scheme means the WHS Accreditation Scheme established under the Building and Construction Industry (Improving Productivity) Act 2016 (Cth).

OHS Legislation means all Laws in connection with occupational health and safety including the *Occupational Health and Safety Act 2004* (Vic), the OHS Regulations and all other regulations made under the *Occupational Health and Safety Act 2004* (Vic).

OMCS Back Office has the meaning given in the PSR.

Omitted Scope has the meaning given in clause 6.2(f)(i).

Omitted Works has the meaning given in clause 34.5(a).

Omitted Works Contractor has the meaning given in clause 34.5(b).

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

OpCo means, as at the date of this Agreement, the party specified in item 9 of the Contract Particulars and any person who, in addition or substitution, is engaged by Project Co to carry out all, or substantially all, of the O&M Activities.

OpCo D&C Phase IRS Activities means the incident response services to be provided by Project Co on and from the later of the date which is 4 months after Financial Close and 1 May 2018 until the Date of West Gate Tunnel Completion in accordance with section 8 of Part H22 of the PSR.

Operating Services Agreement means the agreement entitled "West Gate Tunnel Operating Services Agreement" between Project Co and OpCo dated on or around the date of this Agreement.

Operations Management and Control System or **OMCS** has the meaning given in the PSR.

OSA Direct Deed means the document entitled "Operating Services Agreement Direct Deed - West Gate Tunnel" between the State, Project Co and OpCo.

OSARs Project means the project known as the Outer Suburban Arterial Roads Program (Western Package) involving almost 30 kilometres of lane duplication and over 700 lane kilometres of road rehabilitation in relation to the outer western suburban arterial road network and including the following capital works:

- (a) Dunnings Road and Palmers Road upgrade, Point Cook Road to Princes Freeway, Point Cook;
- (b) Palmers Road upgrade, Princes Freeway to Western Freeway, Truganina;
- (c) Derrimut Road upgrade, Sayers Road to Dohertys Road, Tarneit;
- (d) Leakes Road upgrade, Fitzgerald Road to Derrimut Road, Truganina;
- (e) Dohertys Road upgrade, Fitzgerald Road to Grieve Parade, Laverton North;
- (f) Dohertys Road upgrade, Foundation Road to Palmers Road, Truganina;
- (g) Princes Freeway/Forsyth Road interchange upgrade, Hoppers Crossing;
- (h) Duncans Road interchange, Werribee/Werribee South; and
- (i) Hyde Street bridge strengthening.

OSARs Project Company means the project company engaged by the State to undertake the OSARs Project, and including that project company's Associates.

Other D&C Access Areas means that part of the subdivided stratum (limited in height and depth):

- (a) which is included in the Land Availability Plans, the WGT Road Licence or the WGT Rail Licence; and
- (b) in respect of which access is procured by the State in accordance with clause 6.6.

Other Financing Documents means:

- (a) the general security deed dated on or about the date of this Agreement between Project Co and the Company;
- (b) the general security deed dated on or about the date of this Agreement between Project Co and Clepco; and
- (c) the general security deed dated on or about the date of this Agreement between Funding Co and NewCo.

Other Maintenance Access Areas means those areas in respect of which access is procured by the State in accordance with clause 6.6 in order to carry out the O&M Activities in connection with the Maintained Off-Freeway Facilities.

Outstanding Close-Out Costs has the meaning given in clause 21.2(a)(iv)B.

Outstanding Matters Report has the meaning given in clause 28.4(e).

Overdue Rate means [not disclosed]% per annum above the Bank Bill Rate.

Ownership Schedule means Schedule 18.

Parent Guarantee means the guarantee given by the Parent Guarantor of any D&C Subcontractor to Project Co in connection with the obligations of the relevant D&C Subcontractor to Project Co under a D&C Subcontract.

Parent Guarantor means each person giving a Parent Guarantee, which as at the date of this Agreement means the parties specified in item 10 of the Contract Particulars.

Pass Through Clauses means each of the following clauses:

- (a) in relation to each Material Subcontract (O&M – CityLink/WGT):
 - (i) clause 10.3(d); and
 - (ii) clauses 40.2(d) and 40.2(e); and
- (b) in relation to a Subcontract (O&M - CityLink/WGT) (including for the avoidance of doubt a Material Subcontract (O&M – CityLink/WGT)):
 - (i) clause 10.3(a);
 - (ii) clause 10.5(b), to the extent that the terms of the Material Subcontract (O&M – CityLink/WGT) do not give Project Co the right to require the removal, replacement or restriction on further employment or engagement referred to in that clause;
 - (iii) clause 10.6(a)(iii);
 - (iv) clause 10.9;
 - (v) clause 12.1(b)(v);

- (vi) clauses 54.1(d)(ii) and 54.1(d)(iii); and
- (vii) clauses 54.2(d)(ii) and 54.2(d)(iii).

Payment Certificate (State Works) has the meaning given in the D&C Subcontract.

Performance Bond means a bank guarantee which:

- (a) is unconditional, irrevocable and payable on demand;
- (b) is issued by a financial institution that is the holder of a current licence issued by APRA and has the Required Rating; and
- (c) specifies a location within Melbourne where demand is to be given and payment made, without further confirmation from the issuer, on any Business Day.

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

Permitted Share Capital Dealing Schedule means Schedule 19.

Personal Information means:

- (a) with respect to anything done or occurring during the D&C Phase, "personal information" within the meaning of the *Privacy and Data Protection Act 2014* (Vic); and
- (b) with respect to anything done or occurring during the O&M Phase (including with respect to information collected by Project Co during the D&C Phase), "personal information" within the meaning of the *Privacy Act 1988* (Cth).

Planning Scheme Amendment means the amendment to the Melbourne, Hobsons Bay, Maribyrnong, Wyndham, Port of Melbourne and Brimbank Planning Schemes permitting development of the West Gate Tunnel.

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

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in its capacity to support plant life;
- (c) contaminated; or
- (d) otherwise environmentally degraded.

Port Land Deed means the deed so entitled entered into between the State and Project Co on or about the date of this Agreement.

Port Lessee means Lonsdale Asset Property Pty Limited ACN 614 295 582 as trustee for the Lonsdale Asset Property Trust.

Port Lessor means Melbourne Port Lessor Pty Ltd ABN 39 610 924 626.

Port Manager means Port of Melbourne Operations Pty Ltd ABN 67 610 925 178 as trustee for the Port of Melbourne Unit Trust ABN 83 751 315 034.

Port Transaction Land has the meaning given in the Port Land Deed.

Positive Pre-Agreed Modification means a Pre-Agreed Modification set out in Part A of the Pre-Agreed Modification Schedule.

Post Close IP Deliverables Schedule means Schedule 31.

Post Expiry Licensed Area has the meaning given in clause 28.10(a).

PPS Act means the *Personal Property Securities Act 2009* (Cth) and regulations made under that Act.

Pre-Agreed Modification means a Modification specified in the Pre-Agreed Modification Schedule, which may be either a Negative Pre-Agreed Modification or a Positive Pre-Agreed Modification.

Pre-Agreed Modification Amount means for each Pre-Agreed Modification, the relevant amount specified in the Pre-Agreed Modification Schedule.

Pre-Agreed Modification Election Notice means a notice issued by the State in accordance with clause 34.16(a).

Pre-Agreed Modification Schedule means Schedule 39.

Preferred Respondent Phase means the period between execution of the Western Distributor Commitment Deed and Financial Close.

Preferred Respondent Phase Design Report has the meaning given in clause 17.3(c).

Preliminary Design Documentation has the meaning given in the PSR.

Prevention by Law Event has the meaning given in clause 42.5(a).

Principal Contractor has the meaning given in the OHS Legislation.

Principal Road Interfaces means those roads or other means of vehicular access as set out in Schedule 26.

Principal Road Interface (Freeway) means those roads or other means of vehicular access as set out in paragraphs (i), (ii) and (x) of Schedule 26.

Principal Road Interface Price or Restriction means any Relevant Price or Restriction that relates to the use of vehicles on a Principal Road Interface.

Privacy Code means:

- (a) with respect to anything done or occurring during the D&C Phase, a code of practice defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic); and
- (b) with respect to anything done or occurring during the O&M Phase (including with respect to information collected by Project Co during the D&C Phase), a registered APP code in force under the *Privacy Act 1988* (Cth).

Privacy Regulator means:

- (a) with respect to anything done or occurring during the D&C Phase, the Privacy and Data Protection Commissioner appointed under the *Privacy and Data Protection Act*

2014 (Vic) or any other person or body having power to regulate the collection, use, disclosure or handling of Relevant Personal Information; and

- (b) with respect to anything done or occurring during the O&M Phase (including with respect to information collected by Project Co during the D&C Phase), the Privacy Commissioner appointed under the *Privacy Act 1988* (Cth) or any other person or body having power under the *Privacy Act 1988* (Cth) to regulate the collection, use, disclosure or handling of Personal Information for the purposes of the *Privacy Act 1988* (Cth).

Probity Event includes any event or thing which occurs before or after the date of this Agreement and which:

- (a) has or may have a material adverse effect on, or on the perception of, the character, integrity or honesty of a Consortium Member or a Relevant Person;
- (b) relates to a Consortium Member or a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the Project; or
- (c) without limiting paragraphs (a) and (b), involves a material failure of a Consortium Member or a Relevant Person to achieve or maintain:
 - (i) reasonable standards of ethical behaviour;
 - (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of the Consortium Member or the Relevant Person to carry out and observe its obligations in connection with the Project; or
 - (iii) other standards of conduct that would otherwise be expected of a party involved in a State government project.

Probity Investigation means any probity or criminal investigations to report on the character, integrity or honesty of a person or Entity, including:

- (a) investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges; and
- (b) 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.

Project means:

- (a) the financing and undertaking of the Works;
- (b) the financing and carrying out of the Project Activities;
- (c) the operation, maintenance and repair of the West Gate Tunnel;
- (d) the maintenance and repair of the Maintained Off Freeway Facilities;
- (e) the Handback of the Returned Works to the relevant Facility Owners;
- (f) the handover of the Relevant Infrastructure to the State; and
- (g) the levying and collection of tolls on the West Gate Tunnel,

and the performance of all other obligations in accordance with any Project Document.

Project Activities means all things that Project Co is, or may be, required to do to comply with its obligations in accordance with the State Project Documents, including the D&C Activities and the O&M Activities.

Project Area means the project area designated by the Victorian Minister for Planning under the Relevant Legislation, including any variations to the project area in accordance with the Relevant Legislation.

Project CHMP means the cultural heritage management plan procured by the State for the West Gate Tunnel and approved under the *Aboriginal Heritage Act 2006* (Vic) on 6 September 2017.

Project Co Commercially Sensitive Information means the following Confidential Information of Project Co or Project Co's Related Bodies Corporate:

- (a) any traffic model or traffic model forecast produced by or on behalf of Project Co or any Related Body Corporate of Project Co;
- (b) any forecasted revenue(s);
- (c) discount rates;
- (d) the Base Case Financial Model and any Financial Model, and any information contained within them (other than any information which would not otherwise be Confidential Information of Project Co);
- (e) the Additional State Contribution Schedule;
- (f) the Enforcement Payments Schedule; and
- (g) the Project Financial Model (as defined in the Adjustment Events Schedule), and any information contained within it (other than any information which would not otherwise be Confidential Information of Project Co).

Project Co Equity Note means the note issued by Project Co to Transurban Holdings Limited pursuant to the Project Co Equity Note Deed Poll.

Project Co Equity Note Deed Poll means the deed poll entered into by Project Co to issue the Project Co Equity Note on or around the date of this Agreement.

Project Co Material means:

- (a) the Design Documentation;
- (b) the Construction Documentation;
- (c) the Construction Records;
- (d) the As-Built Records;
- (e) the Project Plans and the O&M Manuals;
- (f) any other Deliverable; and
- (g) all other documentation, information (including data bases and drafts), models, systems, computer software and technology in which Intellectual Property Rights are capable of subsisting which Project Co or any of its Associates prepare or use in carrying out the Project Activities,

but excluding any Third Party Back Office Software.

Project Co OHS Material means any document, report or other information described in clause 12.1(b)(iv)(whether requested by the State in accordance with clause 12.1(b)(iv) or otherwise).

Project Control Group means the group referred to in clause 9.3(a).

Project Co Representative means the person or persons specified in item 11 in the Contract Particulars subject to replacement, termination or delegation in accordance with clause 9.2(e).

Project Delivery Management Plan means the plan relating to Project Co's management of the D&C Activities prepared and updated by Project Co in accordance with the Project Plans and O&M Manuals Section.

Project Documents means:

- (a) this Agreement;
- (b) the Lease;
- (c) the Construction Licence;
- (d) the Maintenance Licence;
- (e) the State Security;
- (f) the D&C Subcontract;
- (g) the Operating Services Agreement;
- (h) the D&C Direct Deed;
- (i) the OSA Direct Deed;
- (j) each Subcontractor Direct Deed;
- (k) the Parent Guarantees;
- (l) the Equity Documents;
- (m) the Finance Documents;
- (n) the Account Bank Deed;
- (o) the account bank deed dated on or about the date of this Agreement between NewCo and the Commonwealth Bank of Australia;
- (p) the Concession Enhancement Payment Deed;
- (q) the State Works Loan Agreement;
- (r) the CLUT Works Loan Agreement;
- (s) the Independent Reviewer and Environmental Auditor Deed of Appointment;
- (t) each Direct Interface Agreement;
- (u) each Road Interface Agreement;

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- (v) each Utility Agreement;
- (w) each Deed of Accession;
- (x) each Escrow Agreement;
- (y) the Port Land Deed;
- (z) the WGT Road Licence;
- (aa) the Sub Port Land Deed;
- (bb) the WGT Road Access Agreement;
- (cc) the WGT Road Operating Agreement;
- (dd) the Sub-Independent Reviewer and Environmental Auditor Deed of Appointment;
- (ee) the Independent Payment Certifier Deed of Appointment;
- (ff) the Proof Engineer Deed of Appointment;
- (gg) the WGT Rail Licence;
- (hh) the WGT Rail Sublicence;
- (ii) the Construction Access Agreement;
- (jj) the CLUT Deed of Accession;
- (kk) the Lease (NewCo);
- (ll) the NewCo Sub-Lease;
- (mm) the NewCo Works Loan Agreement dated on or about the date of this Agreement between Project Co and NewCo;
- (nn) the Transurban / Project Co Deed of Undertaking;
- (oo) the WGT Call Option Deed;
- (pp) the State Equity Subscription Deed;
- (qq) the NewCo Equity Note Deed Poll;
- (rr) the Other Financing Documents; and
- (ss) any other document the parties agree is a Project Document.

Project Equity has the meaning given in Schedule 5 (Termination Payments Schedule).

Project Information means all documents and information provided by the State and its Associates to Project Co in connection with the Project:

- (a) prior to the date of this Agreement, which are not incorporated into this Agreement;
- (b) after the date of this Agreement, which the State is not required by this Agreement to provide to Project Co; and

- (c) without limiting paragraph (a), the Site Information Reports.

Project Intellectual Property Rights means all Intellectual Property Rights in any of the following:

- (a) any Project Co Material, any Relevant Infrastructure or any Returned Facilities, including any such Intellectual Property Rights:
- (i) existing at the date of this Agreement; or
 - (ii) which come into existence after the date of this Agreement, including those derived from Intellectual Property Rights existing at the date of this Agreement; and
- (b) any information, ideas, documents, equipment or material of any kind and however embodied, which are supplied, brought to or used by or on behalf of Project Co in undertaking the Project (including each method of working used by or on behalf of Project Co in carrying out the Project Activities) or which are made available to the State in accordance with this Agreement by or on behalf of Project Co, whether or not forming part of the Project Co Material or the Relevant Infrastructure and whether or not owned by a third party, but excluding the Third Party Back Office Software.

Project Land has the meaning given in the Relevant Legislation.

Project Legislation means legislation for the Project passed by each House of Parliament.

Project Legislation Commencement Date means the date on which the Project Legislation has come into operation in accordance with its terms.

Project Plans means each of the project plans to be prepared and updated by Project Co as described in the Project Plans and O&M Manuals Section.

Project Plans and O&M Manuals Section means section 2 of Part F1 of the PSR.

Project Proponent means the project proponent appointed under the Relevant Legislation in respect of the West Gate Tunnel (formerly known as the Western Distributor Project) until designation of the Project Area and, upon designation of the Project Area, means the project authority (as that term is defined under the Relevant Legislation) for the West Gate Tunnel Project.

Project Requirements has the meaning given in the PSR.

Project Scope has the meaning given in the PSR.

Project Specific Change in Mandatory Requirements means:

- (a) any amendment to a Rail Projects Agreement which has a material impact on the delivery of the Project Activities; or
- (b) a Change in Mandatory Requirements which expressly and exclusively applies to:
- (i) the Project, West Gate Tunnel, the Construction Areas, the CityLink Construction Land, the Maintenance Areas, CityLink Maintenance Land, the Leased Area or Key Operational Areas;
 - (ii) Project Co, but only in its capacity as the Entity contracting with the State to implement the Project; or

- (iii) Project Co and other Entities which are undertaking projects under the Partnerships Victoria framework, or any replacement or substitute policies relating to public private partnership arrangements for the provision of public infrastructure in the State of Victoria, in each case only as it applies to them in that capacity,

excluding the initial enactment of legislation to the extent that the legislation:

- (c) facilitates the operation and maintenance of the West Gate Tunnel by Project Co in accordance with this Agreement; or
- (d) enables Project Co to:
 - (i) levy tolls, administrative fees and charges for the use of the Freeway as contemplated by this Agreement; or
 - (ii) seek enforcement of a failure or refusal to pay such tolls, fees or charges.

Projected Revenue means, at any time, the projected revenue to be derived by Project Co in connection with the West Gate Tunnel from that time until the Final Expiry Date.

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

Proof Engineer Deed of Appointment means the document entitled "Proof Engineer Deed of Appointment – West Gate Tunnel" between Project Co, the D&C Subcontractor and the Proof Engineer.

Property Committee has the meaning given in clause 6.1.

Property Schedule means Schedule 9 as amended in accordance with clause 6.3.

Proposed Change has the meaning given in clause 18.4.

Proposed Leased Area Plans has the meaning given in the PSR.

Protected Infrastructure means that part of the Relevant Infrastructure comprising the tunnels, portals and associated infrastructure and equipment.

Protective Data Security Standards means protective data security standards made under the *Privacy and Data Protection Act 2014* (Vic).

Proximate State Work means where the State, or a person authorised by the State, elects:

- (a) to do or procure one or more of the following:
 - (i) construct, operate, maintain, alter, upgrade or repair any:
 - A. road or other means of vehicle, public transport, pedestrian or bicycle access; or
 - B. Utility Infrastructure or any other infrastructure or improvements; or
 - (ii) carry out any other work, services or activities,

located (in whole or in part) on, adjacent to, under or above the Construction Areas, Maintenance Areas or Leased Area and which:

- (iii) has or will cause a lane closure on the Freeway during carrying out of the relevant works, services or activities;
 - (iv) has or will impact Project Co's ability to maintain the maximum posted speed applicable in ordinary steady state operation of the part or parts of the Freeway that are impacted by the carrying out of the relevant works, services or activities; or
 - (v) has or will directly and materially impact:
 - A. Project Co's ability to carry out the Project Activities, which may include Project Co's ability to keep the Freeway open for the safe, efficient and continuous passage of vehicles;
 - B. the Relevant Infrastructure (including any consequential changes to the Relevant Infrastructure); or
 - C. the costs of carrying out the O&M Activities during the carrying out of the relevant works, services or activities; or
- (b) to connect, or procure the connection of, any:
- (i) structure or road or other means of vehicle, public transport, pedestrian or bicycle access to the West Gate Tunnel; or
 - (ii) Utility Infrastructure or any other infrastructure or improvement to the West Gate Tunnel,
- excluding:
- (c) any work, services or activities undertaken by any Rail Interface Party;
 - (d) other than for the purposes of clause 39.3(d)(iii), the CityLink Tulla Widening Project; and
 - (e) on and from the Date of West Gate Tunnel Completion:
 - (i) any work, services, or activities in relation to a Principal Road Interface to the extent that the State is affording support in accordance with clause 26.1 in respect of that Principal Road Interface; and
 - (ii) any work, services or activities undertaken by the CityLink Parties to implement a Variation (as that term is defined under the CityLink Concession Deed).

Proximate State Works Notice has the meaning given in clause 26.4(b).

PSA Event means the revocation of a planning scheme amendment for the West Gate Tunnel by either House of Parliament in accordance with section 38 of the *Planning and Environment Act 1987* (Vic).

PSA Termination Event has the meaning given in clause 42.6(a).

PSR means the project scope and requirements set out in Exhibit A including all appendices, annexures, attachments and exhibits to it.

PSR (D&C) has the meaning given to the term in the D&C Subcontract.

Public Disclosure Obligations has the meaning given in clause 53.2(a).

Public Transport Victoria means the Public Transport Development Authority established under the *Transport Integration Act 2010* (Vic).

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

- (a) the first Quarter of the O&M Phase will be the period from the Date of West Gate Tunnel Completion until the day before the first Quarterly Date during the O&M Phase; and
- (b) the last Quarter of the O&M Phase will be the period from the last Quarterly Date during the O&M Phase to the Expiry Date.

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

Quarterly KPI Report has the meaning given in section 4(a)(i) of Part B of Schedule 3.

Rail Interface Area has the meaning given in clause 10.12(n).

Rail Interface Parties means each of:

- (a) Category 1 Rail Interface Party;
- (b) Category 2 Rail Interface Party;
- (c) Category 3 Rail Interface Party; and
- (d) Category 4 Rail Interface Party.

Rail Interface Parties' Requirements means any document or requirement to be complied with as required by the Rail Interface Parties in relation to the Rail Interface Works, and includes the Rail Interface Parties' requirements and protocols relating to access and works affecting the infrastructure or operations of the Rail Interface Parties.

Rail Interface Works means all work required to be carried out to develop the Project within the Rail Land, including:

- (a) any part of the Works that relates to the removal and relocation of assets and rail infrastructure to facilitate the construction of the Project; and
- (b) any part of the Works interfacing with or otherwise affecting any infrastructure or operations of the Rail Interface Parties,

but excludes the works set out in section 1 of Schedule 24.

Rail Land means all:

- (a) Category 1 Rail Land;
- (b) Category 2 Rail Land;
- (c) Category 3 Rail Land; and
- (d) Category 4 Rail Land.

Rail Projects Agreements means:

- (a) the Franchise Agreement - Train Projects Module included in the Franchise Agreement;

- (b) the Franchise Agreement - Tram Projects Module included in the Franchise Agreement; and
- (c) the Projects Agreement - V/Line entered into between Public Transport Victoria and V/Line Pty Ltd dated 8 September 2014 as amended and restated.

Rail Safety Acts means the *Rail Safety (Local Operations) Act 2006* (Vic) and the Rail Safety National Law.

Rail Safety National Law has the meaning given in the *Rail Safety National Law Application Act 2013* (Vic).

Rail Transport Operator has the meaning given in the Rail Safety Acts.

Ramp means each of the entry ramps to and exit ramps forming part of the Freeway and includes those ramps specified in Table A.2 and Diagram A.1, Diagram A.2 and Diagram A.3 in section 7 of Part A of the PSR.

Rates means all municipal rates, water rates, sewerage rates, drainage rates and other rates payable to any Authority in connection with the Site, but does not include any portion of such rates as relates to the connection of the Site to utilities or rates or charges for the usage of utilities.

Realignment Works has the meaning given in clause 13.5A(a).

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

Recoverable State Works Set Off Amount has the meaning given in clause 2.20(j).

Reference Document has the meaning given in the PSR.

Refinancing means any new financing arrangement entered into by Project Co or NewCo as borrower with a person who is not Funding Co, an Equity Investor or a Wholly Owned Group Member of an Equity Investor, which has the effect of restructuring the then current financing arrangements, other than under or as contemplated by the Concession Enhancement Payment Deed.

Registered Education and Training Organisation means a person or body registered under Part 4.3 of the ETR Act to deliver an accredited course or award or issue a registered qualification.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Circumstances means:

- (a) where it is agreed or determined that a Compensable Enhancement Amount is payable by Project Co to the State;
- (b) where it is agreed or determined that an amount calculated in accordance with section 3.1(b) of the Change Compensation Principles is payable by Project Co to the State; or
- (c) where it is agreed or determined that an amount described in paragraph (b) of the definition of 'Rent' (as that term is defined in the Lease) is payable by Project Co to the State in accordance with the Lease.

Relevant Circumstances Amount means any amounts payable by Project Co to the State arising out of or in connection with the Relevant Circumstances.

Relevant Circumstances Payment Date means the date on which any Relevant Circumstance Amount is payable by Project Co to the State.

Relevant Circumstances Tax Liability has the meaning given to it in clause 29.3(f).

Relevant Effect means an adverse effect on the projected net operating cashflows in connection with the West Gate Tunnel from the date of the occurrence of the Key Risk Event until the Final Expiry Date, the net present value of which exceeds:

- (a) in relation to a Key Risk Event described in paragraph (a) of the definition of Key Risk Event, \$[not disclosed] (Indexed);
- (b) in relation to a Key Risk Event described in paragraph (e) of the definition of Key Risk Event, \$[not disclosed];
- (c) in relation to a Key Risk Event described in paragraph (f) of the definition of Key Risk Event, \$[not disclosed] (Indexed);
- (d) in relation to a Key Risk Event described in paragraph (g) of the definition of Key Risk Event, \$[not disclosed] (Indexed);
- (e) in relation to a Key Risk Event described in paragraph (h) of the definition of Key Risk Event, \$[not disclosed] (Indexed);
- (f) in relation to a Key Risk Event described in paragraph (s) of the definition of Key Risk Event, \$[not disclosed]; or
- (g) in relation to a Key Risk Event other than an event described in paragraph (a), paragraph (e), paragraph (f), paragraph (g), paragraph (h) or paragraph (s) of the definition of Key Risk Event, \$[not disclosed] (Indexed).

In calculating the net present value for the purposes of this definition, the nominal adverse effect on the net operating cashflows will be calculated by comparing the Base Case Net Operating Cashflows with the Adjusted Net Operating Cashflows.

Relevant Infrastructure means:

- (a) prior to the Date of West Gate Tunnel Completion, the Works;
- (b) on or after the Date of West Gate Tunnel Completion until prior to the Date of Tolling Completion, the Tolling Works, the West Gate Tunnel (excluding the Tolling Back Office System) and the Maintained Off-Freeway Facilities; and
- (c) on or after the Date of Tolling Completion, the West Gate Tunnel and the Maintained Off-Freeway Facilities,

excluding any Returned Works which have achieved Handback.

Relevant Legislation means the *Major Transport Projects Facilitation Act 2009* (Vic).

Relevant Person means:

- (a) a director or secretary of a Consortium Member; or
- (b) any officer or employee, consultant, contractor or agent of a Consortium Member who:
 - (i) has the ability to exercise influence or control in relation to the relevant Consortium Member, or in matters relating to the Project;

- (ii) works in any role in connection with the Project Activities, including undertaking any task for the purpose of this Agreement; or
- (iii) has access to Confidential Information in connection with the Project or Users.

Relevant Personal Information means any "Personal Information" that is collected, held, used or managed by Project Co from time to time in connection with this Agreement or the performance of any Project Activities.

Relevant Price or Restriction means any cost to a vehicle or person for use of the road network (including any tax, levy, impost, duty, rate, charge, toll or fee) or restriction on the use of all or part of a road which relates to:

- (a) the distance travelled by;
- (b) the location (whether point or area) of the use by;
- (c) the type of road used by;
- (d) the time of use by;
- (e) the amount of usage by;
- (f) the occupants or other attributes of;
- (g) the class or category of; or
- (h) any combination of (a) to (f),

a vehicle.

Relevant Systems means:

- (a) all computer software forming part of the Tolling System;
- (b) all computer software forming part of the OMCS;
- (c) all computer software forming part of the Asset Management Systems;
- (d) all other computer software to be provided under the PSR (D&C) or otherwise pursuant to the Project; and
- (e) all Firmware,

but excluding the Subcontractor Material and the Existing Tolling Software.

Relevant Utility means an entity (whether publicly or privately owned) that provides, or intends to provide, water, sewerage, drainage, gas, electricity or other like services under the authority of any State legislation.

Relevant Utility Infrastructure means any part of the supply, distribution or reticulation network owned, operated or controlled by a Relevant Utility, including poles, pipes, cables, wires, conduits and tunnels.

Relief Event means an event which entitles Project Co to:

- (a) an extension of time;

- (b) compensation;
- (c) relief or suspension from carrying out any of the Project Activities; or
- (d) bring any other Claim against the State,

in accordance with this Agreement.

Remaining Works means, on and from the date that the State issues a Pre-Agreed Modification Election Notice pursuant to clause 34.16 in respect of the M80 Interface Works (if at all), the construction and completion of the M80 Interface Works.

Remediation Plan has the meaning given in clause 23.2(c).

Replacement O&M Bond has the meaning given in clause 25.6(i).

Representatives has the meaning given in clause 43.2(a).

Reputable Insurer means an insurance company having the Required Rating.

Required Rating means a credit rating of at least:

- (a) A- by Standard & Poor's Rating Services, a division of The McGraw Hill Companies, Inc. or S&P Global Ratings Australia Pty Ltd; or
- (b) A3 by Moody's Investor Services, Inc. (including in Australia through Moody's Investors Service Pty Limited (ABN 61 003 399 657)) or any successor to its rating business.

Responsible Entity has the meaning given in the Corporations Act.

Responsible Minister for VIPP means the Minister with responsibility for administering the *Victorian Industry Participation Policy Act 2003* (Vic).

Returned Facility means any discrete part of the Returned Works to be completed and handed back in accordance with the State Project Documents.

Returned Works means the:

- (a) Utility Infrastructure Works;
- (b) CityLink Returned Works;
- (c) Road Works;
- (d) State Asset Works; and
- (e) Accommodation Works,

and those Works described as such in section 5.1(l) of Part A of the PSR.

Review Procedures means Schedule 7.

Revised LIDP has the meaning given in clause 56.2(a).

Revocation Period means the period which begins on the date the State exercises its option under the CityLink Option Deed and ends at the end of the last day on which any CityLink and ESEP Concession Amending Deed may be, or has been, revoked (either wholly or in part) by a House of Parliament in accordance with the *Melbourne City Link Act 1995* (Vic).

Road means any road or road reserve (other than the Freeway) which crosses, is adjacent to, or is affected by, the Project Activities.

Road Function has the meaning given in the Relevant Legislation.

Road Interface Agreement means the WGT-OSARs Interface Agreement and the WGT-M80 Road Interface Agreement, in each case on and from the date those agreements are entered into by all parties to them.

Road Interface Party means the OSARs Project Company and the M80 Contractor, in each case on and from the date the relevant Road Interface Agreement is entered into by all parties to it.

Road Management Act means the *Road Management Act 2004* (Vic).

Road Network Price or Restriction means a Relevant Price or Restriction that:

- (a) other than in the case of a Cordon Price or Restriction or Principal Road Interface Price or Restriction, applies on a network wide basis, or substantially on a network wide basis, within the Greater Melbourne Area; and
- (b) has a purpose of changing road network travel volumes (for example, by effecting modal shift).

Road Safety Act means the *Road Safety Act 1986* (Vic).

Road Works means the physical things and works which Project Co must design, supply, construct, install, produce or complete in connection with the construction, modification, reinstatement or improvement of a Road and handover to the State or the relevant Facility Owner in accordance with this Agreement.

Roaming Agreement means the agreement of that name between Project Co and the Company, dated on or around the date of this Agreement.

RSS has the meaning given in the PSR.

Safe Location means a safe and convenient place near the Freeway (including outside of the O&M Site) or a place approved by VicRoads.

Safety Management Documentation means the safety management documentation required to be prepared by a Rail Transport Operator to comply with its obligations under the Rail Safety Acts.

Safety Management System has the meaning given in the Rail Safety Acts.

Schedule of Certificates and Notices means Schedule 8.

Secured Account means a bank account in the name of and nominated by Project Co or NewCo, provided that such account is at all times subject to the State Security and the Account Bank Deed.

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

Security Interest means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind and includes:

- (a) a "security interest" as defined in section 12 of the PPS Act;

- (b) anything which gives a creditor priority to other creditors with respect to any asset; and
- (c) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

Security of Payment Act means the *Building and Construction Industry Security of Payment Act 2002* (Vic).

Separated Systems means:

- (a) the Tolling Back Office System;
- (b) the OMCS; and
- (c) the Asset Management System,

and such other systems contemplated to be subject to the Separation Plan Services in accordance with the Separation Plans.

Separation Fee means the fee payable by the State to Project Co which is calculated in accordance with clause 28.16.

Separation Notice has the meaning given in clause 28.1(a).

Separation Plans means the:

- (a) Separation Plan (ITS);
- (b) Separation Plan (TBO); and
- (c) Separation Plan (AMS),

approved (or deemed to be approved) in accordance with clause 25.10.

Separation Plan Services means the works or services to be performed by Project Co to implement the Separation Plans.

Separation Principles means Schedule 36.

Service Agreement means a Subcontract entered into between:

- (a) OpCo; and
- (b) a member of the Transurban Group (other than Project Co),

for all or part of:

- (c) the O&M Activities;
- (d) the OpCo D&C Phase IRS Activities; or
- (e) the Tolling Works.

Settlement Defect means any aspect of the Relevant Infrastructure or Returned Facility which:

- (a) exceeds the settlement criteria set out in section 10(a) of Part B of the PSR; or

- (b) pursuant to sections 10(c) and 10(d) of Part B of the PSR, is predicted to exceed the settlement criteria set out in section 10(a) of Part B of the PSR,

prior to the Settlement DLP Expiry Date.

Settlement DLP Expiry Date means the date which is 36 months after the Date of West Gate Tunnel Completion (as defined in the D&C Subcontract).

Share Capital Dealings has the meaning given in clause 49.2.

Single Asset Handover (WGT) means the occurrence of Handover on a date that is prior to or after (but not around the same date as) the occurrence of CityLink Handover.

Site means:

- (a) from the date of this Agreement until the Date of Tolling Completion, the Construction Site; and

- (b) in connection with the O&M Phase, the O&M Site,

(as the context requires) and includes any part of such area or land.

Site Access and Interface Protocols means the plan of that name which sets out the procedures and protocols for accessing the Construction Site.

Site Access and Occupation Schedule has the meaning given in the Rail Projects Agreements.

Site Access Program means a site access program agreed between Public Transport Victoria, ARTC and the 'contractor' in accordance with the Interstate Infrastructure Lease.

Site Conditions means any physical conditions on, under, or over the surface, or in the vicinity of the Site, including:

- (a) **(water)**: surface water, ground water, ground water hydrology, the existence of any wells and the effects of any de-watering;
- (b) **(physical structures)**: physical and structural conditions above, upon and below the surface of the ground including any infrastructure, partially completed structures, Artefacts or below ground works;
- (c) **(vegetation)**: pastures, grasses or other vegetation on the Site;
- (d) **(topography)**: topography, ground surface and sub-surface conditions and geology including rock or other materials;
- (e) **(climate)**: climatic and weather conditions, rain, surface water run-off and drainage, water seepage, wind, wind-blown dust and sand seasons, mud and other effects of climatic and weather conditions;
- (f) **(Contamination)**: any Contamination;
- (g) **(Pollution)**: any Pollution;
- (h) **(physical conditions)**: all other physical conditions and characteristics of or in the vicinity of the Site, on or below the surface which may affect Project Co's ability to carry out its obligations in accordance with this Agreement; and
- (i) **(easements)**: all Easements over or in connection with the Site,

whether or not they were in existence or known to Project Co before the date of this Agreement.

Site Information Report means any report provided by the State or any of the State's Associates in relation to any core sample, geotechnical or site information.

Skills Guarantee means the Major Projects Skills Guarantee, which is a policy of the Victorian Government and is located at <http://economicdevelopment.vic.gov.au/about-us/strategies-and-initiatives/major-projects-skills-guarantee>.

Skills Guarantee Compliance Plan means the Major Project Skills Guarantee Compliance Plan set out in Appendix G of the Workforce Development Plan.

Skills Guarantee Performance Reports has the meaning given in clause 57.2(a).

Social Procurement Strategy means the strategy set out in Schedule 23 as amended from time to time in accordance with this Agreement.

Solvent has the meaning given in the Corporations Act.

Standards means all standards, codes, specifications, policies and requirements to be complied with in accordance with, and subject to, the terms of this Agreement (including section 2.1(b) and (d) of Part A of the PSR) and includes:

- (a) the standards, policies, instructions and other procedures specified in or reasonably inferred from the PSR (including the Reference Documents); and
- (b) any other policy, guideline, standard, procedure or requirement, which applies in connection with the Project:
 - (i) which is notified to Project Co;
 - (ii) which is publicly available or otherwise available to Project Co;
 - (iii) with which Project Co is expressly required by the terms of this Agreement, by Law or by direction of the State to comply; or
 - (iv) which Best Industry Practices would dictate would apply to the Project, unless the State (in its absolute discretion) gives notice to Project Co that such policy, guideline, standard, procedure or requirement does not constitute a Standard for the purpose of this Agreement,

as may be amended or updated from time to time.

State means the Crown in right of the State of Victoria and the Project Proponent where it is acting in its capacity as a party to a State Project Document.

State Act of Prevention means:

- (a) a breach by the State of a State Project Document or a breach by the Project Proponent of the Maintenance Licence; or
- (b) a fraudulent, reckless, unlawful, negligent or malicious act or omission of the State or its Associates,

occurring:

- (c) on or after the Date of Tolling Completion; or

- (d) for the purposes of clause 25.9(a), the KPI Regime and Part H19 of the PSR only, on or after the Date of West Gate Tunnel Completion.

State Assets means:

- (a) the traffic signals set out in Part H4 of the PSR which are located within the Leased Area;
- (b) the communications conduits and fibres in the Leased Area which are the responsibility of the State as set out in section 1(b)(ii) of Part H11 of the PSR; and
- (c) any other Assets located within the Leased Area which are to be handed back to the State or any of its Associates in accordance with this Agreement or as otherwise agreed by the State and Project Co.

State Asset Works means the physical things and works which Project Co must design, supply, construct, install, produce or complete in connection with the construction, modification, reinstatement or improvement of a State Asset and handover to the State or the relevant Facility Owner in accordance with this Agreement.

State Condition has the meaning given in clause 8.3(b).

State Cure Notice means:

- (a) a notice issued under clause 6.2(a) of the D&C Direct Deed; and
- (b) a notice issued under clause 6.2(a) of the OSA Direct Deed,

or either as the context requires.

State Equity Subscription Deed means the document so entitled between the State, NewCo, Funding Co and Project Co dated on or around the date of this Agreement.

State Force Majeure Termination Event has the meaning given in clause 42.2(c).

State Notice of Intention to Terminate has the meaning given in clause 28.1(c).

State Project Documents means those Project Documents to which the State or the Project Proponent is a party (other than the D&C Subcontract).

State Representative means the person or persons specified in item 12 of the Contract Particulars subject to replacement, termination or delegation in accordance with clause 9.2(c).

State Security means the document entitled "State Security - West Gate Tunnel" between the State, Project Co and NewCo.

State Works has the meaning given in the D&C Subcontract.

State Works Loan Agreement means the document entitled "State Works Loan Agreement" between the State and Project Co, entered into on or around the date of this Agreement.

State Works Payment Condition means in respect of the payment of an amount on account of the State Works Price that Project Co has provided reasonable evidence to the State of making a corresponding payment pursuant to clause 2.21(k) of the D&C Subcontract.

State Works Price has the meaning given in the D&C Subcontract.

State Works Set Off Amount has the meaning given in clause 2.20(i)(ii).

State Works Unpaid Amount has the meaning given in clause 2.20(i)(i).

Step-In Event has the meaning given in clause 37.1(a).

Streamlined Modification Proposal has the meaning given in clause 34.14(a).

Subcontract means an agreement which:

- (a) Project Co enters into with a Subcontractor; or
- (b) a Subcontractor enters into with another Subcontractor in connection with the Project Activities.

Subcontract (O&M – CityLink/WGT) means a Subcontract (other than a Service Agreement) under which the Subcontractor provides operation, maintenance, repair and/or tolling goods or services (which may include the provision of licensed materials) in relation to the Project and the CityLink Project only.

Subcontractor means any person:

- (a) who enters into a contract in connection with the Project Activities with Project Co or another Consortium Member; or
- (b) whose subcontract is in connection with the Project Activities and is in a chain of contracts where the ultimate contract is with Project Co or another Consortium Member.

Subcontractor Direct Deed means a document entitled "Subcontractor Direct Deed West Gate Tunnel" between Project Co, the D&C Subcontractor and a relevant Key Subcontractor (D&C) substantially in the form of Schedule 13.

Subcontractor IP Exceptions Schedule means Schedule 30.

Subcontractor Material means, subject to clause 52.7(b), any Project Co Material to which any of the exceptions contained in the Subcontractor IP Exceptions Schedule applies, together with any update, upgrade or new release of that Project Co Material.

Sub-Independent Reviewer and Environmental Auditor has the meaning given in the D&C Subcontract.

Sub-Independent Reviewer and Environmental Auditor Deed of Appointment means the document entitled "Sub-Independent Reviewer and Environmental Auditor Deed of Appointment – West Gate Tunnel" between Project Co, the D&C Subcontractor and the Sub-Independent Reviewer and Environmental Auditor.

Subsidiary has the same meaning as 'subsidiary' in the Corporations Act, except that an entity may be a subsidiary of a partnership or trust and a trust or partnership may be a Subsidiary of an entity, for the purposes of which a unit or other beneficial or partnership interest will be regarded as a share.

Sunset Date means the date which is 36 Months after the Date for West Gate Tunnel Completion, as extended (if at all) in accordance with clause 23.16.

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, 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 or Road Network Price.

Technological Improvement means a technological improvement with performance, efficiency, sustainability or durability characteristics that are materially better than those required under the State Project Documents.

Temporary Operational Completion means the stage when the Works are safe for use by the public for the passage of vehicles.

Temporary Works means the temporary physical works which Project Co must design, supply, construct, install, produce or complete for the purpose of carrying out the D&C Activities including access, ingress, egress and laydown requirements.

Term means the term of this Agreement:

- (a) subject to clause 3.1, commencing on the date of Financial Close; and
- (b) ending on the Expiry Date.

Termination for a Default Termination Event means termination of this Agreement in accordance with clause 42.4.

Termination for a Force Majeure Termination Event means termination of this Agreement in accordance with clause 42.2.

Termination for an Early Termination Event means termination of this Agreement in accordance with:

- (a) clause 39.6(b);
- (b) clause 42.5; or
- (c) clause 42.6.

Termination Payment means a termination payment calculated in accordance with the Termination Payments Schedule.

Termination Payment Date means 20 Business Days after the later of:

- (a) the Expiry Date; and
- (b) the date on which the amount of the relevant Termination Payment is agreed by the State and Project Co or, failing agreement, is determined by an independent expert in accordance with the Termination Payments Schedule or clauses 43 to 44,

or such other date as may be specified in the Termination Payments Schedule for payment of a Termination Payment.

Termination Payments Schedule means Schedule 5.

Third Party Software means:

- (a) COTS Software; and
- (b) other computer software (not being COTS Software) in which the Intellectual Property Rights are owned by a person other than Project Co or a member of the Transurban Group,

but excluding the Subcontractor Material, the Existing Tolling Software and the Firmware.

Third Party Back Office Software means Third Party Software which is both:

- (a) used internally by Project Co or any of its Associates in carrying out any Project Activities or to create any materials described in paragraphs (a) to (g) of the definition of Project Co Material (but not incorporated into any such materials); and

(b) COTS Software,

excluding to avoid doubt any computer software which forms part of or is necessary in order for the State or its nominee to use or operate the Critical Systems, or is both necessary and used by a member of the Transurban Group to maintain the Critical Systems.

Third Party Intellectual Property Rights means any Intellectual Property Rights that are not vested in Project Co or any of its Associates.

Third Party Material has the meaning given in clause 52.6(a)(i).

TIML means Transurban Infrastructure Management Limited (ABN 27 098 147 678).

Toll Calculation Schedule means Schedule 28.

Tolling Back Office System has the meaning given in the PSR.

Tolling Completion means the stage when:

- (a) West Gate Tunnel Completion has been achieved;
- (b) the Tolling Works are complete except for minor Defects which:
 - (i) do not prevent the Tolling Works from being Fit for Purpose;
 - (ii) the Independent Reviewer and Environmental Auditor determines that Project Co has reasonable grounds for not promptly rectifying; and
 - (iii) can be corrected without prejudicing the use of the West Gate Tunnel for the safe, efficient and continuous passage of vehicles; and
- (c) Project Co has done everything which this Agreement requires Project Co to do as a condition precedent to Tolling Completion.

Tolling System has the meaning given in the PSR.

Tolling Works has the meaning given to it in the PSR.

TOS Act means the *Traditional Owner Settlement Act 2010* (Vic).

Traffic Management Strategy means the strategy relating to traffic management during the Term prepared and updated by Project Co in accordance with the Project Plans and O&M Manuals Section.

Trainee means a person (other than an Apprentice) employed under a Training Contract.

Training Contract has the meaning given in the ETR Act.

Transition Services means the O&M Activities, other than:

- (a) lifecycle maintenance;
- (b) any other activities carried out for the purpose of achieving a design life requirement; and
- (c) the Handover Services.

Transition Services Fee means the fee (if any) payable by the State to Project Co in accordance with clause 28.16 for carrying out the Transition Services.

Transition Services Fee Entitlement Period has the meaning given in clause 28.16(d).

Transurban Group means the group of entities that comprises, from time to time:

- (a) Transurban International Limited (ACN 121 746 825), Transurban Holdings Limited and Transurban Holding Trust by its responsible entity Transurban Infrastructure Management Limited (ACN 098 147 678) but only while the securities of those entities remain stapled securities (together the **Stapled Entities**);
- (b) each company in which the Stapled Entities, whether individually or collectively, own (directly or indirectly) more than [not disclosed]% of the voting shares or securities; and/or
- (c) each company which is for the purposes of section 50AA of the Corporations Act under the "control" of the Stapled Entities, whether individually or collectively.

Transurban Holdings Limited means Transurban Holdings Limited (ABN 86 098 143 429).

Transurban Holding Trust means Transurban Holding Trust (ARSN 098 807 419).

Transurban Limited means Transurban Limited (ABN 96 098 143 410).

Transurban / Project Co Deed of Undertaking means the deed poll entitled 'Deed of Undertaking (Project Co)' given by Transurban Finance Company Pty Ltd ABN 65 098 539 452 for the benefit of Project Co, dated on or around the date of this Agreement.

Truck Ban means a prohibition on, or curfew or other time limitation in respect of, Trucks (as defined in the *Road Safety Road Rules 2017 (Vic)*) using any roads within the area contained within the shaded portion of the map as set out in Schedule 34.

Tunnel has the meaning given in the PSR.

Uninsurable Risk means a risk that is required to be insured in accordance with this Agreement and is insurable at the date of this Agreement but during the Term:

- (a) insurance becomes unavailable in the recognised international insurance market in connection with that risk by Reputable Insurers; or
- (b) the insurance premium payable for insuring that risk with a Reputable Insurer or the terms and conditions of the relevant insurance are such that the risk is no longer generally being insured against by private sector providers of infrastructure similar to the Relevant Infrastructure or the Project or services similar to the Project Activities in Australia or in the United Kingdom.

Unplanned Occupation Impact means any:

- (a) Unplanned Occupation Impact - Projects Agreement; and
- (b) Unplanned Occupation Impact - Infrastructure Lease.

Unplanned Occupation Impact - Infrastructure Lease means a rail occupation that exceeds the duration provided for in the Interstate Infrastructure Lease (including any Site Access Program) (to the extent of the period of excess).

Unplanned Occupation Impact - Project Agreement means a rail occupation that exceeds the duration provided for in the relevant Rail Projects Agreement (including the Site Access and Occupation Schedule) (to the extent of the period of excess).

User means any person who is entitled to use any part of the West Gate Tunnel or the Maintained Off-Freeway Facilities.

Utility means an entity (whether publicly or privately owned) that provides, or intends to provide, water, sewerage, drainage, gas, electricity, telephone, telecommunications, fuel, railway, tramway, road, intelligent transport systems, bus stop or other like services under the authority of State or Commonwealth legislation and includes all Relevant Utilities.

Utility Agreement means an agreement referred to in Part 7 of the Relevant Legislation entered into between the Project Proponent and any Relevant Utility in relation to the D&C Activities and includes an approved utility agreement as defined in Part 7 of the Relevant Legislation and any 'Utility Agreement' acceded to by Project Co pursuant to a Deed of Accession.

Utility Infrastructure means any part of the supply, distribution or reticulation network owned, operated or controlled by a Utility, including poles, pipes, pipeline, cables, wires, conduits, tunnels, aqueduct, electrical installation, telecommunications plant, water channel, and railway and electronic communications systems but not including communications systems provided as part of the Works and includes the Relevant Utility Infrastructure.

Utility Infrastructure Works means the physical things and works which Project Co must design, supply, construct, install, produce, commission or complete in connection with the construction, modification or relocation of Utility Infrastructure and handover to the State, to an Authority or to another person in accordance with this Agreement other than Utility Infrastructure to be handed over as part of the West Gate Tunnel or the Maintained Off-Freeway Facilities.

Utility Interruption means electricity being unavailable to the Project as a result of a failure upstream of the point of electricity connection to an electricity supply network, provided that the electricity supply network is located in Australia or the Philippines.

Utilities Schedule means Schedule 10.

Ventia Subcontract means the Subcontract between Translink Operations Pty Limited and Ventia Pty Ltd entitled "On Road Surveillance and Incident Management for Melbourne CityLink."

VicRoads means the Roads Corporation established under the *Transport Act 1983 (Vic)* and continued under the *Transport Integration Act 2010 (Vic)*.

VicRoads Managed Motorways Framework has the meaning given in the PSR.

VicTrack means Victorian Rail Track ABN 55 047 316 805.

VIPP means the Victorian Industry Participation Policy made pursuant to section 4 of the *Victorian Industry Participation Policy Act 2003 (Vic)*.

VIPP Schedule means Schedule 21.

VRQA means the Victorian Registration and Qualifications Authority, the statutory body established under Chapter 4 of the ETR Act whose functions include the registration and regulation of apprenticeships and traineeships, and administering legislation including but not limited to the ETR Act and the *Education and Training Reform Regulations 2017 (Vic)*.

WD Early Activities has the meaning given in the Western Distributor Commitment Deed.

WDP means the Workforce Development Plan, not including the Skills Guarantee Compliance Plan.

WGT Interface Works means the works to be performed by the M80 Contractor under the M80 Contract and which are to be handed over to Project Co to enable Project Co to carry out and complete the M80 Interface Works.

WGT-M80 Interface Agreement has the meaning given in the Pre-Agreed Modification in respect of the M80 Interface Works.

WGT-M80 Site Access and Interface Protocols means the plan of that name attached to the WGT-M80 Interface Agreement.

WGT-OSARS Interface Agreement means the agreement to be entered into between Project Co and OSARs Project Co in accordance with clause 10.14.

WGT Traffic Management Plan means the Initial WGT Traffic Management Plan as subsequently amended in accordance with clause 13.2 (and finalised in accordance with clause 13.2(d)(v)).

West Gate Tunnel means:

- (a) the Freeway;
- (b) the Tolling System, the OMCS Back Office and the Asset Management System; and
- (c) all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements on or in the Leased Area,

to be called the West Gate Tunnel or such other name as agreed by the State but excluding all Temporary Works and Returned Works.

West Gate Tunnel – CityLink Umbrella Deed means the document so entitled between the CityLink Parties, ClepCo and Project Co, dated on or around the date of this Agreement.

West Gate Tunnel Completion means the stage when:

- (a) the Works, other than the Remaining Works and the Tolling Works and any other Works not required to be completed to achieve West Gate Tunnel Completion in accordance with this Agreement, are complete except for minor Defects which:
 - (i) do not prevent the Works from being Fit for Purpose;
 - (ii) the Independent Reviewer and Environmental Auditor determines that Project Co has reasonable grounds for not promptly rectifying; and
 - (iii) can be corrected without prejudicing the use of the West Gate Tunnel for the safe, efficient and continuous passage of vehicles;
- (b) Project Co has done everything which this Agreement requires Project Co to do as a condition precedent to West Gate Tunnel Completion; and
- (c) all Returned Works, other than the Remaining Works, have been completed in accordance with clause 20.3(c).

West Gate Tunnel Lease Plan means a plan as agreed or determined in accordance with clause 6.9, which is annexed to the Lease.

West Gate Tunnel Lease (NewCo) Plan means a plan as agreed or determined in accordance with clause 6.9, which is annexed to the Lease (NewCo).

West Gate Tunnel Opening Date means the day when the West Gate Tunnel is opened in accordance with clause 25.2.

West Gate Tunnel Project Rail Licence means the licence so entitled entered into between VicTrack and the State on or about the date of this Agreement.

Western Distributor Authority means the Western Distributor Authority, a public administrative office formed on the 16 June 2016 under section 11(a) of the *Public Administration Act 2004* (Vic).

Western Distributor Commitment Deed means the deed so entitled entered into between Transurban Limited (ABN 96 098 143 410), Project Co and the State on 2 April 2017.

WGT Call Option Deed means the document entitled "West Gate Tunnel Call Option Deed" between the State, Project Co and NewCo, dated on or around the date of this Agreement.

WGT Co Equity Subscription Deed means the document entitled "WGT Co Equity Subscription Deed" between NewCo and Project Co.

WGT Co Loan Facility Agreement means the agreement so entitled between Funding Co and Project Co dated on or around the date of this Agreement.

WGT Legislation Commencement Schedule means Schedule 37.

WGT Rail Licence means the licence so entitled entered into between the State and Project Co on or about the date of this Agreement.

WGT Rail Sublicence means the licence so entitled entered into between Project Co and the D&C Subcontractor on or about the date of this Agreement.

WGT Road Access Agreement has the meaning given in the D&C Subcontract.

WGT Road Area has the meaning given in the WGT Road Licence.

WGT Road Licence means the licence to be granted by the State to Project Co in accordance with the Port Land Deed.

WGT Road Operating Agreement has the meaning given in the Port Land Deed.

Wholly Owned Group Member of a person (Person A) means:

- (a) each person which is a wholly owned Subsidiary of Person A;
- (b) each person of which Person A is a wholly owned Subsidiary; and
- (c) each person that is a wholly owned Subsidiary of the party referred to in paragraph (b).

Workforce Development Plan means the plan set out in Schedule 22 as amended from time to time in accordance with this Agreement.

Works means the physical things and works which Project Co must design, supply, construct, install, produce, commission or complete in accordance with this Agreement, including:

- (a) the West Gate Tunnel;
- (b) the Maintained Off-Freeway Facilities;
- (c) the Returned Works; and

- (d) the Temporary Works,

and any Modifications and rectification of Defects in such works. For the avoidance of doubt, it does not include the WGT Interface Works.

Works Approval means the EPA works approval issued under the *Environment Protection Act 1970* (Vic) authorising construction and installation of a tunnel ventilation system for the purposes of the West Gate Tunnel.

2. General rules of interpretation

2.1 Interpretation

In this Agreement:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(Agreement and Schedule references)**: a reference to:
- (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Agreement; and
 - (ii) a section is a reference to a section of a Schedule or Exhibit;
- (d) **(Agreement as amended)**: without limiting clause 2.7 and except to the extent this Agreement provides otherwise, a reference to this Agreement or to any other deed, agreement, document or instrument includes a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
- (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations,

drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

- (l) ("**\$**"): a reference to "\$", AUD or dollar is to Australian currency;
- (m) (**time**): a reference to time is a reference to time in Melbourne, Australia;
- (n) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) (**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;
- (p) ("**may**"): the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) (**Independent Reviewer and Environmental Auditor**): references to the Independent Reviewer and Environmental Auditor will be interpreted only to the extent of the Independent Reviewer and Environmental Auditor's role under the Independent Reviewer and Environmental Auditor Deed of Appointment (including the term of such appointment). To the extent that any reference to the Independent Reviewer and Environmental Auditor would require the Independent Reviewer and Environmental Auditor to exercise a right or carry out an obligation under this Agreement outside the term of its appointment, the State will be required to exercise such right on a similar basis as the Independent Reviewer and Environmental Auditor would have, acting in accordance with the Independent Reviewer and Environmental Auditor Deed of Appointment. Any such exercise of a right or carrying out of such an obligation by the State will be a decision or determination of the State and not a decision or determination of the Independent Reviewer and Environmental Auditor for the purposes of clauses 9.6, 43 and 44;
- (r) (**Direct Interface Parties and Road Interface Parties**): references to the Direct Interface Parties or Road Interface Parties will be interpreted only to the extent of the Direct Interface Parties' or Road Interface Parties' role under the Direct Interface Agreements or Road Interface Agreements (respectively), if any, (including the term of such appointment) and as specified in or reasonably inferred from the Project Documents;
- (s) (**Port Manager's "usual requirements"**): references to the "usual requirements" of a Facility Owner, with respect to the Port Manager, will be interpreted as a reference to Part H23 of the PSR;
- (t) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (u) (**remedy or cure**): the use of the word "remedy" or "cure" or any form of such words in this Agreement means that the event to be remedied or cured must be remedied or cured or its effects overcome;

- (v) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (w) **(VicRoads' "usual requirements")**: references to the "usual requirements" of a Facility Owner, with respect to the Dynon Road Bridge, will be subject to clause 20.3(l).

2.2 Composition of Agreement and order of precedence

- (a) **(Agreement composition)**: This Agreement comprises as at the date of this Agreement:
 - (i) clause 1 to clause 61;
 - (ii) Schedule 1 to Schedule 43; and
 - (iii) Exhibit A to Exhibit E.
- (b) [Not used]
- (c) **(Order of precedence)**: Subject to clause 2.2(d), the following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this Agreement:
 - (i) the Additional State Contribution Schedule;
 - (ii) the Enforcement Payments Schedule;
 - (iii) clauses 1 to 61;
 - (iv) the PSR; and
 - (v) subject to clauses 2.2(c)(i) to 2.2(c)(iv), the Schedules and remaining Exhibits.
- (d) **(Greater requirement)**: To the extent that any part of any document comprising this Agreement imposes a greater or higher requirement, standard, quality, level of service, quantum or scope on Project Co than any other part of any document comprising this Agreement, unless the context otherwise expressly requires and subject to clause 2.22(a), that greater or higher requirement, standard, quality, level of service, quantum or scope prevails.

2.3 Inconsistency between State Project Documents

Where there is an inconsistency, ambiguity or discrepancy between this Agreement and any other State Project Documents, or between any of the State Project Documents (excluding this Agreement), then the following order of precedence applies:

- (a) in respect of the D&C Activities undertaken on the Port Transaction Land and the Licensed Area (as defined in the WGT Road Licence) only, subject to clause 2.22(a), the Port Land Deed and WGT Road Licence respectively;
- (b) the Finance Direct Deed;
- (c) this Agreement; and
- (d) the remaining State Project Documents.

2.4 Inconsistencies within or between Project Requirements and Project Scope

- (a) **(Inconsistency):** If there is any inconsistency, ambiguity or discrepancy:
- (i) between the Project Requirements and the Project Scope, then, subject to clause 2.22(a), the Project Requirements will prevail, subject only to:
 - A. the Agreed Exceptions; and
 - B. the extent that the Project Scope provides a greater or higher requirement, standard, quality, level of service, quantum or scope; and
 - (ii) within:
 - A. the Project Requirements; or
 - B. the Project Scope,then, subject to clause 2.22(a), the greater or higher requirement, standard, quality, level of service, quantum or scope as determined by the State will prevail.
- (b) **(Inconsistency of Reference Documents):** If there is any inconsistency, ambiguity or discrepancy between the Reference Documents, section 2 of Part A of the PSR will apply.

2.5 Notification of inconsistency, ambiguity or discrepancy

- (a) **(Notification of ambiguity):** If either party identifies any inconsistency, ambiguity or discrepancy within or between any of the State Project Documents, then that party must notify the other party of the inconsistency, ambiguity or discrepancy as soon as possible and, in any case, no later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.
- (b) **(No further action):** If Project Co issues a notice in accordance with clause 2.5(a), it must not take any further action in connection with the ambiguity, discrepancy or inconsistency until a notice is received from the State in accordance with clause 2.5(c) or, if no notice is received, for 5 Business Days after the date Project Co issues its notice in accordance with clause 2.5(a).
- (c) **(Resolution of ambiguity):** Within 5 Business Days of the notice in accordance with clause 2.5(a), the State will direct Project Co as to how to resolve any ambiguity, discrepancy or inconsistency the subject of the notice in accordance with:
- (i) subject to clause 2.5(c)(iii), in the case of an ambiguity, discrepancy or inconsistency within this Agreement:
 - A. the greater requirement in clause 2.2(d); or
 - B. if the ambiguity, discrepancy or inconsistency cannot be resolved under clause 2.5(c)(i)A, the order of precedence in clause 2.2(c); or
 - (ii) in the case of an ambiguity, discrepancy or inconsistency:

- A. between this Agreement and any other State Project Document; or
- B. between any of the State Project Documents (excluding this Agreement),

clause 2.3; or
- (iii) in the case of an ambiguity, discrepancy or inconsistency within or between the Project Requirements and the Project Scope, clause 2.4; and
- (iv) if the relevant inconsistency, ambiguity or discrepancy cannot be resolved in accordance with clauses 2.5(c)(i) to 2.5(c)(iii):
 - A. in accordance with any process for resolving such inconsistencies, ambiguities and discrepancies contained in the relevant document or documents; or
 - B. if clause 2.5(c)(iv)A does not apply, as otherwise determined by the State acting reasonably.

2.6 Business Day

If the day on or by which anything is to be done in accordance with this Agreement is not a Business Day, that thing must be done no later than the next Business Day.

2.7 Review Procedures

Where Project Co is required to comply with a document that has been submitted for review in accordance with the Review Procedures (including pending resolution of any Dispute), Project Co must comply with the version of the document as set out in section 4.1(c) of the Review Procedures.

2.8 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Agreement or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

2.9 Action without delay

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

2.10 Provisions limiting or excluding Liability, rights or obligations

- (a) A right of the State or an obligation of Project Co under this Agreement will not limit or exclude any other right of the State or obligation of Project Co under this Agreement unless expressly stated.
- (b) Any provision of this Agreement which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

2.11 Relationship of the parties

Unless otherwise expressly provided, nothing in this Agreement or any other Project Document:

- (a) **(no additional relationship)**: creates a partnership, joint venture, fiduciary, employment or agency relationship between the State and Project Co or NewCo; or
- (b) **(no good faith)**: imposes any duty of good faith on the State.

2.12 State's executive rights and duties

- (a) **(State's own interests)**: Unless otherwise expressly provided in the State Project Documents, nothing in the State Project Documents gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations in accordance with the State Project Documents.
- (b) **(State's rights)**: Notwithstanding anything expressly provided or implied in the State Project Documents to the contrary, the parties agree that:
 - (i) the State is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of any of its executive or statutory rights or duties; and
 - (ii) nothing expressly provided or implied in the State Project Documents has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- (c) **(No Claim)**: Subject to clause 2.12(d), Project Co will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (d) **(Liability for breach)**: Clauses 2.12(a) to (c) do not limit any Liability which the State would have had to Project Co under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

2.13 Reasonable endeavours of State

Any statement in a State Project Document providing that the State will use or exercise "reasonable endeavours" or "act reasonably" in relation to an outcome, means that the State:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: is not required to:
 - (i) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (ii) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (iii) develop or implement new policy;
 - (iv) procure legislation; or

- (v) act in a way that the State regards as not in the public interest, provided that it will not in itself be contrary to the public interest for the State to have regard to Project Co's commercial interests in using or exercising "reasonable endeavours" or "acting reasonably" in relation to an outcome.

2.14 Reduction in State liability for Relief Events

The State's Liability and Project Co's entitlements in connection with any Relief Event will be reduced:

- (a) **(caused by Project Co)**: to the extent that the Relief Event is caused or contributed to by:
 - (i) any breach of this Agreement by Project Co;
 - (ii) any breach of any other Project Document by Project Co or any of its Associates who is a counterparty to the Project Document; or
 - (iii) any act or omission by Project Co or any of its Associates other than to the extent any such act or omission is authorised or permitted under a Project Document;
- (b) **(failure to mitigate)**: to the extent Project Co, or any of its Associates, fails to:
 - (i) use all reasonable endeavours to mitigate, minimise or avoid the effects, consequences or duration of any Relief Event (including by putting in place temporary measures reasonably required by the State); or
 - (ii) take all reasonable steps which a prudent, competent and experienced contractor in the circumstances of Project Co or the relevant Associate of Project Co would have taken to mitigate, minimise or avoid the effects, consequences or duration of the Relief Event;
- (c) **(insurance proceeds)**: by any insurance proceeds:
 - (i) payable to Project Co, or any of its Associates, under any Insurances in respect of the Relief Event; or
 - (ii) which would have been payable to Project Co or any of its Associates under any Insurance in respect of the Relief Event but for a failure by Project Co to comply with this Agreement or a failure by Project Co or any of its Associates to comply with the terms of those Insurances; and
- (d) **(existing obligations)**: to the extent that the Project Documents require Project Co to expend costs in performing the Project Activities which are affected by the Relief Event, by the actual costs which Project Co would have expended in respect of those Project Activities had the Relief Event never occurred (which costs will not include costs incurred by Project Co in mitigating the effects of the relevant Relief Event).

2.15 No State liability for review

- (a) **(No obligation)**: Except as otherwise expressly provided in the Independent Reviewer and Environmental Auditor Deed of Appointment, the State and the Independent Reviewer and Environmental Auditor do not owe any duty of care to Project Co to:

- (i) review (or when reviewing) the Project Co Material or the Financial Model submitted by Project Co (even where submitted in accordance with the Review Procedures); or
 - (ii) inspect or review the Project Activities or the Relevant Infrastructure, for Defects, other errors or omissions or for compliance with the State Project Documents or any Laws.
- (b) **(No relief):** No:
- (i) review of, comments upon, acceptance, approval or certification of any Project Co Material or the Financial Model by (or on behalf of) the State;
 - (ii) inspection or review of the Project Activities or the Relevant Infrastructure by (or on behalf of) the State; or
 - (iii) failure by (or on behalf of) the State, to detect any non-compliance by Project Co with its obligations in accordance with the State Project Documents or any Laws,
- will:
- (iv) relieve Project Co from, or alter or affect, its Liabilities, obligations or responsibilities whether in accordance with the State Project Documents or otherwise according to Law;
 - (v) prejudice the State's rights against Project Co whether under the State Project Documents or otherwise according to Law; or
 - (vi) constitute an approval by the State of Project Co's performance of its obligations in accordance with the State Project Documents.
- (c) **(State Works):** The payment of any amount in respect of the State Works under the D&C Subcontract does not constitute an approval by the State of the completion or acceptance of the D&C Activities or O&M Activities in accordance with this Agreement, or evidence that the West Gate Tunnel is Fit for Purpose or constitute evidence that all or any other obligations of Project Co under the State Project Documents have been satisfied.

2.16 Indexation

- (a) **(Indexed amounts):** All amounts required to be adjusted in accordance with this Agreement by an Index will be Indexed in accordance with the Indexes Schedule.
- (b) **(Changes to indexes):** Any changes to Indexes will be determined in accordance with the Indexes Schedule.

2.17 Cost of carrying out obligations

Each party must carry out its obligations in accordance with this Agreement at its own cost, unless expressly provided otherwise.

2.18 Project Co and Associates

Any obligation of Project Co under the State Project Documents is deemed to include an obligation on Project Co to ensure that each of its Associates assumes and complies with the corresponding obligation to the extent that the obligation is applicable to that Associate of Project Co under a Project Document.

2.19 Fitness for purpose

A reference to Fit For Purpose will be read having regard to:

- (a) the number of, and configuration of lanes; and
- (b) the Ramp storage lengths,

as specified in the PSR.

2.20 Co-investment role of the State under the D&C Subcontract

- (a) The parties acknowledge that:
 - (i) the design and construction of the State Works; and
 - (ii) the operation, repair and maintenance of the State Works,will be treated as part of the Project Activities.
- (b) It is the parties' common intention that the State is a party to the D&C Subcontract solely for the purposes of:
 - (i) acquiring the services from the D&C Subcontractor in relation to the State Works for consideration (being the State Works Price) and making payments, subject to clause 2.20(h), to the D&C Subcontractor of the amount certified within a Payment Certificate (State Works) or the Final Payment Certificate (State Works) in accordance with clauses 31.8 and 31.9 of the D&C Subcontract respectively or otherwise an amount on account of the State Works Price determined to be payable pursuant to clauses 43 or 44 of the D&C Subcontract;
 - (ii) making payments, subject to clause 2.20(h), to the D&C Subcontractor of any amounts determined pursuant to or in accordance with the Security of Payment Act to be owing to the D&C Subcontractor on account of the State Works Price;
 - (iii) making payments to the D&C Subcontractor of any amounts on account of interest in respect of the State Works Price owing pursuant to clause 31.21(a) of the D&C Subcontract (where the State is not otherwise entitled to withhold payment of the relevant amount of the State Works Price pursuant to clause 31.22(b) of the D&C Subcontract);
 - (iv) being able to exercise the right of set off and deduction granted to the State pursuant to clause 31.22(b) of the D&C Subcontract in respect of amounts due and payable from Project Co to the State under this Agreement;
 - (v) agreeing to clauses 2.21(c), 2.21(g), 2.21(h), 9.11, 31.20(a)(viii) and 45.1 of the D&C Subcontract; and
 - (vi) clauses 2.21(a) to 2.21(h) (inclusive) of the D&C Subcontract.
- (c) Project Co indemnifies the State on demand in respect of any Liability incurred by the State as a result of or in connection with:
 - (i) a breach by the D&C Subcontractor of clauses 2.21(d), 2.21(e) or 2.21(f) of the D&C Subcontract or clause 2.21(d), 2.21(e) or 2.21(f) of the D&C Subcontract being wholly or partly void or unenforceable;

- (ii) without limiting clause 39.8, any failure by Project Co to advance an SW Loan to the State under (and as defined in) the State Works Loan Agreement;
 - (iii) the State being liable to the D&C Subcontractor in respect of the State Works (whether as a result of a determination under clause 43 or 44 of the D&C Subcontract or the Security of Payment Act or otherwise) for an amount greater than the State Works Price and any interest referred to in clause 2.20(b)(iii);
 - (iv) the State incurring any Liability inconsistent with the agreement in clause 2.21(h) of the D&C Subcontract;
 - (v) the State incurring any Liability as a result of complying with clause 2.21(h); or
 - (vi) the State being a party to the D&C Subcontract, other than a Liability expressly assumed by the State under this Agreement or the D&C Subcontract.
- (d) The State appoints Project Co to act as its agent in respect of all necessary dealings with the D&C Subcontractor or the Independent Payment Certifier in respect of or in connection with the State Works, including:
- (i) any dispute under or in connection with the Security of Payment Act, with authority to participate in (in lieu of the State), manage and settle (with the State's written consent, not to be unreasonably withheld or delayed) any such dispute (including pursuant to any necessary adjudication and litigation procedures); and
 - (ii) any dispute in respect of an amount certified by the Independent Payment Certifier in a Payment Certificate (State Works) or Final Payment Certificate (State Works) with authority to participate in (in lieu of the State), manage and settle (with the State's written consent, not to be unreasonably withheld or delayed) any such dispute (including pursuant to all necessary dispute resolution processes and procedures).
- (e) Without limiting clause 2.20(d) or the State's rights under this Agreement (including under clause 10.4), Project Co:
- (i) does not require the consent of the State (subject to clause 2.20(d)) to exercise any rights in respect of the D&C Subcontract, including participating in any dispute with the Independent Payment Certifier or the D&C Subcontractor in respect of the State Works; and
 - (ii) does not need to involve the State in any necessary dealings with the D&C Subcontractor or the Sub-Independent Reviewer and Environmental Auditor in respect of or in connection with the D&C Subcontract or the State Works.
- (f) Subject to clause 2.20(m), Project Co will not be entitled to make any Claim against the State for any Liability incurred by Project Co directly as a result of acting as the agent of the State in accordance with clause 2.20(d).
- (g) The State acknowledges that under the D&C Subcontract, it remains responsible subject to clause 2.20(h), for paying any amounts owing to the D&C Subcontractor on account of the State Works Price, resulting from the resolution of a dispute (under or in connection with the Security of Payment Act or in respect of an amount certified by the Independent Payment Certifier in a Payment Certificate (State

Works) or Final Payment Certificate (State Works)) in respect of which Project Co has acted as the State's agent and to which the State has consented.

- (h) Except to the extent otherwise agreed, Project Co acknowledges and agrees that other than for the interest referred to in clause 2.20(b)(iii) and subject to the State's obligations in relation to Compensable Extension Events, in no event will the State be required to pay an amount on account of the State Works that exceeds the State Works Price.
- (i) The State must promptly notify Project Co in writing in the event that the State:
 - (i) intends not to pay to the D&C Subcontractor or fails to pay the D&C Subcontractor under the D&C Subcontract:
 - A. any amount certified within a Payment Certificate (State Works) or the Final Payment Certificate (State Works) in accordance with clauses 31.8 and 31.9 of the D&C Subcontract respectively, or otherwise an amount on account of the State Works Price determined to be payable pursuant to clauses 43 or 44 of the D&C Subcontract; or
 - B. any amount determined pursuant to or in accordance with the Security of Payment Act to be owing to the D&C Subcontractor on account of the State Works Price,

(any such amounts that have not been paid to the D&C Subcontractor being the **State Works Unpaid Amount**); or
 - (ii) intends to exercise or does exercise its right of set off and deduction pursuant to clause 31.22(b) of the D&C Subcontract (any amount that has been set off or deducted being the **State Works Set Off Amount**),

and provide with such notice:
 - (iii) a detailed breakdown (in accordance with paragraphs (i) and (ii) above) of the quantum of the State Works Unpaid Amount and the State Works Set Off Amount; and
 - (iv) detailed reasons why the State intends not to pay or has failed to pay the State Works Unpaid Amount or State Works Set Off Amount.
- (j) Project Co may Dispute that an amount set off or deducted by the State is due and payable from Project Co to the State under this Agreement and in the event that it is determined pursuant to clauses 43 and 44 that an amount was not due and payable, such amount, (being the **Recoverable State Works Set Off Amount**) will not be deemed to form part of any State Works Set Off Amount.
- (k) The State acknowledges that under clauses 2.21(j) and 2.21(k) of the D&C Subcontract, after receiving a notice from the D&C Subcontractor pursuant to clause 2.21(i) of the D&C Subcontract, Project Co must:
 - (i) in respect of any State Works Unpaid Amount, use all reasonable endeavours to obtain funding and provided Project Co has obtained the necessary funding, subject to clause 2.21(m) of the D&C Subcontract, pay to the D&C Subcontractor the State Works Unpaid Amount (together with any interest owing pursuant to clause 31.21(a) of the D&C Subcontract on account of the relevant State Works Unpaid Amount); or
 - (ii) in respect of any State Works Set Off Amount or any other amount Claimed or determined (under clause 43 or 44 of the D&C Subcontract

or the Security of Payment Act) to be payable by the State in respect of the State Works in excess of the State Works Price, subject to clause 2.21(m) of the D&C Subcontract, pay to the D&C Subcontractor the State Works Set Off Amount or other such amount (together with any interest owing pursuant to clause 31.21(a) of the D&C Subcontract on account of the relevant State Works Set Off Amount or such other amount).

- (l) The State acknowledges that in the event that the State does not pay to the D&C Subcontractor payments on account of the State Works Price in accordance with its obligations under the D&C Subcontract (where the State is not otherwise entitled to withhold payment of the relevant amount of the State Works Price), the State's obligations under the D&C Subcontract also extend to the payment of interest pursuant to clause 31.21(a) of the D&C Subcontract.
- (m) Provided that the State Works Payment Condition has been met at that time, the State must, subject to clause 2.14 of this Agreement, pay to Project Co:
 - (i) within 5 Business Days of a written demand by Project Co, any State Works Unpaid Amount that has been paid by Project Co to the D&C Subcontractor (together with any interest paid by Project Co to the D&C Subcontractor pursuant to clause 31.21(a) of the D&C Subcontract on account of the relevant State Works Unpaid Amount);
 - (ii) within 5 Business Days of a written demand by Project Co, the Recoverable State Works Set Off Amount (together with any interest paid by Project Co to the D&C Subcontractor pursuant to clause 31.21(a) of the D&C Subcontract on account of the relevant Recoverable State Works Unpaid Amount); and
 - (iii) any amount on account of debt financing costs incurred or paid by Project Co in respect of the amount referred to in clause 2.20(m)(i) and 2.20(m)(ii) as relevant, calculated in accordance with the Change Compensation Principles.
- (n) A suspension by the D&C Subcontractor pursuant to clause 31.23 of the D&C Subcontract, or otherwise pursuant to the Security of Payment Act, as a result of the State or Project Co failing to pay a State Works Unpaid Amount to the D&C Subcontractor (other than as a result of a breach by Project Co of its obligations under clause 2.21(k) of the D&C Subcontract) will be deemed to be a Compensable Extension Event.

2.21 Responsibility for State Works

Project Co acknowledges and agrees that except as expressly provided in this Agreement:

- (a) the State has no liability whatsoever to Project Co and Project Co has no Claim whatsoever against the State arising out of or in connection with the State Works, including in respect of:
 - (i) any Defects in the State Works;
 - (ii) late completion of, or failure to complete, the State Works;
 - (iii) the State Works not being fit for their intended purposes; or
 - (iv) any non-compliance by the D&C Subcontractor with any requirements applying to the State Works;

- (b) Project Co is not excused from any breach of its obligations under the State Project Documents which arises as a result of any act or omission of the D&C Subcontractor or any Subcontractor in carrying out the State Works, except to the extent the breach results from the State's failure to comply with its payment obligations under the D&C Subcontract in respect of the State Works Price or for the interest referred to in clause 2.20(b)(iii) (other than to the extent caused by a breach of the State Project Documents by Project Co or where the State is otherwise entitled to withhold payment of an amount of the State Works Price pursuant to clause 31.22(b) of the D&C Subcontract);
- (c) Project Co must integrate, interface and co-ordinate the design and construction of the State Works with the design and construction of the Project Co Works (as defined in the D&C Subcontract);
- (d) Project Co must supervise and manage the performance of the State Works to ensure that the Works and the Project Activities comply with the requirements of this Agreement;
- (e) Project Co must not direct a Modification (as defined in the D&C Subcontract) under clause 34.1(a) of the D&C Subcontract in respect of the State Works that results in a change to the State Works Price except to the extent that the State directs a corresponding Modification to the State Works under clause 34.1(a) of this Agreement and it is agreed between the State and Project Co that this is to be paid for by way of an increase in the State Works Price;
- (f) Project Co may direct (in writing) the State to withhold from any payment of the State Works Price;
 - (i) Liquidated Damages (as defined in the D&C Subcontract);
 - (ii) any amounts for which Project Co is entitled to call on any Construction Bond;
 - (iii) any amounts that the D&C Subcontractor is expressly required under the D&C Subcontract to reimburse or pay to Project Co;
 - (iv) any amounts which Project Co pays on the D&C Subcontractor's behalf as expressly permitted under the D&C Subcontract;
 - (v) any amounts which the D&C Subcontractor owes to Project Co, as certified as due and payable by the Independent Payment Certifier in accordance with the D&C Subcontract (whether on account of the Project Co Works or the State Works); and
 - (vi) any amounts paid in respect of which the D&C Subcontractor indemnifies Project Co or its Associates under the D&C Subcontract;
- (g) A direction in writing pursuant to clause 2.21(f) must set out the amount the State is to withhold from a payment of the State Works Price (being the **Project Co Directed Set-Off Amount**); and
- (h) If the State receives a written direction from Project Co pursuant to clause 2.21(f), the State must:
 - (i) withhold the Project Co Directed Set-Off Amount from any payment to the D&C Subcontractor of the State Works Price; and
 - (ii) pay the Project Co Directed Set-Off Amount to Project Co at the same time as the State would have paid that amount to the D&C Subcontractor

pursuant to the D&C Subcontract had the State not received a notice from Project Co pursuant to clause 2.21(f).

2.22 AS5100

- (a) **(AS5100 (2017))**: Subject only to clauses 34 and 2.22(c), but notwithstanding any other provision of the State Project Documents, Project Co is not required to comply with AS5100 (2017) in carrying out the Project Activities.
- (b) **(References to AS5100)**: Without limiting clause 2.22(a) or clause 2.22(d) but subject to clause 2.22(c), any reference in a State Project Document to compliance with the Rail Interface Parties' Requirements or requirements or usual requirements of a Facility Owner, Authority, Rail Interface Party, Road Interface Party or other third party does not require compliance with AS5100 (2017).
- (c) **(Exception)**: Clauses 2.22(a) and 2.22(b) do not limit or otherwise affect Project Co's obligations to comply with a requirement of AS5100 (2017):
 - (i) which is incorporated in, the same as or is required by:
 - A. AS5100 (2004);
 - B. any applicable Standard under the State Project Requirements;
 - C. any Rail Interface Parties' Requirements; or
 - D. any Facility Owner's, Authority or other third party's usual requirements,and which existed prior to 31 March 2017; or
 - (ii) which is a requirement set out in the Project Scope (as at the date of this Agreement).
- (d) **(Reasonable endeavours)**: Project Co must:
 - (i) use all reasonable endeavours to assist the State, a Facility Owner, Road Interface Party, Rail Interface Party to mitigate or avoid; and
 - (ii) notify the State promptly if any Facility Owner, Road Interface Party, Rail Interface Party, Authority or any third party seeks to impose, any AS5100 (2017) Requirement.
- (e) **(Interpretation)**: For the avoidance of doubt, nothing in clauses 2.2, 2.3 or 2.4 will limit clauses 2.22(a) to 2.22(d).
- (f) **(Change in Policy)**: If, notwithstanding clauses 2.22(a) and 2.22(b), Project Co is required to comply with an AS5100 (2017) Requirement in carrying out the Project Activities, such requirement will be a Change in Policy for the purposes of clause 34.7 and the State must issue (and will be deemed to have issued) a direction to Project Co under clause 34.7(b) to comply with the AS5100 (2017) Requirement.
- (g) **(Dispute)**: If there is a dispute as to whether Project Co is required to comply with AS5100 (2017) as an AS5100 (2017) Requirement in accordance with clause 2.22(c)(i), the party asserting that Project Co is or was required to do so must demonstrate that the relevant requirement to comply with AS5100 (2017) as an AS5100 (2017) Requirement existed prior to 31 March 2017. A determination by the

Independent Reviewer and Environmental Auditor that clause 2.22(c)(i) applies is capable of dispute for the purposes of clause 9.6(b).

- (h) **(IREA):** For the avoidance of doubt, decisions of the Independent Reviewer and Environmental Auditor must be made in accordance with this clause 2.22.

2.23 Relevant Legislation

The parties acknowledge that the Project Documents are made for the purpose of an approved project under the Relevant Legislation.

2.24 Accession of Trustee under the D&C Subcontract

Project Co may only issue a written request in accordance with clause 63(b) of the D&C Subcontract on or after the Date of Parliamentary Support (CityLink).

2.25 Contingent Schedules

The parties agree to be bound by, and comply with, the terms of each of:

- (a) the Additional State Contribution Schedule;
- (b) the Enforcement Payments Schedule;
- (c) the Adjustment Events Schedule;
- (d) the WGT Legislation Commencement Schedule; and
- (e) the CityLink Amendments Schedule.

2.26 Tolling System, Tolling Back Office System and Asset Management System

Where any term of this Agreement requires Project Co to provide systems, functionality or licences to the State or its nominee in connection with Handover and/or a Step-In Event, the definitions of "Tolling System", "Tolling Back Office System" and "Asset Management System" as set out in clause 1 are to be interpreted as follows:

- (a) Tolling System means the Tolling Back Office System (interpreted in accordance with clause 2.26(b)) and the RSS;
- (b) where the systems in use by or on behalf of Project Co at the relevant time to meet the requirements for the Tolling Back Office (as described in the PSR) exceed those requirements, those systems will (excluding, where they are part of a bureau system, functionality of that bureau system not used by or on behalf of Project Co for the Project) be taken to form part of the Tolling Back Office System; and
- (c) where the systems in use by or on behalf of Project Co at the relevant time to meet the requirements for the Asset Management System (as described in the PSR) exceed those requirements, those systems will (excluding, where they are part of a bureau system, functionality of that bureau system not used by or on behalf of Project Co for the Project) be taken to form part of the Asset Management System.

3. Conditions Precedent

3.1 Commencement

This Agreement will not commence until each of the Conditions Precedent has been satisfied (or waived in accordance with clause 3.3), except for, subject to clause 3.1A, the provisions contained in:

- (a) clause 1 (Definitions);
- (b) clause 2.1 (Interpretation);
- (c) clause 2.11 (Relationship of the parties);
- (d) clause 2.12 (State's executive rights and duties);
- (e) clause 2.13 (Reasonable endeavours of State);
- (f) clause 2.14 (Reduction in State liability for Relief Events);
- (g) this clause 3 (Conditions Precedent);
- (h) clause 4 (Term);
- (i) clause 5.1 (Project Co's primary obligations);
- (j) clause 5.4 (All Risks);
- (k) clause 8.1 (Key Approvals to be obtained by the State);
- (l) clause 9.2 (Parties' representatives);
- (m) clause 12 (Health and safety);
- (n) clause 16 (Building Code);
- (o) clause 39.8 (Indemnity for Project Co breach);
- (p) clause 39.9 (General indemnity);
- (q) clause 39.10 (Release);
- (r) clause 40 (Insurance);
- (s) clause 43 (Dispute resolution);
- (t) clause 44 (Arbitration);
- (u) clause 45 (Representations and warranties);
- (v) clause 47 (Project Co to inform itself);
- (w) clause 48 (Restrictions on Project Co);
- (x) clause 49 (Assignment, amendments and change in ownership);
- (y) clause 50 (Financial Model);

- (z) clause 53.2 (Confidential Information and disclosure);
- (aa) clause 59 (Probity Events and Probity Investigations);
- (bb) clause 60 (Notices and bar to Claims); and
- (cc) clause 61 (Miscellaneous),

(the "**Day 1 Clauses**") which will commence on the date of this Agreement.

3.1A Early Activities

The Day 1 Clauses will not apply to or in respect of the WD Early Activities and the D&C Early Activities, and the parties acknowledge and agree that any WD Early Activities or D&C Early Activities performed by Project Co or the D&C Subcontractor (as applicable) after the date of this Agreement will continue to be governed as between the State and Project Co by the terms of the Western Distributor Commitment Deed.

3.2 Satisfaction of Conditions Precedent

- (a) **(State to use reasonable endeavours)**: The State must use reasonable endeavours to satisfy each Condition Precedent which is expressed to be included for the benefit of Project Co (or Project Co and the State) by the relevant Condition Precedent Deadline and must notify Project Co as such Conditions Precedent are satisfied.
- (b) **(Project Co to satisfy)**: Project Co must satisfy each Condition Precedent which is expressed to be included for the benefit of the State (or Project Co and the State) by the relevant Condition Precedent Deadline and must notify the State as such Conditions Precedent are satisfied.
- (c) **(Notice at Financial Close)**: When the last of the Conditions Precedent to be satisfied has been satisfied or waived, the State Representative must confirm that all of the Conditions Precedent have been satisfied or waived and the date upon which the last of the Conditions Precedent was satisfied or waived.

3.3 Waiver of Conditions Precedent

- (a) **(Conditions Precedent Schedule)**: The Conditions Precedent Schedule sets out which party benefits from the satisfaction of each Condition Precedent.
- (b) **(Waiver)**: A Condition Precedent is only waived if:
 - (i) where the Condition Precedent is included for the benefit of a particular party as set out in the Conditions Precedent Schedule, that party gives notice of the waiver of the Condition Precedent to the other party; and
 - (ii) where the Condition Precedent is included for the benefit of both parties, both parties agree to waive the Condition Precedent.

3.4 Failure to satisfy Condition Precedent Deadline

If the Conditions Precedent are not satisfied (or waived in accordance with clause 3.3) by the relevant Condition Precedent Deadline, then:

- (a) **(State option to terminate)**: the State may, at its option, terminate this Agreement upon the State giving not less than 5 Business Days' notice to Project Co; and

- (b) **(State Project Documents terminated)**: each of the State Project Documents will be taken to have been terminated at the time this Agreement is terminated and will be of no further force or effect.

3.5 Post Close IP Deliverables

- (a) Project Co must deliver to the State each of the documents set out in the Post Close IP Deliverables Schedule by 31 May 2018.
- (b) The State will reasonably consider any amendments which are proposed to the Escrow Agreements by the parties thereto.

4. Term

4.1 Commencement date

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

4.2 Expiry Date

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

5. Overarching obligations

5.1 Project Co's primary obligations

- (a) **(Deliver the Project)**: Project Co must carry out the Project Activities in accordance with:
 - (i) the State Project Documents;
 - (ii) all applicable Laws;
 - (iii) subject to section 2.1(d) of Part A of the PSR, Best Industry Practices; and
 - (iv) all applicable Standards.
- (b) **(Comply with directions)**: Project Co must comply with:
 - (i) all Modification Orders and its obligations with respect to Streamlined Modification Proposals; and
 - (ii) all directions or determinations given in accordance with the State Project Documents by the State or its delegates, the State Representative or its delegates, or the Independent Reviewer and Environmental Auditor.
- (c) **(Reference Documents)**: The parties acknowledge and agree that clauses 5.1(a)(iii) and 25.5(a)(iv) do not require Project Co to comply with any Reference Document to the extent that a requirement to comply with such Reference Document would be inconsistent with section 2.1(b)(i) of Part A of the PSR.

5.2 Grant of concession

The State grants to Project Co the right to:

- (a) design, construct and commission the Works;
- (b) operate, maintain and repair the West Gate Tunnel;
- (c) maintain and repair the Maintained Off-Freeway Facilities;
- (d) impose and collect tolls and administrative fees and charges for the use of the West Gate Tunnel; and
- (e) raise revenues from other lawful uses of the West Gate Tunnel approved by the State,

subject to, and in accordance with, the terms of this Agreement.

5.3 Fit for Purpose Warranty

Project Co warrants that:

- (a) **(West Gate Tunnel Completion)**: in respect of West Gate Tunnel Completion (other than in respect of the Tolling Works and any Remaining Works), at all times on and from the Date of West Gate Tunnel Completion until the end of the Term, the West Gate Tunnel and the Maintained Off-Freeway Facilities;
- (b) **(Tolling Completion)**: in respect of the Tolling Works, on and from the Date of Tolling Completion until the end of the Term, the Tolling Works; and
- (c) **(Close-Out)**: in respect of the Remaining Works, on and from the Date of Close-Out until the end of the Term, the Remaining Works,

will:

- (d) **(Fit for Purpose)**: be Fit For Purpose; and
- (e) **(Laws and Standards)**: comply with:
 - (i) all applicable Laws; and
 - (ii) all applicable Standards,

(the FFP Warranty).

5.4 All risks

- (a) **(All risks and no claim)**: Subject to clauses 5.4(b) and 5.4(c) and except as otherwise expressly provided in the State Project Documents, as between the State and Project Co:
 - (i) Project Co accepts all risks (and the cost of such risks) in connection with delivering the Project; and
 - (ii) Project Co is not entitled to make any Claim against the State or the State's Associates in connection with the Project or the Project Documents (but without limiting Project Co's right to raise any defence in relation to a Claim made by the State or the State's Associates against Project Co).
- (b) **(State breach and third party liability)**: Clause 5.4(a) and (notwithstanding clause 2.3(a)) clause 14.2 of the Port Land Deed does not exclude or limit any

Liability the State or its Associates may have to Project Co or any of its Associates under the State Project Documents or at Law:

- (i) without limiting clauses 5.4(b)(ii), 5.4(b)(iii) or 5.4(b)(iv), for a failure by the State to pay an amount that is due and payable to Project Co in accordance with:
 - A. a State Project Document to the extent that the amount relates to Liabilities incurred by the CityLink Parties; or
 - B. the Additional State Contribution Schedule, the Enforcement Payments Schedule or the Adjustment Events Schedule;
 - (ii) if Project Co or its Associates incur a Liability in respect of a breach by the State or its Associates of any State Project Document, except where the Liability is:
 - A. in respect of delay to the progress of the Works (for which Project Co's entitlement is limited in accordance with clauses 23.5, 23.10 and 23.14); or
 - B. a Liability for breach of this Agreement which triggers a Key Risk Event (for which Project Co's entitlement in respect of that Key Risk Event is limited in accordance with clause 27);
 - (iii) if Project Co or its Associates incur any Liability to a third party in respect of death, personal injury or damage to property, to the extent that the Liability of Project Co or its Associates is a consequence of:
 - A. a breach by the State or its Associates of a State Project Document;
 - B. a fraudulent, reckless, unlawful, negligent or malicious act or omission of the State or a State Associate; or
 - C. Project Co not being required to comply with AS5100 (2017) in carrying out the Project Activities, except as set out in clause 2.22(c); or
 - (iv) if Project Co or its Associates incur any Liability on or after the Date of Tolling Completion, to the extent that the Liability of Project Co or its Associates is a consequence of a State Act of Prevention.
- (c) **(Deemed State Project Document):** To the extent that a State Associate expressly assumes a Liability under an agreement with Project Co in relation to the Project, that agreement will be deemed to be a State Project Document for the purpose of this clause 5.4.

6. Land

6.1 Property Committee

In order to coordinate and facilitate the land issues for the Project, the State and Project Co will form a consultative committee (**Property Committee**) comprising:

- (a) at least two representatives from the State; and
- (b) at least two representatives from Project Co, at least one of which may be a representative of the D&C Subcontractor,

which will conduct its proceedings in the manner agreed between the State and Project Co.

6.2 Land Availability Plans

- (a) **(State to make available):** Subject to clauses 6.7(c), 6.2(d) and 6.2(e), the State will make each relevant parcel of land specified in the Land Availability Plans available to Project Co and NewCo, by the dates and, to the extent that a duration is specified, for the duration specified for that parcel of land in the Land Availability Plans and otherwise in accordance with the terms of this Agreement, by one of the following processes:
- (i) by granting a Construction Licence in accordance with clause 6.5(a);
 - (ii) by an alternative process determined by the State, which process may involve sections 167 or 170 of the Relevant Legislation, or section 75 of the *Land Acquisition and Compensation Act 1986* (Vic) (as amended by section 119 of the Relevant Legislation), under which Project Co and NewCo will be granted access to the relevant parcel of land on terms equivalent to those contained in the Construction Licence, and as a minimum, with sufficient rights to carry out the D&C Activities on that parcel of land in accordance with this Agreement; or
 - (iii) by an alternative process described in clause 6.6.
- (b) **(No other rights):** Except as provided for in this clause 6 and clause 28.10, the State has no obligation to provide Project Co or NewCo with any rights identified in the Land Availability Plans relating to land or any other rights in respect of land required for the Project.
- (c) **(Adjustment of Land Availability Plans):** The Land Availability Plans may only be adjusted in accordance with clause 6.3.
- (d) **(State to make available):** Subject to clause 6.2(f), the State will make each Additional Land Parcel specified in Table H15.2 of Part H15 of the PSR available to Project Co and NewCo (as applicable), by the dates and for the purposes specified for that parcel of land and, to the extent that a duration is specified in section 3 of Part J of the PSR for that parcel of land, for that duration. Project Co must provide all required information and reasonable assistance requested by the State in making available the Additional Land Parcels.
- (e) **(State to use reasonable endeavours):** The State will use its reasonable endeavours to make each Additional Land Parcel specified in Table H15.3 of Part H15 of the PSR available to Project Co and NewCo (as applicable), by the dates and for the purposes specified for that parcel of land and, to the extent that a duration is specified in section 3 of Part J of the PSR for that parcel of land, for that duration.
- (f) **(No Obligation):** If the State cannot make Additional Land Parcel AP6 as set out in Table H15.2 of Part H15 of the PSR available to Project Co and NewCo by the relevant date set out in Table 15.2:
- (i) the Concept Design will be changed to delete the works as set out in Part K22 of the PSR on AP6 (**Omitted Scope**);
 - (ii) Project Co will have no obligation to deliver the Omitted Scope; and
 - (iii) Project Co will not be entitled to make any Claim against the State or its Associates in connection with the Omitted Scope.

6.3 Adjustment of Land Availability Plans

- (a) **(Project Co may request):** Subject to clauses 6.3(b) and 6.3(c), Project Co may submit a notice to the State for review in accordance with the Review Procedures, requesting that the Land Availability Plans be amended to:
- (i) include additional parcels of land;
 - (ii) defer the availability date of an existing parcel of land referred to in the Land Availability Plans which:
 - A. changes the duration of the access period for that parcel of land; or
 - B. does not change the duration of the access period for that parcel of land; or
 - (iii) bring forward the availability date of an existing parcel of land referred to in the Land Availability Plans which:
 - A. changes the duration of the access period for that parcel of land; or
 - B. does not change the duration of the access period for that parcel of land.
- (b) **(Project Co's Notice under clause 6.3(a)(i)):** Project Co's notice under clause 6.3(a)(i) must include details of:
- (i) the additional parcel of land (including height and depth) required by Project Co and NewCo;
 - (ii) the purpose for which Project Co and NewCo require that additional parcel of land;
 - (iii) the date by which Project Co and NewCo reasonably anticipate they require access to the additional parcel of land; and
 - (iv) any consequential amendments required to the Land Availability Plans.
- (c) **(Project Co's Notice under clauses 6.3(a)(ii) or 6.3(a)(iii)):** Project Co's notice under clauses 6.3(a)(ii) or 6.3(a)(iii) must include details of the amended availability date being requested.
- (d) **(State may exercise powers):** Subject to clause 6.3(e), within a reasonable period following receipt of a notice under:
- (i) clause 6.3(a)(i), if the State has the legislative power under the Relevant Legislation (or any equivalent legislation) enabling it to do so; or
 - (ii) clause 6.3(a)(iii), if the State is reasonably able to make the parcel of land available by the amended availability date,
- the State may:
- (iii) agree to amend the Land Availability Plans under clause 6.3(h) and impose any reasonable conditions required by the State in connection with the request received by Project Co under clause 6.3(a)(i) or 6.3(a)(iii) (as applicable); or

- (iv) advise Project Co that it will not agree to the request made by Project Co under clause 6.3(a)(i) or 6.3(a)(iii) (as applicable).
- (e) **(Excluded parcels of land):** Project Co will not be entitled to make a request under clauses 6.3(a)(ii) or 6.3(a)(iii) in respect of the Port Transaction Land, any land licensed under the WGT Road Licence or any residential land.
- (f) **(Project Co accepts all risks):** Project Co accepts all risks under this clause 6.3, including:
 - (i) the risk of any unavailability or delay in making a parcel of land available;
 - (ii) any risk arising as a result of compliance with the conditions imposed in the determination by the State under clause 6.3(d)(iii);
 - (iii) subject to clause 6.3(i), all costs incurred by the State (including land acquisition costs), provided that the State has used reasonable endeavours to mitigate such costs, which will be a debt due and payable by Project Co to the State; and
 - (iv) the risk that the State does not agree to a request in accordance with clause 6.3(d)(iv).
- (g) **(Payment as a condition of exercise of power):** The State may, as a condition of exercising its powers under clause 6.3(d)(iii), require Project Co to deposit sufficient funds into its nominated bank account in order to meet all costs that the State reasonably anticipates that it will incur as a result of the exercise of its powers.
- (h) **(Adjustment of the Land Availability Plans):** If:
 - (i) the State agrees to amend the Land Availability Plans under clause 6.3(d)(iii); or
 - (ii) Project Co provides a notice under clause 6.3(a)(ii) in accordance with clause 6.3(c),then the Land Availability Plans will be amended by the State to reflect the:
 - (iii) additional parcel of land to be made available by the State and the date upon which the State will make such land available to Project Co and NewCo, having regard to the date advised by Project Co under clause 6.3(b)(iii) and the exercise of the State's powers to make the parcel available; or
 - (iv) amended availability date of an existing parcel of land,(as the case may be), including any consequential amendments required to remove Land Availability Plans, as a result of the inclusion of an additional parcel of land.
- (i) **(Relief event):** Project Co's obligation to pay the State's costs under clause 6.3(f)(iii) does not apply to the extent that:
 - (i) a Relief Event delays the carrying out of the Project Activities for a period of time, and there is no other concurrent delay to those Project Activities resulting from a cause that is not a Relief Event during that period of time (**Access Delay Period**);
 - (ii) as a result of the Access Delay Period, the Project Activities could not be performed during the period provided for in the Land Availability Plans in

respect of the land required for the performance of those Project Activities (**Access Delay Project Activities**); and

- (iii) the access to land procured by the State following a Project Co request under clause 6.3(a) was required to carry out the Access Delay Project Activities (and no other Project Activities),

provided that Project Co must provide the State with:

- (iv) a notice detailing the relevant Relief Event and the estimated delay to the Project Activities caused by the Relief Event within 15 Business Days after the date Project Co becomes aware of the Relief Event; and
- (v) a notice advising the State that the delay caused by the Relief Event has ceased, and Project Co's opinion of the Access Delay Period and the Access Delay Project Activities, within 15 Business Days after cessation of the delay caused by the Relief Event.

6.4 Permitted use

Except as otherwise expressly provided in the State Project Documents, Project Co must not use or permit the use of the Construction Areas, Maintenance Areas or Leased Area for any purpose other than as permitted under this Agreement, the Construction Licence, the Maintenance Licence, the Lease, the Lease (NewCo) or the terms of any legislation under which access is granted.

6.5 Grant of Licences

- (a) **(Construction Licence)**: Subject to the other provisions of this Agreement affecting access or granting rights in relation to land, the State will grant or procure the grant to Project Co and NewCo of a non-exclusive licence under section 173 of the Relevant Legislation or other means:
 - (i) in respect of the Licensed Construction Areas;
 - (ii) substantially in the form of, and on the terms and for the purposes specified in, the Construction Licence and the PSR; and
 - (iii) otherwise on such other terms imposed by the State (acting reasonably):
 - A. having regard to the nature, location, hours and mode of construction of the Works for which the Construction Licence is granted; and
 - B. in consultation with the Property Committee.
- (b) **(Maintenance Licence)**: Subject to the other provisions of this Agreement affecting access or granting rights in relation to land, the State will grant, or procure the grant to, Project Co of a non-exclusive licence under section 173 of the Relevant Legislation:
 - (i) in respect of the Licensed Maintenance Areas;
 - (ii) with effect on and from the Date of West Gate Tunnel Completion until the Expiry Date;
 - (iii) substantially in the form of, and on the terms and for the purposes specified in the Maintenance Licence and the PSR; and

- (iv) otherwise on such other terms imposed by the State (acting reasonably):
 - A. having regard to the nature and location of:
 - 1) Project Co's obligations in relation to the Licensed Maintenance Areas under this Agreement; and
 - 2) OpCo's obligations (if any) in relation to incident response outside of the Leased Area or Licensed Maintenance Areas; and
 - B. in consultation with the Property Committee.
- (ba) **(Returned Works licence):** To the extent that any part of the Returned Works is a Maintained Off-Freeway Facility, the State will grant, or procure the grant to, Project Co a licence on substantially the same terms to those set out in clause 6.5(b) on and from the Date of Handback of the relevant Returned Works.
- (bb) **(No interference):** When accessing or utilising the Licensed Maintenance Areas, the State must not, and must ensure that its Associates and any other person permitted by it to access or utilise the Licensed Maintenance Areas do not, unnecessarily interfere with the carrying out of the Project Activities.
- (c) **(Project Co bears risk of obtaining access):** Project Co bears all risks in relation to, and is responsible for, gaining access to and from the Site, including any failure to gain, or delay in gaining, access to the Site (other than to the extent arising out of a failure by the State to comply with its obligations under clause 6.2, this clause 6.5, clause 6.6 or clause 6.9).
- (d) **(Progressive removal of materials and make good):** During the term of a Construction Licence or Maintenance Licence, Project Co must, as soon as practicable after completion of any Project Activities on any part of the Construction Areas or Maintenance Areas:
 - (i) remove all plant, equipment, machinery, facilities and vehicles; and
 - (ii) make good all damage or Contamination caused by Project Co's or NewCo's use and occupation of that part of the Construction Areas or Maintenance Areas (as the case may be), including removing all rubbish and debris,unless Project Co is expressly not required to do so by the State Project Documents.
- (e) **(End of Construction Licence, Maintenance Licence):** Project Co must, at the end of the:
 - (i) Construction Licence, reinstate the Licensed Construction Areas, in accordance with the terms of the Construction Licence; and
 - (ii) Maintenance Licence, reinstate the Licensed Maintenance Areas, in accordance with the terms of the Maintenance Licence.
- (f) **(Development of Maintenance Area Plans):** On or before the date which is 6 months prior to the Date of West Gate Tunnel Completion, the State must provide Project Co with the Licensed Maintenance Area Plans which must, unless the parties otherwise agree, include:
 - (i) the areas comprising the Maintained Off-Freeway Facilities in accordance with the Maintenance Principles; and

- (ii) any other areas reasonably required by Project Co to enable it to discharge its obligations under this Agreement and the Maintenance Licence in relation to the Maintained Off-Freeway Facilities.

6.6 Other D&C Access Areas and Other Maintenance Access Areas

- (a) **(Access to Port land):** The State will make access to the:
 - (i) WGT Road Area available in accordance with the WGT Road Licence; and
 - (ii) Port Transaction Land available in accordance with the Port Land Deed, by the dates set out in the Land Availability Plans.
- (b) **(Access to Rail Land):**
 - (i) Project Co acknowledges that:
 - A. the terms and conditions of access to Category 1 Rail Land will be subject to the Rail Projects Agreements and Interstate Infrastructure Lease, in accordance with clause 10.12(d);
 - B. the terms and conditions of access to Category 2 Rail Land will be subject to the Direct Interface Agreements, in accordance with clause 10.12(e);
 - C. under the WGT Rail Licence, Project Co is required to notify VicTrack of any consents obtained from a Category 1 Rail Interface Party or Category 2 Rail Interface Party in relation to relocations carried out on Category 1 Rail Land or Category 2 Rail Land (as applicable); and
 - D. in relation to Category 3 Rail Land, once:
 - 1) a parcel that is Category 3 Rail Land is vacated following the issue of a notice to vacate by VicTrack to the Category 3 Rail Interface Party; or
 - 2) the leasehold interest in the Category 3 Rail Land is surrendered to VicTrack in accordance with clause 6.7(a),the Category 3 Rail Land will become Category 4 Rail Land.
 - (ii) Without limiting clause 6.8(d), the State will make access to the Category 4 Rail Land available in accordance with the WGT Rail Licence.

6.7 Obtaining possession or occupation of land

- (a) **(Notice to vacate):** Subject to clause 6.7(e), not later than 10 Business Days prior to the date by which the State must make available to Project Co and NewCo any parcel of land as specified in the Land Availability Plans (or 60 Business Days prior to the date specified in the Land Availability Plans in respect of the land parcels identified in clause 6.7(c)(v)), the State will, where applicable, issue a notice of its intention to enter into possession or occupation of the land (as the case may be) to the occupier of that land in accordance with the requirements of the Relevant Legislation (or any equivalent legislation).

- (b) **(Project Co to take necessary action):** Without limiting Project Co's obligations under the PSR, on the earlier of:
- (i) the date the State must make available to Project Co and NewCo any parcel of land as specified in the Land Availability Plans (other than Roads); and
 - (ii) 10 Business Days after the State issues, where applicable, a notice of its intention to enter into possession or occupation of the land (as the case may be) to the occupier of that land in accordance with the requirements of the Relevant Legislation (or any equivalent legislation),
- Project Co must, subject to clause 6.7(c), unless otherwise agreed by the State, immediately fence off and secure that parcel of land.
- (c) **(Procedure where refusal to give up possession or occupation):**
- (i) If the owner or occupier of the land:
 - A. refuses to give up possession or occupation of the land (as the case may be); or
 - B. prevents Project Co or NewCo from taking possession or occupation of the land (as the case may be),after the State has issued a notice under clause 6.7(a), Project Co must immediately give notice of such fact, including all relevant details, to the State.
 - (ii) On receipt by the State of a notice under clause 6.7(c)(i), the State will issue a warrant to the sheriff in accordance with the Relevant Legislation (or any equivalent legislation) or otherwise take steps to enforce any entitlement to such possession or occupation (as the case may be).
 - (iii) The State must ensure that the sheriff delivers possession or occupation (as the case may be) of the land to Project Co and NewCo or otherwise takes steps to enforce any entitlement to possession or occupation (as the case may be) so that possession or occupation is provided within 60 Business Days (or 40 Business Days in respect of the land parcels identified in clause 6.7(c)(v)) of receipt by the State of a notice under clause 6.7(c)(i).
 - (iv) On delivery of possession or occupation (as the case may be) of the land to Project Co or NewCo under clause 6.7(c)(iii), Project Co must, unless otherwise agreed by the State, immediately fence off and secure that land.
 - (v) For the purposes of clauses 6.7(a) and 6.7(c)(iii), the identified land parcels are the relevant portions of West Gate Freeway Land Parcels 485, 498, 569, 582, 583 and 568.
- (d) **(Project Co to comply with the *Fences Act 1968* (Vic)):** Project Co must comply with any notice issued by an occupier of any adjoining land to the Project Area under the *Fences Act 1968* (Vic).
- (e) **(Northern Portal Land):** The parties agree that this clause 6.7 does not apply to the Northern Portal Land parcels 27 and 33.

6.8 Access to Roads

- (a) Subject to clauses 6.8(b), 6.8(c) and 6.8(d), Project Co must obtain access to Roads in accordance with the PSR.
- (b) Clause 10.11 applies in relation to Project Co's access to CityLink.
- (c) Project Co must obtain access to Mackenzie Road, and any other roads managed by the Port Manager, in accordance with the Port Land Deed and the WGT Road Licence.
- (d) Project Co must obtain access to Category 4 Common Roads and Tracks in accordance with the WGT Rail Licence.

6.9 West Gate Tunnel Lease Plan

- (a) **(Certified Lease Survey Plan):** Without limiting clause 6.10(c), Project Co must submit to the State prior to the expected Date of West Gate Tunnel Completion:
 - (i) a survey plan of the proposed areas to be the subject of either the Lease or the Lease (NewCo) which:
 - A. sets out the location of the proposed areas (limited as to height and depth);
 - B. encompasses that land reasonably necessary (limited as to height and depth) for Project Co to comply with its obligations under this Agreement and the Lease and for NewCo to comply with its obligations under the Lease (NewCo);
 - C. identifies the location and purpose of any rights of way or access reasonably necessary for Project Co and NewCo to have, in order for Project Co to perform its obligations under this Agreement or Maintenance Licence and the proposed Lease and for NewCo to comply with its obligations under the Lease (NewCo) respectively;
 - D. takes into account departures from the Lease Principles as a result of the changes (if any) made to the Design Documentation and the Land Availability Plans and which is otherwise based on, and consistent with, the Lease Principles;
 - E. delineates which areas will be the subject of the Lease and which areas will be the subject to the Lease (NewCo); and
 - F. complies with the PSR; and
 - (ii) a certificate which certifies that the West Gate Tunnel has been, or will be, constructed so as to comply with clauses 18.1(b)(iv) and 18.1(b)(v), signed by a licensed surveyor,
(Certified Lease Survey Plan).
- (b) **(Departures Report):** Project Co must submit to the State, at the same time as the Certified Lease Survey Plan, a report which identifies the departures from the Lease Principles as a result of the changes (if any) made to the Design Documentation and the Land Availability Plans.

- (c) **(Plan information):** If required by the State, Project Co must make available the appropriate personnel to explain the Certified Lease Survey Plan and to provide information in relation to the Certified Lease Survey Plan, in such form and substance as the State requests.
- (d) **(State Approval):** Project Co must allow the State a reasonable time, which must be not less than 40 Business Days, within which to:
 - (i) approve the Certified Lease Survey Plan; or
 - (ii) submit to Project Co amendments to the Certified Lease Survey Plan.
- (e) **(Approval of Certified Lease Survey Plan):** If the State:
 - (i) approves the Certified Lease Survey Plan submitted by Project Co under clause 6.9(d)(i); or
 - (ii) fails to approve or submit amendments to the Certified Lease Survey Plan under clause 6.9(d),then the Certified Lease Survey Plan will be:
 - (iii) the West Gate Tunnel Lease Plan (in respect of those areas the subject of the Lease); and
 - (iv) the West Gate Tunnel Lease (NewCo) Plan (in respect of those areas the subject of the Lease (NewCo)).
- (f) **(Amendments to Certified Lease Survey Plan):** If the State submits amendments to the Certified Lease Survey Plan under clause 6.9(d)(ii), then:
 - (i) the State and Project Co must consult in good faith, and use their reasonable endeavours, to establish the amendments required to the Certified Lease Survey Plan, having regard to the:
 - A. Lease Principles;
 - B. State's requirement that the West Gate Tunnel Lease Plan must only encompass that land reasonably necessary (limited as to height and depth) for Project Co to comply with its obligations under this Agreement and the Lease; and
 - C. State's requirement that the West Gate Tunnel Lease (NewCo) Plan must only encompass that land reasonably necessary (limited as to height and depth) for NewCo to comply with its obligations under the Lease (NewCo)); and
 - (ii) if, and to the extent that, amendments are agreed, the revised Certified Lease Survey Plan agreed by the State and Project Co will be:
 - A. the West Gate Tunnel Lease Plan (in respect of those areas the subject of the Lease); and
 - B. the West Gate Tunnel Lease (NewCo) Plan (in respect of those areas the subject of the Lease (NewCo)).
- (g) **(Dispute):** If the State and Project Co do not agree on the amendments required to the Certified Lease Survey Plan within 10 Business Days (or such longer period agreed by the parties) after the commencement of the consultation under clause

6.9(f)(i), then the parties must refer the matter for resolution under clause 43 and the State's reasonable requirements for the West Gate Tunnel Lease Plan or the West Gate Tunnel Lease (NewCo) Plan will be deemed to be incorporated into the Lease or the Lease (NewCo) (as applicable) for the purposes of clause 6.10(c), until otherwise determined in accordance with clauses 43 to 44.

6.10 Grant of Lease

- (a) **(Lease Term):** Subject to West Gate Tunnel Completion having occurred, and on finalisation of the West Gate Tunnel Lease Plan and the West Gate Tunnel Lease (NewCo) Plan under clause 6.9(e), 6.9(f) or 6.9(g) (as the case may be), the State will grant or will procure:
- (i) the grant of the Lease to Project Co:
 - A. for a term which will:
 - 1) be deemed, under clause 6.10(f), to commence on the earlier of:
 - a) West Gate Tunnel Completion;
 - b) the Date of West Gate Tunnel Completion; and
 - c) a date that is agreed between the parties; and
 - 2) end on the Expiry Date; and
 - B. on the terms and conditions set out in the Lease; and
 - (ii) the grant of the Lease (NewCo) to NewCo:
 - A. for a term which will:
 - 1) be deemed, under clause 6.10(f), to commence on the earlier of:
 - a) West Gate Tunnel Completion;
 - b) the Date of West Gate Tunnel Completion; and
 - c) a date that is agreed between the parties; and
 - 2) end on the Expiry Date; and
 - B. on the terms and conditions set out in the Lease (NewCo).
- (b) **(Registration):** The State will, if reasonably requested by Project Co:
- (i) take all reasonable steps to grant the Lease and the Lease (NewCo) in a registrable form; and
 - (ii) do all things reasonably required by Project Co to enable the Lease or the Lease (NewCo) (as applicable) to be registered on the register

maintained by the Registrar of Titles under the *Transfer of Land Act 1958* (Vic).

- (c) **(Delivery):** Not later than 20 Business Days prior to the expected Date of West Gate Tunnel Completion, Project Co must prepare and deliver to the State three counterparts of the Lease and the Lease (NewCo) which:
- (i) are in a registrable form, if Project Co has requested that the State grant the Lease or Lease (NewCo) in a registrable form under clause 6.10(b)(i), and
 - (ii) are:
 - A. executed by Project Co or NewCo (as applicable); and
 - B. complete, except for those matters that the State is authorised to complete under clause 6.10(d).
- (d) **(Authority to complete):** Project Co authorises (and must procure that NewCo authorises) the State to complete the Lease and the Lease (NewCo) by inserting:
- (i) the commencement date of the Lease and the Lease (NewCo) as determined under clause 6.10(a);
 - (ii) the:
 - A. West Gate Tunnel Lease Plan, as an annexure to the Lease;
 - B. the West Gate Tunnel Lease (NewCo) Plan, as an annexure to the Lease (NewCo); and
 - (iii) any other particulars necessary to complete the Lease and the Lease (NewCo).
- (e) **(Execution):** The State will complete the counterparts of the Lease and the Lease (NewCo) delivered by Project Co, execute each counterpart and return one of the completed and executed counterparts for each of the Lease and the Lease (NewCo) to Project Co.
- (f) **(Lease to have effect from West Gate Tunnel Completion):** On the earlier of:
- (i) West Gate Tunnel Completion;
 - (ii) the Date of West Gate Tunnel Completion; and
 - (iii) a date that is agreed between the parties,
- whether or not the Lease or the Lease (NewCo) has been executed by both parties to them by that date:
- (iv) each of the State and Project Co will be bound by the Lease as if the Lease had been fully completed and executed;
 - (v) the State will be bound by the Lease (NewCo) as if the Lease (NewCo) had been fully completed and executed; and
 - (vi) Project Co will procure that NewCo will be bound by the Lease (NewCo) as if the Lease (NewCo) had been fully completed and executed.

- (g) **(Sub-lease):** The State authorises NewCo to grant a sub-lease to Project Co in respect of those areas the subject of the Lease (NewCo), on the terms of the NewCo Sub-Lease.
- (h) **(Alternate Traffic Control Room):** Upon expiry or termination of the CityLink Concession Deed, the State will grant or will procure the grant of a lease to Project Co on terms substantially similar to the terms (including, for the avoidance of doubt, the obligation to pay 'Rent' (other than paragraph (b) of the definition of 'Rent' as that term is defined in the Lease)) of the Lease in respect of the property at 49 Balston St, Southbank, including the Alternate Traffic Control Room there, and all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements on or in the Alternate Traffic Control Room.
- (i) **(Indemnity in respect of commencement of Lease and Lease (NewCo)):** Subject to clause 6.10(k), Project Co indemnifies the State and its Associates in respect of any Claim or Liability incurred by the State and its Associates arising out of or in connection with the commencement of the Lease and the Lease (NewCo) prior to the Date of West Gate Tunnel Completion, except where the parties agree a date for the commencement of the Lease and Lease (NewCo) in accordance with clauses 6.10(a)(i)A.1)c, 6.10(a)(ii)A.1)c and 6.10(f)(iii).
- (j) **(Release):** Subject to clause 6.10(k), Project Co releases, and must procure that each of its Associates releases, each of the parties indemnified by Project Co in accordance with clause 6.10(i) from any Claim or Liability arising out of or in connection with the commencement of the Lease and the Lease (NewCo) prior to the Date of West Gate Tunnel Completion, except where the parties agree a date for the commencement of the Lease and Lease (NewCo) in accordance with clauses 6.10(a)(i)A.1)c, 6.10(a)(ii)A.1)c and 6.10(f)(iii).
- (k) **(Exception to indemnity and release):** Project Co's liability to indemnify or release the State and its Associates under clause 6.10(i) and clause 6.10(j) is reduced to the extent that the Claim or Liability arises as a result of a risk that the State has otherwise assumed under the State Project Documents prior to the Date of West Gate Tunnel Completion.

6.11 Termination of this Agreement

If this Agreement is terminated prior to the Date of West Gate Tunnel Completion, Project Co and NewCo:

- (a) **(no entitlement):** cease to have any entitlement to call for the grant of a Lease or a Lease (NewCo) in connection with any land within the Leased Area; and
- (b) **(no right or interest):** have no right, interest or entitlement (whether legal or equitable) in or to the Leased Area or any part of the Project Area.

6.12 State's licence

Project Co grants or will procure the grant to the State, its Associates (excluding Interface Parties except as authorised by the State) and any other person authorised by the State or otherwise contemplated by the Lease or Lease (NewCo), a non-exclusive, free of charge licence (including the right to sub-license) to access or use the Leased Area for any of the purposes set out in clauses 3.1 to 3.3 of the Lease or the Lease (NewCo).

6.13 Project Co responsible

Project Co acknowledges and agrees that the granting of the Construction Licence by the State to NewCo in accordance with clause 6.5(a) and the granting of certain parts of the

Leased Area by the State to NewCo under the Lease (NewCo) in accordance with clause 6.10(a)(ii):

- (a) will not limit any of Project Co's obligations under the State Project Documents which relate to (or are referable to) the Licensed Construction Area and Leased Area; and
- (b) Project Co will procure that NewCo takes any action that is necessary for Project Co to meet its obligations under the State Project Documents which relate to (or are referable to) the Leased Area, to the extent that Project Co is unable to perform those obligations itself due to those parts of the Leased Area being the subject of the Lease (NewCo).

6.14 Relief Events

For the purposes of agreeing or determining any compensation or other relief under this Agreement in respect of a Relief Event, the impact of that Relief Event on NewCo will be deemed to have been suffered or incurred by Project Co.

7. Site Conditions

7.1 Environmental issues

Project Co must:

- (a) **(no industrial waste or hazardous substance)**: during any period where Project Co is entitled to use or occupy the Site, not use or allow it to be used, such that:
 - (i) any spoil, Industrial Waste or potentially Hazardous Substance is:
 - A. abandoned or dumped on the Site; or
 - B. handled, disposed of, disturbed, discharged or released in a manner which is likely to cause or contribute to Contamination on Site or the presence of an Environmental Hazard (other than, prior to the Date of West Gate Tunnel Completion, in respect of groundwater Contamination, except where such groundwater Contamination is not Managed in accordance with clause 7.2(a) by Project Co or its Associates); or
 - (ii) any other substance is handled, disposed of, disturbed, discharged, released, deposited to, or emanated from, the Site such that a state of Contamination occurs:
 - A. other than, prior to the Date of West Gate Tunnel Completion, in respect of groundwater Contamination, except where such groundwater Contamination is not Managed in accordance with clause 7.2(a) by Project Co or its Associates; and
 - B. other than, on or after the Date of West Gate Tunnel Completion, as permitted by an Approval;
- (b) **(environmental responsibility)**: at all times carry out the Project Activities in accordance with the Environmental Requirements, in an environmentally responsible manner and in accordance with Best Industry Practices, so as to protect the Environment;
- (c) **(notification)**: immediately notify the State of any:

- (i) breach or alleged or potential breach of; or
- (ii) non-compliance or alleged or potential non-compliance with,
the conditions or requirements of any Environmental Requirements or the Environmental Management Plans;
- (d) **(manage waste disposal)**: manage and be responsible for the handling and proper disposal, transport or removal of all waste, rubbish, debris, redundant materials, spoil and Industrial Waste produced by the Project Activities in accordance with Best Industry Practices, the Environmental Requirements, all relevant Approvals and this Agreement; and
- (e) **(directions)**: comply with all directions by the State regarding the removal from the Construction Areas, Leased Areas and Maintenance Areas and disposal of any spoil, Industrial Waste or Hazardous Substance.

7.2 Contamination

- (a) **(Groundwater Contamination)**: Without limiting clauses 7.2(ab) or 7.2(d), Project Co must, prior to the Date of West Gate Tunnel Completion, Manage any groundwater Contamination (or part of a mass of groundwater Contamination) which is on, in, over or under, or that emanated or is emanating to or from, the Construction Areas in accordance with Law and this Agreement, including in accordance with:
 - (i) the PSR;
 - (ii) the Project Plans;
 - (iii) the Environmental Requirements; and
 - (iv) the Groundwater Management Plan,and in any event must mitigate, minimise and avoid groundwater Contamination to the extent a prudent, experienced and competent contractor in the circumstances would mitigate, minimise or avoid such groundwater Contamination.
- (ab) **(Groundwater Settlement)**: Project Co must continue to comply with the groundwater monitoring regime and program set out in the Groundwater Management Plan, including by undertaking any groundwater management, rectification measures or remedial action required by the Groundwater Management Plan, until the Groundwater Settlement Date.
- (b) **(Notification)**: If Project Co discovers any Contamination on, in, over, under, or emanating from the Construction Areas, Leased Areas or Maintenance Areas (whether or not Project Co has caused or contributed to that Contamination), it must notify the State as soon as practicable, but nevertheless within 5 Business Days after the discovery of the Contamination.
- (c) **(Notification requirements)**: Project Co's notice under clause 7.2(b) must contain all relevant details in relation to the Contamination, including:
 - (i) the type of Contamination;
 - (ii) the location of the Contamination; and
 - (iii) the nature and extent of the Contamination,

to the extent such details are known at the time the notification is provided.

- (d) **(Contamination Notice):** Without limiting clause 34.8:
- (i) Project Co must comply with any Contamination Notice relating to Contamination on, in, over, under, or that emanated or is emanating to or from, the Construction Areas, Maintenance Areas or Leased Areas, regardless of whether:
 - A. the Contamination Notice is addressed to the State, Project Co, the D&C Subcontractor, OpCo or some other person; and
 - B. the Contamination occurred before or after Project Co was given access to the Site; and
 - (ii) the State must promptly provide Project Co with a copy of any Contamination Notice addressed to the State.
- (e) **(Disputing a Contamination Notice):** Without limiting Project Co's obligation under this clause 7.2, nothing in this clause 7.2 prevents Project Co from disputing the issue of a Contamination Notice with the EPA or taking action against a third party with respect to the Contamination.
- (f) **(Parties not to cause service of Contamination Notice):** Subject to their respective obligations at Law, and the functions and powers of the EPA, none of the State, Project Co, or any of Project Co's Associates will do anything with the intent, directly or indirectly, of causing or being likely to cause the issue or service of a Contamination Notice.
- (g) **(Indemnity):** Subject to clause 7.2(h), Project Co must indemnify the State and its Associates against any third party Claim arising in connection with any Contamination existing on, in, over, under, migrating or emanating from the Construction Areas, Leased Areas or Maintenance Areas which:
- (i) was caused or contributed to by an act or omission of Project Co or any of its Associates; or
 - (ii) was not caused or contributed to by an act or omission of Project Co or any of its Associates but:
 - A. was disturbed, exacerbated or interfered with by Project Co or any of its Associates; or
 - B. would have been prevented or minimised by a prudent, competent and experienced contractor in the circumstances.
- (h) **(Exception to indemnity):** Project Co's liability to indemnify the State and its Associates under clause 7.2(g) will be reduced to the extent, in respect of groundwater Contamination only, that the groundwater Contamination was not caused or contributed to, disturbed, exacerbated or interfered with by Project Co or any of its Associates due to a failure of Project Co or any of its Associates to comply with clause 7.2(a).
- (i) **(Groundwater Contamination and trace to source obligations):** The parties acknowledge and agree that:
- (i) the carrying out of the Project Activities may disturb the water table and accordingly may cause, contribute to, disturb, exacerbate or interfere with groundwater Contamination;

- (ii) to the extent that groundwater Contamination is not caused or contributed to, disturbed, exacerbated or interfered with by Project Co or any of its Associates due to a failure of Project Co or any of its Associates to comply with clause 7.2(a), clauses 2.14(a) and 2.14(b) will not operate to reduce Project Co's entitlement in connection with such Contamination Modification Event; and
- (iii) nothing in this Agreement obliges Project Co to remove, disperse, abate, destroy, dispose of, neutralise, remediate, treat or contain ('**Treat**') Contamination at its source or destination:
 - A. to the extent that:
 - 1) it is not necessary for Project Co to Treat in order to carry out the Project Activities; and
 - 2) it was not caused or contributed to by an act or omission of Project Co or any of its Associates; or
 - B. except where a Modification Order requires Project Co to Treat Contamination at its source or destination.

7.3 Native Title Claims and Heritage Claims

- (a) (**Native Title**): As between the State and Project Co, the State is responsible for:
 - (i) dealing with any Native Title Claim in connection with any part of the Project Area and undertaking any action that may be required in accordance with the TOS Act or required under any LUAA in connection with the Project;
 - (ii) the payment of any compensation or other moneys required to be paid to the native title holders of any part of the Project Area as a consequence of a successful Native Title Claim; and
 - (iii) the payment of any compensation or other moneys required to be paid as a result of the application of the TOS Act or a LUAA applicable to the Project.
- (b) (**Artefacts**): As between the State and Project Co, if an Artefact is discovered on or under the surface of the Project Area:
 - (i) it will be the absolute property of the State; and
 - (ii) Project Co must:
 - A. immediately notify the State of the discovery;
 - B. permit the State to watch or examine any excavation on the Project Area; and
 - C. take every reasonable precaution in carrying out the Project Activities so as to prevent Artefacts being damaged or removed until appropriate arrangements for dealing with, or removing, the Artefacts have been made.
- (c) (**Project Co must continue to carry out**): If there is a:
 - (i) Native Title Claim or Heritage Claim in connection with; or

- (ii) discovery of Artefacts in,
any part of the Project Area, Project Co must:
 - (iii) continue to carry out its obligations in accordance with this Agreement, except to the extent otherwise:
 - A. directed by the State or the Commonwealth;
 - B. ordered by a court or tribunal of competent jurisdiction; or
 - C. required by Law; and
 - (iv) provide all reasonable assistance to the State in connection with dealing with the Native Title Claim, Heritage Claim or Artefact discovery.
- (d) **(Project Co's obligations in connection with the Project CHMP):** Project Co must comply with:
 - (i) the provisions and procedures of the Project CHMP; and
 - (ii) all reasonable directions of the State concerning Artefacts and the protection of Aboriginal Cultural Heritage.

7.4 Interference, obstruction and nuisance

- (a) **(Project Co's obligations):** Without limiting Project Co's other obligations in accordance with this Agreement, in undertaking the Works or carrying out the Project Activities, Project Co must:
 - (i) avoid or ensure minimal:
 - A. interference with the passage of people and vehicles;
 - B. obstruction to any property; and
 - C. disruption to operations carried out in the vicinity of the Site;
 - (ii) prevent or minimise nuisance including any nuisance caused by Pollution, noise, dust, light emission, vibration or disturbance, air pollution, odour on or adjacent to the Site; and
 - (iii) ensure the safety of people and property in accordance with Best Industry Practices.
- (b) **(Unreasonable levels of nuisance or interference):** To the extent that the levels of nuisance or interference referred to in clause 7.4(a) are not reasonable or are not in the interests of the safety of persons on the Site or any other areas adjacent to the Site, Project Co must comply with any reasonable direction of the State or the Independent Reviewer and Environmental Auditor to:
 - (i) stop or change the manner of undertaking the Works or carrying out of the Project Activities; and
 - (ii) amend the Project Delivery Management Plan and any other relevant Project Plan or Business Management Strategy to remedy the nuisance or interference and submit it to the State for review in accordance with the Review Procedures.

7.5 Not used

7.6 Whitehall Street PAN

Notwithstanding anything to the contrary in clause 17.3 of the Port Land Deed or clause 2.3, the parties acknowledge and agree that Project Co will not have any obligations under the Whitehall Street PAN after the Port Transaction Land Access Expiration Date (as defined in the Port Land Deed).

8. Approvals

8.1 Key Approvals to be obtained by the State

- (a) **(Key Approvals):** Subject to clause 8.1(f), the State:
- (i) has obtained the Key Approvals; and
 - (ii) will ensure that Project Co has the benefit of such Key Approvals as required to perform the Project Activities, to the extent it is able to do so, having regard to any information or assistance that is required to be provided by Project Co.
- (b) **(Key Approval Event):** If there is a Key Approval Event, Project Co must:
- (i) continue to carry out its obligations under this Agreement, except to the extent Project Co is otherwise prevented from carrying out its obligations as a result of the Key Approval Event, including to the extent Project Co is required to suspend, cease or alter the carrying out of its obligations in accordance with:
 - A. a direction or instruction of the State;
 - B. applicable Law; or
 - C. an order of a court or tribunal of competent jurisdiction.
- (c) **(Reasonable assistance and costs):** Subject to clause 8.1(d):
- (i) at the request of the State, Project Co must provide all reasonable assistance in connection with dealing with any Key Approval Event or PSA Event, provided that any costs reasonably and properly incurred by Project Co in doing so in respect of any PSA Event will be reimbursed by the State to the extent they exceed \$[not disclosed] in the aggregate in respect of all PSA Events; and
 - (ii) the State will indemnify Project Co in respect of the reasonable costs incurred by Project Co in the conduct of any legal action taken in connection with the implementation of an Alternative Approval, other than legal action being taken for any breach or alleged breach (which is later established to be a breach) of the Alternative Approval by Project Co or its Associates which is not related to a legal challenge to the Alternative Approval itself.
- (d) **(Responsibility for Key Approval Event or PSA Event):** As between the State and Project Co, the State may deal with a Key Approval Event or PSA Event as it sees fit (including, where appropriate, conducting any legal challenge in the name of Project Co).
- (e) **(Delegation of Road Functions):** The State:

- (i) must procure that the Project Proponent delegates to Project Co the Road Functions in connection with the D&C Activities by no later than 10 Business Days after Financial Close pursuant to section 105 of the Relevant Legislation or other equivalent legislation until such Road Functions are no longer required to perform the D&C Activities, with such delegation authorising the sub-delegation of those Road Functions to the D&C Subcontractor; and
- (ii) must procure that the Project Proponent does not:
 - A. revoke; or
 - B. amend, in a manner which materially impacts Project Co's ability to carry out the D&C Activities,

the delegation referred to in clause 8.1(e)(i) other than in accordance with this Agreement or to the extent that the relevant Road Functions are no longer required.
- (f) **(Acknowledgement):** Project Co acknowledges and agrees that the Key Approvals as at the date of this Agreement do not entitle:
 - (i) the State to grant access to Project Co in relation to the Additional Land Parcels; or
 - (ii) Project Co to carry out any Project Activities on the Additional Land Parcels.
- (g) **(Update of CHMP):** Subject to clauses 6.2(e) and 6.2(f), the State will update the Project CHMP to ensure it reflects the Additional Land Parcels in order for Project Co to use the land for the purpose, and by the dates, set out in Table H15.2 and Table H15.3 of Part H15 of the PSR and for the duration set out in section 3 of Part J of the PSR. Project Co will provide the State with such assistance reasonably requested by the State to allow the State to comply with this clause 8.1(g).
- (h) **(Minister's Assessment):** The parties acknowledge and agree that Project Co's obligations to comply with the Minister's Assessment will be satisfied by compliance with each of the following:
 - (i) the Incorporated Document;
 - (ii) the Planning Scheme Amendment or, in the circumstances of a PSA Event, an Alternative Approval;
 - (iii) the Works Approval; and
 - (iv) the Project CHMP.

Nothing in this clause 8.1(h) derogates from any express obligation of Project Co under the State Project Documents which would apply regardless of the Minister's Assessment.

8.2 Approvals to be obtained by Project Co

- (a) **(Project Co to obtain Approvals (other than Key Approvals)):** Project Co:
 - (i) must apply for and obtain from each relevant Authority in a timely manner:

- A. all Approvals (other than the Key Approvals); and
 - B. any amendments to any Approvals (other than the Key Approvals); and
- (ii) bears all risks associated with obtaining any Approvals or amendments to Approvals that Project Co is required to obtain under clause 8.2(a)(i).
- (b) **(Project Co to obtain secondary approvals):** Subject to clause 34.11, if any aspect of a Key Approval requires a secondary consent, verification or other supplementary action, information or Approval (whether as a condition of the Key Approval taking effect or otherwise), those further matters will be the responsibility of Project Co.
- (c) **(Deviations from the Approved Project):** Without limiting clauses 8.2 and 8.3, if the Project as proposed or undertaken by Project Co deviates from the Approved Project, Project Co:
- (i) must obtain and comply with any further Approvals required as a result of such deviation;
 - (ii) must obtain and comply with any necessary amendments to Approvals (including, to the extent necessary, the Key Approvals); and
 - (iii) bears all risks associated with obtaining any further Approvals under clause 8.2(c)(i) and any necessary amendments to the Key Approvals required under clause 8.2(c)(ii), except to the extent to which Project Co is expressly entitled to relief under clause 23, clause 27 or clause 34 in connection with that deviation.
- (d) **(State initiated Modifications):** Notwithstanding clauses 8.2(a), 8.2(b) and 8.2(c):
- (i) any changes to a Key Approval required as a consequence of a Modification Order issued by the State, will be the responsibility of the State (excluding a Modification Order issued by the State in respect of a Modification Proposal); and
 - (ii) any changes to:
 - A. any other Approval (excluding a Key Approval) and any further Approval required as a consequence of a Modification Order issued by the State; and
 - B. a Key Approval required as a consequence of a Modification Order issued by the State in respect of a Modification Proposal,
- will be the risk and responsibility of Project Co.

8.3 Compliance with Approvals

- (a) **(Compliance by Project Co):** Subject to clause 8.3(b), Project Co must, in carrying out the Project Activities, comply with:
- (i) all conditions and requirements of all Approvals (including paying all fees, procuring all insurances and preparing and executing any documents or agreements required by any relevant Authority in relation to any Approval); and

- (ii) the Environmental Requirements including the Environmental Management System and Environmental Management Plans developed to implement the Environmental Requirements,

and take no action that will prevent the State from complying with, to the extent relevant, any conditions or requirements of any Key Approval.

- (b) **(Compliance by the State):** Subject to clause 8.3(c), Project Co is not responsible for complying with the conditions listed in Part H21 of the PSR for which the State is identified as the 'responsible party' (**State Conditions**).
- (c) **(Project Co to assist the State):** Project Co must do everything reasonably required by the State to assist the State to comply with the State Conditions.
- (d) **(State Conditions):** To the extent that the State requires Project Co to comply with any condition identified as a State Condition, the State must issue a Modification Order in respect of compliance by Project Co with the State Condition in accordance with clause 34.1.
- (e) **(Conditional Approvals):** Without limiting clause 17.2 and clause 34, to the extent that the design of the Works (whether incorporated in the Concept Design, any other part of the State Project Documents or prepared under this Agreement), the Project Activities or the Works do not comply with the requirements set out in clause 8.3(a):
 - (i) Project Co must amend the design of the Works, the Project Activities or the Works in order to conform with the:
 - A. requirements of all Approvals; and
 - B. Environmental Requirements, including the Environmental Management System and Environmental Management Plans developed to implement the Environmental Requirements; and
 - (ii) such amendments will not constitute a Modification Order or entitle Project Co to bring any Claim against the State, except as otherwise specifically provided in this Agreement.
- (f) **(Copies of Approvals):** Project Co must promptly provide to the State:
 - (i) copies of all Approvals when they are obtained, amended or renewed; or
 - (ii) upon request, evidence that any conditions or requirements of all Approvals have been complied with.
- (g) **(Condition Precedent):** Project Co must, as a condition precedent to achieving West Gate Tunnel Completion, ensure that it has:
 - (i) obtained all Approvals it is required to obtain under this Agreement; and
 - (ii) complied with, carried out and fulfilled all conditions and requirements of all Approvals with respect to the Works.

8.4 Design and Development Overlay

- (a) Subject to clause 8.4(b), where a PSA Event occurs, the State will indemnify Project Co and its Associates in respect of:

- (i) any loss or damage to the Protected Infrastructure to the extent such loss or damage arises as a consequence of the development of land for which a planning permit, but for the PSA Event, would have been required under the Design and Development Overlay (or any replacement design and development overlay having substantially similar terms as the Design and Development Overlay); and
 - (ii) any loss of revenue incurred by Project Co in connection with such loss or damage to the Protected Infrastructure.
- (b) The parties acknowledge and agree that the State has no liability to indemnify Project Co and its Associates under clause 8.4(a) where the development of land occurs during a period when the Design and Development Overlay (or a replacement design and development overlay having substantially similar terms as the Design and Development Overlay) is in effect.

9. Parties and personnel

9.1 Authorities

- (a) **(Authorities):** Project Co acknowledges and agrees that, subject to clause 9.1(b):
- (i) **(jurisdiction of Authorities):** there are Authorities with jurisdiction over aspects of the Project Activities and the Site; and
 - (ii) **(exercise of functions):** such Authorities may, from time to time and at any time, exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Project Activities.
- (b) **(Project Proponent, Rail Interface Parties and Road Interface Parties):** For the purposes of paragraphs (b)(iii) and (b)(v) of the definition of Compensable Extension Event, acts or omissions of the Project Proponent, Rail Interface Parties or Road Interface Parties acting in their respective capacities as the Project Proponent, a Rail Interface Party or Road Interface Party will not be treated as being authorised under clause 9.1(a) or as being contemplated by clause 9.1(a).

9.2 Parties' representatives

- (a) **(Parties' representatives):** The parties may exercise any of their rights or carry out any of their obligations in accordance with this Agreement through their respective representatives identified in the Contract Particulars.
- (b) **(Agent):** Each party's representative must be a natural person and will act as the agent of its respective party.
- (c) **(State Representative):** The State Representative will exercise the rights and carry out the obligations of the State as set out in the State Project Documents, including its ability to give and receive directions and notices.
- (d) **(Project Co Representative):** The Project Co Representative will exercise those rights and carry out those obligations which it is authorised to perform as notified to the State, including providing a copy of the relevant instrument of appointment to the State, and Project Co must ensure that the Project Co Representative has the proper authority and skill to perform its rights and carry out its obligations.
- (e) **(Delegation):** Subject to clause 10.1, each party may vary or terminate the duties of its representative identified in the Contract Particulars as it sees fit, including delegating its representative's duties to a new representative.

- (f) **(Notice):** Where a party varies, terminates or delegates the duties of its representatives in accordance with clause 9.2(e), that party will promptly notify the other of the variation, termination or delegation, including the identity of any new representative and the new representative's duties (with Project Co also providing a copy of the relevant instrument of delegation) (if applicable) and of any further variation, termination or delegation.
- (g) **(Project Co not to act):** Except as otherwise required by Law, Project Co must not accept or act upon directions in connection with the Project Activities from an employee or agent of the State other than the State Representative or a delegate appointed in accordance with clause 9.2(e) acting in accordance with this Agreement.

9.3 Project Control Group

- (a) **(Establishment):** The parties will establish a group consisting of:
 - (i) the State Representative;
 - (ii) two or more other representatives of the State notified by the State from time to time;
 - (iii) the Project Co Representative;
 - (iv) two or more other persons nominated by Project Co who must be members of the senior management of Project Co with a sound knowledge of the Project and must be authorised to make commitments on behalf of Project Co;
 - (v) an independent chair agreed by the State and Project Co (or in the absence of agreement, appointed by the Victorian Minister for Roads and Road Safety) or such other chair as agreed by the State and Project Co; and
 - (vi) such other members as the parties may agree from time to time,(together the **Project Control Group**).
- (b) **(Appointment of delegates):** The members of the Project Control Group may, by notice to the other members of the Project Control Group, appoint replacement delegates who hold the same or similar position to:
 - (i) attend Project Control Group meetings in their absence; and
 - (ii) otherwise discharge their responsibilities in accordance with this clause 9.3.
- (c) **(Functions):** The functions of the Project Control Group will be to:
 - (i) monitor the overall progress of the Project Activities and compliance with the State Project Documents;
 - (ii) assist in the resolution of any matters referred to the Project Control Group by a party;
 - (iii) review all reports and plans provided by Project Co and its Subcontractors and, during the term of their respective appointments, the Independent Reviewer and Environmental Auditor and the Handover Reviewer; and

- (iv) discuss and address such other matters as the members of the Project Control Group may agree from time to time in connection with the Project.
- (d) **(Cost):** The State and Project Co will share equally in the costs of the independent chair agreed or appointed in accordance with clause 9.3(a)(v).
- (e) **(Meetings):** The Project Control Group must:
 - (i) meet:
 - A. Monthly during the period between the date of this Agreement and the Date of Tolling Completion (or as otherwise agreed by the State Representative and the Project Co Representative);
 - B. Quarterly during the period between the Date of Tolling Completion and the date which is 5 years prior to the Final Expiry Date (or as otherwise agreed by the State Representative and the Project Co Representative);
 - C. Quarterly or at more frequent intervals as agreed between the parties during the period between the date which is 5 years prior to the Final Expiry Date and the Expiry Date (acting reasonably and with regard to the extent of the parties' obligations under the Separation Plans at any given time); and
 - D. when otherwise called to meet on 10 Business Days' notice by the State Representative or the Project Co Representative (or on such other notice as otherwise agreed by them); and
 - (ii) conduct its meetings in the manner agreed from time to time or as otherwise directed by the independent chair.
- (f) **(Meeting agendas):** The State will determine the agenda for each meeting, and in determining each agenda:
 - (i) will seek input from the Project Co Representative;
 - (ii) subject to clause 9.3(f)(iii), must include any items notified to it by any other member received no later than 2 Business Days prior to the date of the meeting; and
 - (iii) will not include any item if the item does not fall within the functions of the Project Control Group unless its inclusion is agreed to by the State.
- (g) **(Reports):** Project Co must, no later than 5 Business Days before each meeting of the Project Control Group convened in accordance with clause 9.3(e)(i)A, give each member of the Project Control Group and, for the term of its appointment, the Independent Reviewer and Environmental Auditor:
 - (i) prior to the Date of Tolling Completion, a Monthly D&C Phase Progress Report for the previous Month prepared and updated in accordance with the PSR; and
 - (ii) thereafter, a Monthly O&M Phase Progress Report prepared and updated in accordance with the PSR.

- (h) **(Minutes)**: The State will take minutes of each Project Control Group meeting and distribute such minutes prior to the next Project Control Group meeting.
- (i) **(Other attendees)**: The State may:
 - (i) require the Independent Reviewer and Environmental Auditor or any Interface Party to attend any meeting of the Project Control Group; and
 - (ii) direct Project Co to procure the attendance of senior representatives of any of the Subcontractors (not forming part of the Project Control Group) or any of their respective Associates at any meeting of the Project Control Group.
- (j) **(Liability of Project Control Group)**: The Project Control Group:
 - (i) is advisory only and its decisions or recommendations are not binding on the parties; and
 - (ii) does not have any legal responsibilities, Liability or right to require any of the parties to act or refrain from acting in any way.
- (k) **(No limitation)**: The parties' involvement in the Project Control Group does not affect their respective rights and obligations in accordance with this Agreement.
- (l) **(Further information)**: The State Representative may require Project Co to provide information on matters discussed at any Project Control Group meeting and Project Co must provide that information in a timely manner.
- (m) **(No reliance or Claim)**: Neither the State nor Project Co will be entitled to:
 - (i) rely on any statement, opinion, advice, representation, warranty, promise or undertaking made or given by or on behalf of or any member of the Project Control Group (in its capacity as a member); or
 - (ii) make any Claim against any such group or committee or any member of the Project Control Group (in its capacity as a member),

arising in connection with anything which any such member does or fails to do in its capacity as a member of the Project Control Group.
- (n) **(Project Co conduct at meetings)**: Project Co and its Associates must freely and openly discuss the Project Activities at all meetings (including meetings of the Project Control Group) conducted with the State and Project Co, and must procure that its Associates fully respond to any questions which the State Representative may ask Project Co at any meetings conducted in accordance with this Agreement within 5 Business Days.

9.4 Appointment of Independent Reviewer and Environmental Auditor

The State will appoint and the State and Project Co must jointly engage the Independent Reviewer and Environmental Auditor to act as Independent Reviewer and Environmental Auditor:

- (a) **(appointment terms)**: in accordance with the terms of this Agreement and the Independent Reviewer and Environmental Auditor Deed of Appointment; and
- (b) **(not agent)**: independently and not as agent of either party.

9.5 Costs and expenses of Independent Reviewer and Environmental Auditor

- (a) **(Costs):** Subject to clause 9.5(b), the costs and expenses of the Independent Reviewer and Environmental Auditor (including the Independent Reviewer and Environmental Auditor's professional fees and any costs incurred in exercising or purporting to perform its obligations under the Independent Reviewer and Environmental Auditor Deed of Appointment but not including any payments due to the Independent Reviewer and Environmental Auditor in respect of any Downstream Independent Reviewer and Environmental Auditor Functions) will be paid [not disclosed]% each by the State and Project Co to the Independent Reviewer and Environmental Auditor.
- (b) **(Costs for reports):** Where the Independent Reviewer and Environmental Auditor prepares a report not otherwise required by this Agreement or the Independent Reviewer and Environmental Auditor Deed of Appointment, but requested by the State or Project Co:
- (i) the costs of the Independent Reviewer and Environmental Auditor of preparing such an additional report will be paid directly by the party requesting the report; and
 - (ii) a copy of that additional report must be provided by the Independent Reviewer and Environmental Auditor to the party not requesting the report.
- (c) **(IREA Cap):**
- (i) If at the expiry of the D&C Phase or earlier termination of this Agreement the total amount paid to the Independent Reviewer and Environmental Auditor under the Independent Reviewer and Environmental Auditor Deed of Appointment, is less than the IREA Cap, Project Co will pay to the State an amount equal to [not disclosed]% of the difference.
 - (ii) When calculating the amount paid to the Independent Reviewer and Environmental Auditor under the Independent Reviewer and Environmental Auditor Deed of Appointment for the purposes of clause 9.5(c)(i), any amount paid by the State or Project Co to the Independent Reviewer and Environmental Auditor in accordance with clause 9.5(b) will be excluded.

9.6 Determinations of Independent Reviewer and Environmental Auditor

Determinations of the Independent Reviewer and Environmental Auditor will be final and binding on the State and Project Co except:

- (a) **(manifest error):** in the case of manifest error on the face of the Independent Reviewer and Environmental Auditor's determination; or
- (b) **(express provision):** if there is an express provision in this Agreement to the contrary.

9.7 Replacement of Independent Reviewer and Environmental Auditor

- (a) **(Appointment and replacement):** If:
 - (i) the Independent Reviewer and Environmental Auditor Deed of Appointment is terminated in accordance with its terms; or

- (ii) the Independent Reviewer and Environmental Auditor ceases to act as the Independent Reviewer and Environmental Auditor for the purposes of the State Project Documents,

the State will appoint and the State and Project Co must jointly engage another person to act as the Independent Reviewer and Environmental Auditor on substantially the same terms as the Independent Reviewer and Environmental Auditor Deed of Appointment, provided that the Independent Reviewer and Environmental Auditor to be engaged must:

- (iii) be reasonably acceptable to the State and Project Co;
- (iv) have appropriate qualifications and experience; and
- (v) have no interest or duty which conflicts or may conflict with its functions as an Independent Reviewer and Environmental Auditor.

- (b) **(Decisions of previous Independent Reviewer and Environmental Auditor):** The new Independent Reviewer and Environmental Auditor appointed in accordance with clause 9.7(a) is bound by the exercise of any functions or decisions made by the previous Independent Reviewer and Environmental Auditor which would have been binding on the State and Project Co.

9.8 Proof Engineer

- (a) **(Appointment):** Project Co must:
 - (i) with the D&C Subcontractor, jointly engage the Proof Engineer; and
 - (ii) ensure that, where the engagement of the Proof Engineer is terminated or otherwise ceases, it engages another person to act as Proof Engineer.
- (b) **(Approval):** Any Proof Engineer appointed by Project Co under clause 9.8(a) must:
 - (i) be reasonably acceptable to the State;
 - (ii) have appropriate qualifications and experience; and
 - (iii) be engaged on terms reasonably acceptable to the State.
- (c) **(Obligations):** Project Co must ensure that the Proof Engineer:
 - (i) complies with the requirements of the Proof Engineer set out in the State Project Documents; and
 - (ii) provides such information, assistance and documentation to the Independent Reviewer and Environmental Auditor and gives such access to the Independent Reviewer and Environmental Auditor (and any person authorised by the Independent Reviewer and Environmental Auditor) as may be reasonably required by the Independent Reviewer and Environmental Auditor (and any person authorised by the Independent Reviewer and Environmental Auditor) for the purpose of performing its role and functions under this Agreement and the Independent Reviewer and Environmental Auditor Deed of Appointment.

10. Subcontracting and third party arrangements

10.1 Key People and Key Subcontractors

- (a) **(Subcontracting):** Subject to clause 10.1(b), Project Co:
- (i) must ensure that the Key People and Key Subcontractors are employed or engaged in the roles specified in the Contract Particulars;
 - (ii) must procure from each Key Subcontractor an executed direct deed:
 - A. in respect of the D&C Subcontractor, in the form of the D&C Direct Deed; and
 - B. in respect of OpCo, in the form of the OSA Direct Deed;
 - (iii) must:
 - A. enter into, and procure that the D&C Subcontractor and each Key Subcontractor (D&C) enter into (on or around the same time as the Key Subcontractor (D&C) executes the relevant Subcontract), a deed in the form of the Subcontractor Direct Deed; and
 - B. provide the State with a copy of each Subcontractor Direct Deed promptly after that Subcontractor Direct Deed is entered into;
 - (iv) subject to:
 - A. clause 10.1(a)(v); and
 - B. clause 10.1(c) in the case of OpCo,must:
 - C. not replace the Key Subcontractors;
 - D. procure that the Key Subcontractors (D&C) are not replaced; and
 - E. ensure that the Key People are not replaced,without the State's prior consent (which will not be unreasonably withheld or delayed); and
 - (v) if any of the Key People die, become seriously ill or resign from the employment of Project Co or the relevant Key Subcontractor or receive a promotion, must procure the replacement of the relevant Key People with persons approved by the State (not to be unreasonably withheld) of at least equivalent qualification, experience, ability and expertise.
- (b) **(Appointment of Key People for O&M Activities):** Project Co must ensure that:
- (i) the Key People in respect of the O&M Activities are employed or engaged in the roles specified in the Contract Particulars on and from the Date of West Gate Tunnel Completion; and

- (ii) the identity of those Key People is notified to the State for the State's consent (which will not be unreasonably withheld or delayed) not less than 12 months prior to the Date for West Gate Tunnel Completion.
- (c) **(State consent to replace OpCo):** If Project Co requests the State's consent to replace OpCo in accordance with clause 10.1(a)(iv), the State must not withhold such consent where:
 - (i) the State has been provided with:
 - A. details of the proposed replacement subcontractor; and
 - B. the terms and conditions on which the proposed replacement subcontractor is to be engaged;
 - (ii) in the State's reasonable opinion, the proposed replacement subcontractor is a reputable corporation;
 - (iii) in the State's reasonable opinion, the proposed replacement subcontractor (whether by itself or by way of support from its shareholders in a form acceptable to the State acting reasonably):
 - A. has sufficient expertise and ability; and
 - B. is of sufficiently high financial and commercial standing, to properly carry out the obligations which were carried out by OpCo (or a subsequent replacement Subcontractor) under the relevant Project Documents;
 - (iv) the terms and conditions on which the proposed replacement subcontractor is to be engaged are reasonably acceptable to the State;
 - (v) the proposed replacement subcontractor has agreed to be bound by the terms of the relevant Project Documents; and
 - (vi) a person other than the State bears all reasonable costs and expenses (including legal costs and expenses) of and incidental to:
 - A. any enquiries which the State may make for the purposes of determining whether to consent to the replacement of OpCo (or a subsequent replacement Subcontractor);
 - B. the procurement of a replacement subcontractor; and
 - C. the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in relation to such documentation.

10.2 Subcontracting

Project Co:

- (a) **(no relief):** is not relieved from any or all of its obligations or Liabilities in accordance with the State Project Documents as a result of subcontracting any of those obligations or Liabilities;

- (b) **(Project Co responsible)**: will be responsible for the acts and omissions of any Subcontractor and their respective Associates in carrying out the Project Activities as if such acts or omissions were the acts or omissions of Project Co;
- (c) **(Wrongs Act)**: for the purposes of Part IVAA of the *Wrongs Act 1958* (Vic), is entirely responsible for any failure to take reasonable care on the part of any Subcontractor or their Associates to the extent permitted by law;
- (d) **(access to Subcontracts)**: must if the State requires, give the State access to (or copies of, upon request) any proposed or executed Subcontract (other than Enterprise-wide Subcontracts) (regardless of whether Project Co is a party to that contract) and all plans, specifications and drawings relating to that Subcontract; and
- (e) **(restrictions)**: must not, and must procure that OpCo and its Related Bodies Corporate do not, enter into Enterprise-wide Subcontracts or Service Agreements which contain exclusivity obligations which would restrict the ability of the State or its nominees to utilise the works, products, services or rights that are provided under the relevant Subcontract for the purposes of the Project.

10.3 Requirements for Subcontracting

Project Co must not engage any Subcontractor, unless:

- (a) **(Probity Investigation)**: if the State requires Probity Investigations to be carried out in respect of the Subcontractor, the State's probity requirements as described in clause 59 are satisfied;
- (b) **(relevant capacity)**: the proposed Subcontractor has the financial capacity, experience and capability to perform the obligations of Project Co to be Subcontracted to at least the standards required by this Agreement;
- (c) **(relevant provisions)**: any Key Subcontract, Material Subcontract (D&C) or Material Subcontract (Tolling Works) to be entered into by the Subcontractor contains further provisions expressly recognising and permitting the exercise by the State of its rights under and contains all relevant provisions prescribed by (if applicable), clauses 10.1, 10.4, 10.6, 26.4, 28.6, 28.7, 28.12, 37, 40, 41, 42, 45, 49, 53 and 59; and
- (d) **(relevant provisions for Material Subcontract (O&M))**: subject to clause 10.3A, any Material Subcontract (O&M) to be entered into by the Subcontractor contains further provisions expressly recognising and permitting the exercise by the State of its rights under and contains all relevant provisions prescribed by (if applicable) clauses 10.1, 10.4, 10.6, 26.4, 28.6, 28.7, 28.12, 37, 40, 41, 42, 45, 53 and 59.

10.3A Grandfathering

The State agrees that Project Co and its Subcontractors will be relieved of their obligations:

- (a) under the Pass Through Clauses to the extent that such obligations relate to or require compliance by a Subcontractor to a Subcontract (O&M - CityLink/WGT) or an Enterprise-wide Subcontract; or
- (b) under clause 54.1(d)(ii) and 54.1(d)(iii) to the extent that such obligations relate to or require compliance by Ventia Pty Ltd in carrying out the OpCo D&C Phase IRS Activities pursuant to the Ventia Subcontract,

until the earlier of:

- (c) the date on which:

- (i) the terms of the Subcontract (O&M - CityLink/WGT), the Enterprise-wide Subcontract or the Ventia Subcontract (as applicable) are renegotiated by the parties to it;
 - (ii) the Subcontract (O&M - CityLink/WGT), the Enterprise-wide Subcontract or the Ventia Subcontract (as applicable) is terminated and replaced with a new Subcontract (O&M - CityLink/WGT), Enterprise-wide Subcontract or the Ventia Subcontract (as applicable) for the provision of the same type of goods or services; or
 - (iii) the term of the Subcontract (O&M - CityLink/WGT), the Enterprise-wide Subcontract or the Ventia Subcontract (as applicable) is extended; and
- (d) the Date of West Gate Tunnel Completion.

10.3B Enterprise-wide Subcontracts

- (a) **(Warranty):** Project Co warrants that each Subcontractor engaged under an Enterprise-wide Subcontract has sufficient financial capacity, experience and capability to perform the obligations of Project Co which are Subcontracted to at least the standards required by this Agreement.
- (b) **(Information):** Project Co must within 30 Business Days following:
 - (i) the date of Financial Close;
 - (ii) the Date of West Gate Tunnel Completion; and
 - (iii) thereafter, each anniversary of the Date of West Gate Tunnel Completion,

provide the State with the following information in relation to each Enterprise-wide Subcontract:

- (iv) the identity of the counterparties to the Enterprise-wide Subcontract; and
- (v) the nature of the goods or services provided or to be provided, or rights granted or to be granted, under the Enterprise-wide Subcontract.

10.4 Material Subcontracts

- (a) **(Restrictions on Subcontracts):** Project Co must not in respect of any Key Subcontracts, Material Subcontracts or Service Agreements, itself amend, terminate, rescind, novate or assign or allow at any time amendment to, or termination, rescission, novation or assignment of such Key Subcontracts, Material Subcontracts or Service Agreements without the State's prior consent (which will not be unreasonably withheld or delayed) other than in accordance with the OSA Direct Deed or the D&C Direct Deed (as applicable).
- (b) **(D&C Subcontract):** If the State consents to an amendment, termination, rescission, novation or assignment of the D&C Subcontract in accordance with clause 10.4(a), the State must do everything reasonably necessary in its capacity as counterparty to the D&C Subcontract to give effect to the amendment, termination, rescission, novation or assignment.
- (c) **(Restrictions on Material Subcontracts (O&M) and Service Agreement):** Project Co must not, and must procure that OpCo does not, at any time:
 - (i) enter into a Material Subcontract (O&M); nor

- (ii) enter into a Service Agreement,

without the State's prior consent, which consent must not be unreasonably withheld or delayed.

- (d) **(State consent for the Operating Services Agreement or Material Subcontracts (O&M)):** If Project Co requests the State's consent in accordance with clause 10.4(a) or clause 10.4(c), the State must not withhold such consent where:

- (i) the Material Subcontract (O&M) or Service Agreement, or an amendment to the Operating Services Agreement, Material Subcontract (O&M) or Service Agreement (as applicable) is on commercial terms which have been negotiated on an arm's length basis; and
- (ii) a copy of the Material Subcontract (O&M) or Service Agreement, or the proposed amendment to the Operating Services Agreement, the Material Subcontract (O&M) or Service Agreement (as applicable) has been given to the State.

- (e) **(Prescribed terms):** Project Co must ensure that each Key Subcontract and each Material Subcontract includes a clause which provides that, if this Agreement is terminated in accordance with clause 42:

- (i) subject to the terms of the D&C Direct Deed, OSA Direct Deed or Subcontractor Direct Deed (as the case may be), the D&C Subcontractor, OpCo, Project Co or any other relevant party may terminate the relevant Subcontract; and
- (ii) the D&C Subcontractor, OpCo, Project Co or the other relevant party will pay to the relevant Subcontractor (in the case of Project Co, excluding the D&C Subcontractor and OpCo and, in the case of OpCo, excluding any Subcontractor that has entered into a Service Agreement), an early termination amount which is no greater than the aggregate of:
 - A. the contract value of the work or services properly executed in accordance with the Subcontract up to the date of termination;
 - B. reasonable costs and expenses properly incurred up to the date of termination in expectation of completing the work or services under the Subcontract;
 - C. Liabilities to third parties (excluding any Related Body Corporate, other than to the extent the Related Body Corporate is engaged on an arm's length basis and on commercial terms) for termination; and
 - D. in respect of Subcontracts relating to:
 - 1) the D&C Activities, [not disclosed]% of the unpaid balance of the contract sum on account of early termination; and
 - 2) the O&M Activities, [not disclosed]% of the unpaid balance of the contract sum on account of early termination that would have been payable to the relevant Subcontractor in accordance with the Subcontract (after deducting the amounts payable in accordance with clauses 10.4(e)(ii)A to

10.4(e)(ii)C) but for the termination, for the 12 month period from the date of the termination,

less the total amounts already paid on account of the contract sum.

10.5 Competence

- (a) **(Project Co to ensure competence):** Project Co must ensure that all persons employed or engaged on the Project Activities hold appropriate qualifications and have received appropriate training for their intended duties, and provide evidence of such qualifications and training to the State as reasonably requested.
- (b) **(Incompetence):** If the State notifies Project Co of any person employed or engaged on the Project Activities who, in the State's reasonable opinion, is incompetent, does not meet the standard required by clause 10.5(a), or is negligent, dishonest, guilty of misconduct or fraudulent, then Project Co must promptly:
 - (i) remove the person or ensure that such person is promptly removed from working on the Project Activities;
 - (ii) replace the person or ensure that such person is promptly replaced; and
 - (iii) ensure that the person is not again employed or engaged on the Project Activities.

10.6 Payment of amounts owed to Subcontractors

- (a) **(Payments):** Project Co must:
 - (i) ensure that Subcontractors who are parties to Subcontracts with Project Co and the D&C Subcontractor are paid in accordance with the terms of their Subcontracts;
 - (ii) use reasonable endeavours to ensure that any other Subcontractors are paid in accordance with the terms of their Subcontracts; and
 - (iii) ensure that each Subcontract contains an equivalent provision to clause 10.6(a)(i) in relation to that Subcontract and Subcontractor.
- (b) **(Copies of notices under Security of Payment Act):** Project Co must ensure that, within:
 - (i) 2 Business Days after any notice under the Security of Payment Act (excluding any "payment claim" or "payment schedule" as those terms are defined under the Security of Payment Act) is given to, or received by, Project Co from any Subcontractor; or
 - (ii) 1 Business Day after notice of a Subcontractor's intention to suspend work under a Subcontract in accordance with the Security of Payment Act is given to, or received by, Project Co from any of its Subcontractors,a copy of that notice is given to the State.
- (c) **(Suspension under Security of Payment Act):** If the State reasonably considers that a Subcontractor has become entitled to suspend work under a Subcontract in accordance with the Security of Payment Act because of a failure by Project Co or any of its Associates to pay moneys due and payable to the Subcontractor, the State may pay to the Subcontractor the amount owing to the Subcontractor in

connection with that work, and any amount paid by the State will be a debt due and payable by Project Co to the State.

(d) **(State may pay Subcontractors):** Notwithstanding clause 10.6(c), if any amount is:

- (i) certified as payable; or
- (ii) otherwise due and payable,

to a Subcontractor under a Subcontract, and Project Co or its relevant Associate does not pay such amount to that Subcontractor in accordance with that Subcontract, then the State may pay such amount to that Subcontractor provided it has given Project Co 5 Business Days' notice of its intention to do so, and any amount paid by the State will be a debt due and payable by Project Co to the State.

10.7 General interface requirements

(a) **(Coordination):** Project Co acknowledges that the State, any of the State's Associates and any other person authorised by the State including all Rail Interface Parties and Road Interface Parties (together, the **Interface Parties**), may carry out work, services, activities and functions:

- (i) in connection with the West Gate Tunnel;
- (ii) otherwise in connection with the Project Activities; or
- (iii) adjacent to or in the vicinity of the West Gate Tunnel,

simultaneously with Project Co's performance of the Project Activities.

(b) **(Co-operation):** Except to the extent Project Co is expressly entitled to relief as a Compensable Extension Event, Modification, Proximate State Works or Key Risk Event, or, is entitled to relief in respect of a State Act of Prevention, and without limiting any of its rights under any Utility Agreement or any Road Interface Agreement, Project Co bears all risk in respect of the Interface Parties and must:

- (i) permit the Interface Parties to undertake their work, services, activities and functions;
- (ii) fully co-operate with the Interface Parties;
- (iii) carefully co-ordinate and interface the Project Activities with the work, services, activities and functions carried out or to be carried out by the Interface Parties;
- (iv) carry out the Project Activities so as to minimise interference, disruption or delay to the work, services, activities and functions of the Interface Parties; and
- (v) notify the State of any problems which the undertaking or intended undertaking of any works, services, activities or functions of the Interface Parties may have on the carrying out of the Project Activities as soon as possible after becoming aware of such problems.

(c) **(Rail Interface Parties):** The parties agree that Project Co's obligations under clause 10.7(b) will not be construed as requiring Project Co to provide the Rail Interface Parties with access to any part of the Leased Area.

10.8 Road Interface Agreements

- (a) Project Co must:
 - (i) comply with all of its obligations under each Road Interface Agreement; and
 - (ii) provide to the State a copy of each Road Interface Agreement promptly after that Road Interface Agreement is entered into.
- (b) The State must provide Project Co with all necessary assistance to enable Project Co and its Associates to access the M80 Interface Site as reasonably necessary to carry out the M80 Interface Design Activities including to allow for:
 - (i) investigations including excavation of test pits and execution of bore holes;
 - (ii) inspections of the M80 Interface Site to assess existing features;
 - (iii) feature survey and surface contour survey;
 - (iv) provision and maintenance of survey control marks; and
 - (v) inspections with Subcontractors to coordinate future activities including access arrangements.
- (c) When accessing the M80 Interface Site for the purposes of and pursuant to clause 10.8(b), Project Co must comply with the reasonable site safety and security requirements of the State or (at any time after the execution of the M80 Contract) the M80 Contractor and must not unnecessarily interfere with the carrying out of the M80 Upgrade Project.

10.9 Notification of Subcontractor claims and disputes

Project Co must notify the State Representative of the existence of any claims or disputes of which Project Co is aware that have arisen under any Subcontract (regardless of whether Project Co is a party to that contract), where the claims process or dispute resolution process under that Subcontract has been activated by any party to it, provided that this clause 10.9 will only apply to claims or disputes that have arisen under any Enterprise-wide Subcontract to the extent that the claim or dispute relates to the carrying out of the O&M Activities.

10.10 Obligations as to Claims made on pass-through basis

Project Co must, in circumstances where it makes any Claim against the State as a consequence of a claim that has been made by a Subcontractor against Project Co, take reasonable steps to ensure that any such claim made by the Subcontractor is bona fide, prior to making any related Claim against the State and must notify the State of the steps it has taken prior to or at the same time it makes the Claim against the State.

10.11 Interface with CityLink

- (a) Without limiting clause 10.7, Project Co acknowledges and agrees that it is responsible for, and assumes all cost and risk associated with:
 - (i) gaining access to CityLink to carry out the Project Activities;
 - (ii) consulting with the CityLink Parties in relation to the Project Activities; and

- (iii) coordinating the Project Activities with the works and activities of the CityLink Parties,

except to the extent Project Co is expressly entitled to relief in accordance with this Agreement or has rights at Law that are preserved by this Agreement.

- (b) Without limiting any other provision of this Agreement or Project Co's rights at Law to the extent such rights are preserved by this Agreement, Project Co acknowledges that it:
 - (i) has made allowance for all delays, costs and risks arising in connection with this clause 10.11 and the CityLink Access Deed (excluding a breach of the CityLink Access Deed by the CityLink Parties or any act or omission of the CityLink Parties not authorised or permitted under the CityLink Access Deed); and
 - (ii) except as expressly provided for in the State Project Documents, will not be entitled to make any Claim against the State for any Liability arising in connection with CityLink, the CityLink Parties or the CityLink Access Deed.
- (c) Project Co releases and agrees not to make a Claim against the State in relation to any amount that the CityLink Parties are entitled to Claim under section 7 of the Variation Principles (as that term is defined under the CityLink Concession Deed).
- (d) The parties agree that clauses 10.11(a) to 10.11(c) will cease to have effect on and from expiry or termination of the CityLink Concession Deed.
- (e) If the CityLink Concession Deed is terminated prior to the Date of Tolling Completion, the State will, at the request of Project Co, accept a novation of (or procure an incoming concessionaire of CityLink accept a novation of) the CityLink Access Deed (in the form of that document as at the date of this Agreement).
- (f) If the CityLink Concession Deed is terminated at any time prior to the Expiry Date, the parties will negotiate in good faith to enter into arrangements between them (or between Project Co and an incoming concessionaire of CityLink) on substantially the same terms as the West Gate Tunnel – CityLink Umbrella Deed, having regard to the fact that CityLink would no longer be owned by a Related Body Corporate of Project Co.

10.11A Roaming Agreement and Network Tolling Agreement

- (a) **(Definitions):** For the purposes of this clause 10.11A the terms 'Fee Review', 'Discount Amount', 'Image Processing Fee', 'IPF Retention Amount', 'Net Incremental Cost', 'Price Review', 'Roaming Services', 'TAF Retention Amount', 'Toll' and 'Toll Administration Fee' have the meanings given in the Roaming Agreement.
- (b) **(Adjustment under Roaming Agreement):** Project Co must:
 - (i) following a Price Review in accordance with clause 10.7 of the Roaming Agreement:
 - A. notify the State of any adjustment to the Discount Amount agreed between Project Co and the Company pursuant to the Price Review; and
 - B. subject to clause 13.3(k), provide to the State such information as is reasonably required by the State to demonstrate that the adjusted Discount Amount does not exceed the Net Incremental Cost to the Company of

recovering Tolls on behalf of Project Co as part of the
Roaming Services; and

- (ii) following a Fee Review in accordance with clause 10.9 of the Roaming Agreement:
 - A. notify the State of any adjustment to the IPF Retention Amount and the TAF Retention Amount agreed between Project Co and the Company pursuant to the Fee Review; and
 - B. subject to clause 13.3(k), provide to the State such information as is reasonably required by the State to demonstrate that the adjusted IPF Retention Amount and the adjusted TAF Retention Amount (as applicable) does not exceed the Net Incremental Cost to the Company of recovering an Image Processing Fee or a Toll Administration Fee respectively, on behalf of Project Co.
- (c) **(Notification by the State):** If the State reasonably considers that:
 - (i) the Discount Amount (as adjusted through a Price Review) exceeds the Net Incremental Cost to the Company of recovering Tolls on behalf of Project Co as part of the Roaming Services;
 - (ii) the IPF Retention Amount (as adjusted through a Fee Review) exceeds the Net Incremental Cost to the Company of recovering an Image Processing Fee as part of the Roaming Services; or
 - (iii) the TAF Retention Amount (as adjusted through a Fee Review) exceeds the Net Incremental Cost to the Company of recovering a Toll Administration Fee as part of the Roaming Services,the State may issue a notice to Project Co which identifies:
 - (iv) the amount by which the Discount Amount, IPF Retention Amount and TAF Retention Amount (as applicable) exceeds the relevant Net Incremental Cost; and
 - (v) the reasonable period of time within which Project Co must (and must ensure that the Company does) agree to a variation to the Discount Amount, IPF Retention Amount and TAF Retention Amount (as applicable) to reduce it to the relevant Net Incremental Cost.
- (d) **(Dispute):** If Project Co disagrees with any notice given by the State under clause 10.11A(c), then:
 - (i) it must, within 5 Business Days of receipt of the notice given under clause 10.11A(c), give notice of its disagreement to the State including such supporting documentation to the reasonable satisfaction of the State;
 - (ii) the State and Project Co must use reasonable endeavours to resolve the matter the subject of the disagreement; and
 - (iii) if the matter is not resolved within 10 Business Days after the date of the notice given under clause 10.11A(d)(i), either party may, by notice to the other party, refer the matter for determination under clauses 43 to 44.

- (e) **(Compliance with State notice):** Upon receipt of a notice from the State under clause 10.11A(c), Project Co must (and must ensure that the Company does):
- (i) except where the State's notice under clause 10.11A(c) does not refer to the Discount Amount, or the State's notice is disputed in accordance with clause 10.11A(d), vary the Roaming Agreement so as to reduce the Discount Amount to an amount no more than the Net Incremental Cost to the Company of recovering the Tolls on behalf of Project Co as part of the Roaming Services;
 - (ii) except where the State's notice under clause 10.11A(c) does not refer to the IPF Retention Amount, or the State's notice is disputed in accordance with clause 10.11A(d), vary the Roaming Agreement so as to reduce the IPF Retention Amount to an amount no more than the Net Incremental Cost to the Company of recovering an Image Processing Fee; and
 - (iii) except where the State's notice under clause 10.11A(c) does not refer to the TAF Retention Amount, or the State's notice is disputed in accordance with clause 10.11A(d), vary the Roaming Agreement so as to reduce the TAF Retention Amount to an amount no more than the Net Incremental Cost to the Company of recovering a Toll Administration Fee,

in accordance with the State's notice under clause 10.11A(c) with effect from the date specified in the State's notice under clause 10.11A(c), or where the State's notice is disputed in accordance with clause 10.11A(d) as determined in accordance with clause 10.11A(d).

- (f) **(Termination of the Roaming Agreement or Network Tolling Agreement):** Project Co must not:
- (i) [not used]; and
 - (ii) give notice to the other parties to the Network Tolling Agreement of its intention to terminate the Network Tolling Agreement in accordance with clause 9.2(a)(2) of the Network Tolling Agreement without the State's prior consent, such consent not to be unreasonably withheld or delayed,

provided that nothing in this clause 10.11A(f) is intended to limit any other right of Project Co under the Roaming Agreement or the Network Tolling Agreement to terminate those agreements.

- (g) **(Assignment and amendment of Roaming Agreement and Network Tolling Agreement):** Project Co must not:
- (i) assign or novate the Roaming Agreement or the Network Tolling Agreement; and
 - (ii) amend the Roaming Agreement or the Network Tolling Agreement,
- without the State's prior consent and such consent must not to be unreasonably withheld or delayed.
- (h) **(Operation of clause 10.11A):** The parties agree that this clause 10.11A will cease to have effect in relation to each of the Roaming Agreement and the Network Tolling Agreement on and from the earlier of:
- (i) the termination or expiry of the CityLink Concession Deed; and

- (ii) the termination or expiry of this Agreement.

10.12 Interface with Rail

- (a) **(General obligations in relation to the Rail Interface Works):** Without limiting clause 10.12(h) or clause 10.7, Project Co must:
 - (i) carry out the Rail Interface Works in accordance with:
 - A. this clause 10.12; and
 - B. the Rail Interface Parties' Requirements;
 - (ii) ensure that the D&C Subcontractor complies with each Direct Interface Agreement;
 - (iii) if required by the State or a Rail Interface Party, participate in and / or procure the participation of the D&C Subcontractor in, any working group, committee or similar forum relating to the Rail Interface Works, whether as a member or observer;
 - (iv) fully inform itself of the Rail Interface Parties' Requirements; and
 - (v) upon request by the State, provide any information or supporting documentation, including in such form and by such time, as the State reasonably requires in relation to the Rail Interface Works.
- (b) **(Direct Interface Agreements):** Project Co must:
 - (i) ensure that the D&C Subcontractor, in carrying out the D&C Activities, complies with all directions of the State in relation to compliance with the requirements of each Direct Interface Agreement;
 - (ii) provide to the State:
 - A. a copy of each Direct Interface Agreement no later than 10 Business Days before that Direct Interface Agreement is proposed to be entered into; and
 - B. a copy of each Direct Interface Agreement promptly after that Direct Interface Agreement is entered into.
- (c) **(Category 1 Rail Land - Rail Projects Agreements and Interstate Infrastructure Lease):** Project Co warrants that it is familiar with, and understands, the framework established by:
 - (i) each of the Rail Projects Agreements; and
 - (ii) the Interstate Infrastructure Lease.
- (d) **(Project Co obligations - Category 1 Rail Land):** Without limiting clause 10.7 or clause 10.12(h), Project Co must:
 - (i) do all things reasonably necessary, or as reasonably required by the State, to enable the State or Public Transport Victoria to comply with its obligations under:
 - A. each of the Rail Projects Agreements; and

B. the Interstate Infrastructure Lease,

in connection with the Rail Interface Works, including in relation to the design, standards, construction and handover of the Rail Interface Works including those obligations identified as the responsibility of Project Co in section 4 of Schedule 24 but excluding those obligations retained by the State in section 4 of Schedule 24;

(ii) ensure that the D&C Subcontractor enters into a Direct Interface Agreement with each Category 1 Rail Interface Party on terms that are consistent with the relevant Rail Projects Agreement or Interstate Infrastructure Lease;

(iii) do all things necessary to comply with, or procure compliance with, the obligations of:

A. the 'Contractor' as set out in each of the Rail Projects Agreements; and

B. the 'contractor' as set out in the Interstate Infrastructure Lease,

in relation to the Rail Interface Works, including in relation to the design, standards, construction and handover of the Rail Interface Works; and

(iv) ensure that it does not, in connection with the Rail Interface Works, cause the State or Public Transport Victoria to be in breach of any of their obligations under:

A. any of the Rail Projects Agreements; or

B. the Interstate Infrastructure Lease.

(e) **(D&C Subcontractor obligations - Category 2 Rail Land):** Project Co:

(i) must ensure that the D&C Subcontractor enters into a Direct Interface Agreement with each Category 2 Rail Interface Party on terms that are consistent with the principles set out in section 5 of Schedule 24; and

(ii) acknowledges that it is the responsibility of the D&C Subcontractor to negotiate with each Category 2 Rail Interface Party, and although the State will endeavour to assist (to the extent necessary and if the D&C Subcontractor has requested the State to assist), in those negotiations if requested by Project Co at the request of the D&C Subcontractor, the State does not have any further obligations to Project Co or the D&C Subcontractor to facilitate the D&C Subcontractor's access in relation to the Category 2 Rail Land.

(f) **(D&C Subcontractor obligations - Category 4 Rail Land):** Project Co:

(i) without limiting clause 10.12(h) or clause 10.7, must in carrying out the D&C Activities:

A. do all things reasonably necessary, or as reasonably required by the State to enable the State to comply with its obligations under the West Gate Tunnel Project Rail Licence, in connection with the Rail Interface Works, including in relation to the design, standards, construction and handover of the Rail Interface Works; and

- B. ensure that it does not, in connection with the Rail Interface Works cause the State to be in breach of any of its obligations under the West Gate Tunnel Project Rail Licence; and
- (ii) acknowledges that it will be responsible for such costs and expenses as agreed with the Category 4 Rail Interface Party in relation to the Rail Interface Works and the WGT Rail Licence in accordance with section 6 of Schedule 24.
- (g) **(Rail safety and accreditation):** Without limiting clause 10.12(h) or clause 10.7, Project Co must in carrying out the D&C Activities:
 - (i) not do, or omit to do, anything in respect of the Rail Interface Works which may cause the Accreditation of any Rail Transport Operator to be suspended or cancelled;
 - (ii) liaise, co-operate and use its best endeavours (including by providing such information and documentation required by any Rail Transport Operator or any other authority from time to time responsible for Accreditation):
 - A. to assist the relevant Rail Transport Operator to obtain or maintain any Accreditation, or modify its Accreditation, to the extent necessary for the performance of, or as a result of, the Rail Interface Works;
 - B. to assist the relevant Rail Transport Operator to:
 - 1) prepare Safety Management Documentation in relation to the Rail Interface Works; and
 - 2) manage changes associated with the Rail Interface Works as relevant to the Safety Management System;
 - C. to provide information, advice and other support in relation to the Rail Interface Works as required by the relevant Rail Transport Operator in order to amend its Safety Management System, or by the State in order to facilitate any Rail Transport Operator amending its Safety Management System; and
 - D. to make available all relevant personnel to attend Safety Management System meetings or workshops as arranged from time to time to the extent such meetings or workshops relate to the Rail Interface Works,

until the relevant Rail Transport Operator has completed all activities associated with amending its Safety Management System as a consequence of the performance of the Rail Interface Works and any notifications or variations to the Safety Management System have been accepted by the Safety Regulator under the Rail Safety Acts;
 - (iii) undertake a comprehensive risk analysis of the Rail Interface Works. In undertaking the risk analysis, Project Co shall convene a workshop in conjunction with the relevant Rail Transport Operator and arrange for representatives of the State, the relevant Rail Interface Parties and other relevant stakeholders to attend; and

- (iv) develop a railway site safety plan which includes appropriate measures and procedures to eliminate, reduce or manage identified risks. Such measures and procedures shall be to the satisfaction of the relevant Rail Interface Parties.
- (h) **(Project Co's risks):** Project Co must:
 - (i) pay for or reimburse the State and the Rail Interface Parties for any costs, Claims or Liabilities in connection with:
 - A. the undertaking of the Rail Interface Works including under the Rail Projects Agreements, the Interstate Infrastructure Lease and the WGT Rail Licence (excluding those obligations retained by the State set out in section 4 of Schedule 24 and including those obligations identified as the responsibility of Project Co in section 4 of Schedule 24); and
 - B. their costs relating to access for, disruption relating to and impact of, the Rail Interface Works; and
 - (ii) indemnify the State and, in respect of Category 1 Rail Land, Public Transport Victoria, against any Claim or Liability arising in connection with:
 - A. any breach by Project Co of its obligations under this clause 10.12;
 - B. any access or disruption relating to the impact of the Rail Interface Works in breach of this clause 10.12; and
 - C. any damage caused by Project Co to the property of the Rail Interface Parties.
- (i) **(Unplanned Occupation Impact):** If there is or is likely to be an Unplanned Occupation Impact, Project Co must:
 - (i) immediately notify the State, Public Transport Victoria and the relevant Rail Interface Parties of the occurrence or likely occurrence of the Unplanned Occupation Impact and the expected duration of the Unplanned Occupation Impact;
 - (ii) take all necessary steps to bring any Unplanned Occupation Impact to an end as soon as possible; and
 - (iii) submit to the State, Public Transport Victoria and the relevant Category 1 Rail Interface Parties, within 2 Business Days of the occurrence of an Unplanned Occupation Impact, a cure plan which:
 - A. identifies the reasons why the Unplanned Occupation Impact occurred; and
 - B. describes the steps to be taken by Project Co (including any changes to operating procedures, policies or practices of Project Co) to ensure that Unplanned Occupation Impacts do not recur.
- (j) **(State's review of cure plan):** The State must, within 3 Business Days of receiving a cure plan from Project Co under clause 10.12(i)(iii), consider the cure plan and provide Project Co with a notice either:

- (i) stating that the State is satisfied (acting reasonably) with the cure plan;
or
 - (ii) specifying the reasons why the State is not satisfied (acting reasonably) with the cure plan.
- (k) **(Amended cure plan)**: Project Co must, within 3 Business Days of a notice received from the State in accordance with clause 10.12(j)(ii), submit an amended cure plan which addresses the reasons the State is not satisfied as identified by the State in the notice.
- (l) **(State's review of amended cure plan)**: Following submission of an amended cure plan under clause 10.12(k), the State must, within 3 Business Days of receiving an amended cure plan from Project Co under clause 10.12(k), consider the amended cure plan and provide Project Co with a notice either:
 - (i) stating that the State is satisfied (acting reasonably) with the amended cure plan; or
 - (ii) specifying the reasons why the State is not satisfied (acting reasonably) with the amended cure plan, in which case clause 10.12(k) and this clause 10.12(l) will apply again as though the amended cure plan was the original cure plan submitted under clause 10.12(i)(iii).
- (m) **(Project Co to comply with cure plan)**: Project Co must comply with any cure plan in relation to which the State provided a notice under clause 10.12(j)(i) or 10.12(l)(i).
- (n) **(Suspension of access)**: Where three or more Unplanned Occupation Impacts occur in relation to any one Category 1 Rail Interface Party, the State will be entitled to suspend Project Co's access to the relevant area for the purpose of undertaking the Rail Interface Works (**Rail Interface Area**) until such time as the State is satisfied (acting reasonably) with the cure plan submitted by Project Co under clause 10.12(i)(iii) or clause 10.12(k) (as the case may be).
- (o) **(Vacate Rail Interface Area)**: Where the State exercises its rights under clause 10.12(n), Project Co must vacate the Rail Interface Area in a safe condition.
- (p) **(State's obligations)**: The State must:
 - (i) ensure that the Project is nominated as:
 - A. a "State Project" under clause 10.3 of each Rail Projects Agreement; and
 - B. a "State Rail Project" under clause 7.5(a) of the Interstate Infrastructure Lease,on and from the date of this Agreement and that nomination, or equivalent, is maintained (and not suspended or discontinued under clause 11.1 of each Rail Projects Agreement or clause 7.5(b) of the Interstate Infrastructure Lease) until the end of the D&C Phase;
 - (ii) procure that the Rail Interface Parties provide Project Co with access in accordance with and comply with their relevant obligations under:
 - A. in respect of each Category 1 Rail Interface Party, the applicable Rail Projects Agreements; and

- B. in respect of the Category 4 Rail Interface Party, the WGT Rail Licence; and
- (iii) procure that the Rail Interface Parties mitigate any losses, damages, costs and expenses as a result of the undertaking of the Rail Interface Works.
- (q) **(Cancellation of Agreed Occupations):** If a Category 1 Rail Interface Party or the State cancels an Agreed Occupation that has been granted under the relevant Rail Projects Agreement or Interstate Infrastructure Lease for any reason other than as a result of an act or omission of Project Co:
 - (i) such cancellation will not be a breach of this Agreement but will be treated as a Compensable Extension Event; and
 - (ii) except as expressly provided for in clause 10.12(q)(i), the State is not liable for, or in connection with, any Claim by Project Co or the D&C Subcontractor (and Project Co and the D&C Subcontractor is absolutely barred from making any Claim) arising out of, or in connection with, the cancellation of the Agreed Occupation.

10.13 Interface with Mackenzie Road and Appleton Dock Road

Without limiting Project Co's obligations under clauses 10.7 and 10.8, on and from the Date of West Gate Tunnel Completion, Project Co will be relieved of its obligations under this Agreement to the extent that it is prevented, hindered or disrupted from performing those obligations in accordance with the State Project Documents as a direct consequence of either MacKenzie Road and/or Appleton Dock Road not being kept open to the public for the safe, continuous and efficient passage of vehicles, except to the extent that a closure or partial closure of either MacKenzie Road and/or Appleton Dock Road:

- (a) is a result of carrying out maintenance, management, operation, repair or refurbishment activities which:
 - (i) other than in the case of an emergency, have been notified to Project Co sufficiently in advance of being carried out in accordance with any agreed traffic operations requirements; and
 - (ii) may be reasonably expected of a private road operator complying with best industry practices; or
- (b) is otherwise carried out with the prior consent of Project Co.

10.14 Interface with OSARs Project

- (a) The parties acknowledge and agree that:
 - (i) Project Co must negotiate in good faith with the State and OSARs Project Co and use its best endeavours to; and
 - (ii) the State must, and must procure that OSARs Project Co, negotiates in good faith with Project Co and uses its best endeavours to,agree and enter into an interface agreement with respect to the OSARs Project in the form substantially set out in Schedule 25 by 31 January 2018, or such later date as the parties may agree.
- (b) The parties acknowledge and agree that as part of the negotiations contemplated by clause 10.14(a), they will consider and discuss in good faith whether any

amendments are required to this Agreement in respect of the interface between the Project and the OSARs Project.

- (c) The parties acknowledge and agree that:
- (i) the Interface Working Group as described in the draft form of the WGT-OSARs Interface Agreement set out in Schedule 25 will commence; and
 - (ii) Project Co must comply, the State must comply and the State will procure that OSARs Project Co complies, with clauses 7 and 9 of the draft set out in Schedule 25,

on and from the date of this Agreement until execution of the WGT-M80 Interface Agreement, in order to achieve the objective in clause 10.14(a).

11. Project Plans and O&M Manuals and Business Management Strategy

- (a) **(Submission):** Project Co must prepare, finalise, implement and update the Business Management Strategy, Project Plans and O&M Manuals in accordance with the Project Plans and O&M Manuals Section and submit the Business Management Strategy, Project Plans and O&M Manuals to the State and the Independent Reviewer and Environmental Auditor for review in accordance with the Review Procedures.
- (b) **(Additional information):** Project Co must provide any additional information in connection with the Business Management Strategy, Project Plans and O&M Manuals at any time as reasonably requested by the State or the Independent Reviewer and Environmental Auditor.
- (c) **(Delivery):** Unless otherwise agreed by the State, Project Co must carry out the Project Activities in accordance with the Business Management Strategy, Project Plans and O&M Manuals.
- (d) **(Code of Maintenance Standards):** Subject to section 11.1(d) of Part F7 of the PSR, the State and Project Co acknowledge and agree that, notwithstanding any other provision of this Agreement, Project Co may depart from and/or amend any scheduled activity, intervention, process, standard or other provision set out in the Code of Maintenance Standards (including the preliminary Code of Maintenance Standards set out in Part K of the PSR) provided that such departure and/or amendment (as applicable) is consistent with Project Co's obligation to carry out the O&M Activities in accordance with Best O&M Practices.
- (e) **(Updating plans):** The parties acknowledge and agree that:
 - (i) as at the date of this Agreement, the plans set out in the VIPP Schedule, Schedule 22 and Schedule 23 have not been updated to ensure compliance with all of the requirements of this Agreement to the extent such requirements have changed from, or are additional to, the requirements set out in the Agreed Project Agreement (as defined in the Western Distributor Commitment Deed);
 - (ii) within 3 months after the date of this Agreement, Project Co must:
 - A. update the plans set out in the VIPP Schedule, Schedule 22 and Schedule 23 to ensure compliance with all of the requirements of this Agreement to the extent that such requirements have changed from, or are additional to, the

requirements set out in the Agreed Project Agreement (as defined in the Western Distributor Commitment Deed); and

- B. submit the updated plans to the State for its approval; and
- (iii) if the State does not approve the updated plans in accordance with clause 11(e)(ii)B, Project Co must continue to comply with the VIPP Schedule, Schedule 22 and Schedule 23 as at the date of this Agreement.

12. Health and safety

12.1 Project Co's general OHS obligations

Project Co:

- (a) **(general OHS):** except in relation to the obligations of any Principal Contractor under the OHS Legislation appointed in accordance with this clause 12, accepts that it is responsible for all aspects of health and safety relating to the Relevant Infrastructure, the Site and the Project Activities from Financial Close until the Expiry Date and it cannot delegate or assign this responsibility to a third party without the prior approval of the State; and
- (b) **(cooperation):** must cooperate with the State in respect of the discharge of any occupational health and safety obligations of the State in connection with the Project under the OHS Legislation, and must:
 - (i) comply with all reasonable requests of the State to assist it to discharge its obligations;
 - (ii) refrain from doing anything that may impede the State in discharging its obligations;
 - (iii) notify the State immediately of any non-compliance or potential non-compliance in connection with the OHS Legislation or any other significant occupational health and safety incident that occurs in connection with the Relevant Infrastructure, the Site or the Project Activities and provide such information and documentation requested by the State in respect of any such non-compliance or incident, including any information or documents demonstrating actions taken by Project Co to remedy hazardous conditions or any other conditions which caused the non-compliance or incident(s);
 - (iv) provide to the State upon its request, access to any documentation relevant to safety, including the following:
 - A. health, safety and environmental audit reports or similar documents;
 - B. health, safety and environmental performance reports or any similar documents;
 - C. records of any breaches under the OHS Legislation;
 - D. documents demonstrating actions taken by the Principal Contractor or its subcontractors to comply with OHS Legislation or this Agreement (including the PSR) in respect of safety;

- E. documents demonstrating implementation of any actions to remedy any notices under this Agreement (including the PSR); and
 - F. any health, safety and environmental information received by Project Co from a Subcontractor; and
- (v) require that all Subcontracts contain clauses equivalent to clauses 12.1(b)(i) to 12.1(b)(iv), provided that the equivalent clauses in the Enterprise-wide Subcontracts will relate only to the O&M Activities carried out under those Enterprise-wide Subcontracts.

12.2 Principal Contractor

- (a) **(Appointment of Principal Contractor):** The State will:
- (i) appoint CPB Contractors Pty Limited (ABN 98 000 893 667) as Principal Contractor pursuant to, and for the purposes of, the OHS Legislation in respect of the parcels of land comprising the Construction Areas (other than the WGT Road Area, the Port Transaction Land and the Licensed Areas (as defined under the WGT Rail Licence)) as they are made available progressively to Project Co under this Agreement and the Construction Licence and up to and including the Date of West Gate Tunnel Completion, in connection with the D&C Activities; and
 - (ii) authorise CPB Contractors Pty Limited (ABN 98 000 893 667) to manage or control the Construction Areas (other than the WGT Road Area, the Port Transaction Land and the Licensed Areas (as defined under the WGT Rail Licence)) to the extent necessary to discharge the duties of a Principal Contractor under the OHS Legislation.
- (b) **(Obligations of Principal Contractor):** Project Co must ensure that CPB Contractors Pty Limited (ABN 98 000 893 667):
- (i) accepts the appointment as, and complies with the obligations of, a Principal Contractor under the OHS Legislation;
 - (ii) accepts any revised appointment as Principal Contractor that may be necessary as a result of a Change in Mandatory Requirements which occurs after the date of this Agreement; and
 - (iii) is able to discharge the obligations required of a Principal Contractor.
- (c) **(Appointment of Principal Contractor in connection with the O&M Activities):**
- (i) The State appoints OpCo to perform or ensure the performance of the role of Principal Contractor in respect of any 'construction project' which meets the applicable threshold under the OHS Regulations undertaken in connection with the O&M Activities and authorises OpCo to manage and control the O&M Site to the extent necessary to discharge the duties of a Principal Contractor under OHS Legislation;
 - (ii) Project Co must ensure that OpCo accepts the appointment as, and complies with the obligations of, a Principal Contractor under the OHS Legislation in respect of any 'construction project' which meets the applicable threshold under the OHS Regulations undertaken in connection with the O&M Activities, unless:

- A. another person has the capability and resources to comply with the duties of Principal Contractor under OHS Legislation in respect of that construction project;
 - B. OpCo appoints that person as Principal Contractor in respect of that construction project; and
 - C. OpCo authorises that person to manage or control the O&M Site, or part thereof, to the extent necessary to discharge the duties of a Principal Contractor under OHS Legislation in respect of that construction project.
- (iii) In respect of any Principal Contractor appointment under clause 12.2(c)(ii)B, Project Co, or OpCo acting as its nominee, must ensure that the appointed Principal Contractor:
- A. accepts the appointment as, and complies with the obligations of, a Principal Contractor under the OHS Legislation;
 - B. accepts any revised appointment as Principal Contractor that may be necessary as a result of a Change in Mandatory Requirements which occurs after the date of this Agreement; and
 - C. is able to discharge the obligations required of a Principal Contractor.
- (iv) In respect of any Principal Contractor appointment under clause 12.2(c)(ii)B, if, for any reason, the entity identified as appointed as Principal Contractor is determined at Law to not be validly appointed within the meaning of and for the purposes of the OHS Legislation, OpCo is hereby taken to have been appointed as Principal Contractor in accordance with clause 12.2(c)(ii), in respect of the construction project, from its commencement, and OpCo accepts that appointment.

12.3 New WHS Regulations

If the New WHS Regulations are enacted in Victoria and supersede the OHS Regulations and the new WHS Regulations require the State to appoint a Principal Contractor for any of the Relevant Infrastructure, the Site or the Project Activities in accordance with the New WHS Regulations, then:

- (a) **(appointment under New WHS Regulations):** the State will appoint:
 - (i) CPB Contractors Pty Limited (ABN 98 000 893 667) as Principal Contractor in respect of the Construction Site up to and including the Date of West Gate Tunnel Completion, in connection with the D&C Activities; and
 - (ii) OpCo as Principal Contractor in respect of the O&M Site from the Date of West Gate Tunnel Completion, to the extent required under the New WHS Regulations, provided that clause 12.2(c)(ii) will apply to that appointment (as if it were an appointment under clause 12.2); and
- (b) **(Project Co to procure):** Project Co must procure that CPB Contractors Pty Limited (ABN 98 000 893 667) and OpCo accept appointment as Principal Contractor for the purposes of clauses 12.3(a)(i) and 12.3(a)(ii) under the New WHS Regulations on terms that are the same as those specified in clause 12.2 and on other such terms as are prescribed in the New WHS Regulations for a Principal Contractor.

12.4 OHS Accreditation Scheme

Project Co:

- (a) **(OHS accreditation):** warrants that the D&C Subcontractor is accredited under the OHS Accreditation Scheme; and
- (b) **(D&C Subcontractor requirements):** must ensure that the D&C Subcontractor:
 - (i) subject to the exclusions specified in the *Fair Work (Building Industry - Accreditation Scheme) Regulation 2016* (Cth), maintains accreditation under the OHS Accreditation Scheme while building work (as defined in section 5 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth)) is carried out; and
 - (ii) complies with all conditions of the OHS Accreditation Scheme accreditation.

13. Site issues

13.1 Industrial issues

Project Co:

- (a) **(Sole responsibility):** has sole responsibility for and must manage all aspects of industrial relations in connection with:
 - (i) the Project Activities; and
 - (ii) the Relevant Infrastructure,including any industrial relations issues arising in respect of the Interface Parties; and
- (b) **(State to be informed):** must keep the State fully and immediately informed of industrial relations issues or action which affect or are likely to affect the carrying out of the Project Activities or the Relevant Infrastructure and what action or measures (including settlements) Project Co has taken or proposes to take to overcome the effects of such industrial relations issues or action.

13.2 Traffic management

- (a) **(Traffic Management):** Subject to the Road Management Act, the Relevant Legislation and the powers and functions of any relevant road authority under the Road Management Act, Project Co must, during the carrying out of the Project Activities, control, direct, manage and protect all traffic in the Leased Area, the Construction Areas and the Maintenance Areas (as the case may be) to ensure:
 - (i) the safe, efficient and continuous movement of traffic;
 - (ii) that any traffic congestion, delays or disruptions to Roads, CityLink, public transport, pedestrians, cyclists, or any shared use path are minimised; and
 - (iii) that Project Co otherwise complies with this Agreement.
- (b) **(Compliance):** Project Co must:

- (i) at all times comply with the Traffic Management Strategy, Road Management Act, Relevant Legislation, Road Safety Act and this Agreement in connection with traffic management; and
 - (ii) comply with the directions of the Project Proponent and any relevant road authority under the Road Management Act in connection with the management of traffic.
- (c) **(Preparation of M80 Traffic Management Plan):** The following process will apply to the preparation of the initial M80 Traffic Management Plan and any subsequent update to the M80 Traffic Management Plan:
- (i) the State must procure that the M80 Contractor prepares a draft of the M80 Traffic Management Plan to give priority to, and not conflict with, the M80 Interface Works (including the sequencing of such M80 Interface Works) or any other works being carried out by Project Co contained in the then current WGT Traffic Management Plan;
 - (ii) the State must ensure that the M80 Contractor provides the draft M80 Traffic Management Plan to Project Co by 31 October 2018;
 - (iii) within 13 Business Days (or in respect of the initial M80 Traffic Management Plan, 30 Business Days) after receiving the draft M80 Traffic Management Plan from the M80 Contractor, Project Co may review and provide any comments to give priority to, and not conflict with, the M80 Interface Works (including the sequencing of such M80 Interface Works) or any other works being carried out by Project Co, as set out in the then current WGT Traffic Management Plan and otherwise any other reasonable comments on the draft M80 Traffic Management Plan;
 - (iv) the State must ensure that the M80 Contractor must amend the draft M80 Traffic Management Plan to give priority to, and not conflict with, the M80 Interface Works (including the sequencing of such M80 Interface Works) or any other works being carried out by Project Co, as set out in the then current WGT Traffic Management Plan and otherwise take into account any reasonable comments provided by Project Co in accordance with clause 13.2(c)(iii) and provide a copy to Project Co and provided the State has complied with this clause, Project Co will not be entitled to make any further comments in respect of that version of the M80 Traffic Management Plan; and
 - (v) a draft M80 Traffic Management Plan will become the then current M80 Traffic Management Plan upon either:
 - A. the expiration of the period referred to in clause 13.2(c)(iii), where Project Co has not provided any comments in accordance with that clause; or
 - B. the State complying with clause 13.2(c)(iv).
- (d) **(Preparation of an updated WGT Traffic Management Plan):** The following process will apply to the preparation of any updated or amended WGT Traffic Management Plan by Project Co:
- (i) Project Co must prepare the updated or amended WGT Traffic Management Plan to give priority to, and not conflict with, the WGT Interface Works (including the sequencing of such WGT Interface Works) or any other works being carried out by the M80 Contractor contained in the then current M80 Traffic Management Plan;

- (ii) Project Co must submit the draft updated or amended WGT Traffic Management Plan to the State prior to altering any traffic arrangements in its then current WGT Traffic Management Plan;
- (iii) within 13 Business Days after receiving the draft updated or amended WGT Traffic Management Plan from Project Co, the State and the M80 Contractor may review and the State may provide any comments (including any comments received from the M80 Contractor) to give priority to, and not conflict with, the WGT Interface Works (including the sequencing of such WGT Interface Works) or any other works being carried out by the M80 Contractor, as set out in the then current M80 Traffic Management Plan and otherwise any other reasonable comments on the draft WGT Traffic Management Plan;
- (iv) Project Co must amend the draft updated or amended WGT Traffic Management Plan to give priority to, and not conflict with, the WGT Interface Works (including the sequencing of such WGT Interface Works) or any other works being carried out by the M80 Contractor, as set out in the then current M80 Traffic Management Plan and otherwise take into account any reasonable comments provided by the State in accordance with clause 13.2(d)(iii) and provide a copy to the State and provided Project Co has complied with this clause, the State and the M80 Contractor will not be entitled to make any further comments in respect of that version of the WGT Traffic Management Plan; and
- (v) a draft updated or amended WGT Traffic Management Plan will become the WGT Traffic Management Plan upon either:
 - A. the expiration of the period referred to in clause 13.2(d)(iii), where the State has not provided any comments in accordance with that clause; or
 - B. Project Co complying with clause 13.2(d)(iv).
- (e) **(WGT–M80 Site Access and Interface Protocols):** The State will procure and provide to Project Co a set of draft WGT–M80 Site Access and Interface Protocols for review and comment. Within 10 Business Days of receiving the draft WGT–M80 Site Access and Interface Protocols, Project Co may provide the State with reasonable comments on the draft WGT–M80 Site Access and Interface Protocols. Upon either:
 - (i) the State addressing the reasonable comments of Project Co provided in accordance with this clause 13.2(e); or
 - (ii) the period referred to in this clause 13.2(e) expiring without Project Co providing any comments,the draft WGT–M80 Site Access and Interface Protocols will become the WGT–M80 Site Access and Interface Protocols for the purpose of the WFT-M80 Interface Agreement.
- (f) **(Application of this clause 13.2(f)):** The parties acknowledge that:
 - (i) if the Pre-Agreed Modification in respect of M80 Interface Works is not directed pursuant to a Pre-Agreed Modification Election Notice by the expiry of the time within which that Pre-Agreed Modification may be directed under this Agreement, clauses 13.2(d), 13.2(e) and 13.2(f) will cease to apply; and

- (ii) clauses 13.2(c), 13.2(d), 13.2(e) and 13.2(f) will not apply on and from the Operative Date (as defined in the WGT-M80 Interface Agreement).

13.3 State's right to enter, inspect and test

- (a) **(Right of entry):** Subject to clauses 13.3(b), 13.3(c), 13.3(f) and 13.3(k), the State and any of its Associates (excluding the Interface Parties, except as otherwise contemplated in any relevant:
 - (i) Direct Interface Agreement or Rail Interface Parties' Requirements in respect of the Rail Land and the Rail Interface Works only; or
 - (ii) Road Interface Agreement),
and any other person authorised by them (including the Independent Reviewer and Environmental Auditor) may during Business Hours or upon giving reasonable notice to Project Co (except in the case of an emergency when no notice is required) enter the Site or the offices of Project Co to:
 - (iii) inspect, observe or test any part of the Relevant Infrastructure or the Project Activities (whether or not such inspections, observations or test are otherwise required in accordance with this Agreement);
 - (iv) exercise any right (including any step-in right) or carry out any obligation which the State has in accordance with any State Project Document;
 - (v) take such other action as the State considers necessary to exercise its rights in accordance with any State Project Document and to discharge its executive or statutory rights or duties; or
 - (vi) examine and make copies of the records, reports and all documents reasonably requested of Project Co or any Subcontractor in connection with the Project.
- (b) **(Conditions of access):** When entering the Site or the offices of Project Co in accordance with clause 13.3(a) or otherwise, the State must and must ensure its Associates and any authorised person:
 - (i) complies with the Site Access and Interface Protocols and any generally applicable safety and security requirements of Project Co;
 - (ii) does not unnecessarily interfere with the carrying out of the Project Activities;
 - (iii) does not damage the Relevant Infrastructure, the Site or property of Project Co or its Associates; and
 - (iv) on and from the Date of Tolling Completion, use reasonable endeavours to access the Freeway during a Low Impact Lane Closure, period of planned maintenance or any other planned closure.
- (c) **(Limitation of office access):** The State's rights under clause 13.3(a) to enter into the offices of Project Co will be limited to inspection of:
 - (i) the FCC, the Alternate Traffic Control Room, Key Operational Areas;
 - (ii) any other office dedicated to the Project or the Project and CityLink; and

- (iii) any other office or part of an office where D&C Activities are being carried out.
- (d) **(Project Co to assist):** Subject to clause 13.3(k), if requested by the State, Project Co must assist the State in connection with any inspection or testing in accordance with this clause 13.3, including:
 - (i) providing access to such part of the Relevant Infrastructure and all Project Co Materials as may be required by the State;
 - (ii) preparing samples of materials used in connection with the Relevant Infrastructure as required by the State;
 - (iii) forwarding the samples prepared in accordance with clause 13.3(d)(ii) to the State or such other place or person notified by the State; and
 - (iv) if requested by the State, carrying out any tests (including tests not otherwise required by this Agreement) and providing the results of those tests to the State.
- (e) **(Relevant Infrastructure not to be covered up):**
 - (i) The State may direct that any part of the Relevant Infrastructure must not be covered up or made inaccessible without the State's prior approval, which will not be unreasonably withheld or delayed.
 - (ii) Where a direction has been given under clause 13.3(e)(i) and a part of the Relevant Infrastructure has been covered up or made inaccessible without the State's prior approval and the State wishes to inspect or test that part of the Relevant Infrastructure, Project Co must uncover or make accessible such part of the Works and all costs associated with uncovering or making accessible such part of the Relevant Infrastructure must be borne by Project Co.
- (f) **(Project Co to test Tolling Back Office System):** If the State wishes to test the Tolling Back Office System, the Asset Management System or the OMCS Back Office in accordance with clause 13.3(a)(iii), the State may not carry out those tests itself and must instead direct Project Co to carry out such tests, which may be carried out in the presence of the State, any of its Associates or any other person authorised by the State.
- (g) **(Costs of inspection or testing):** Subject to clause 13.3(h), the State will bear the reasonable costs incurred by it and Project Co (including loss of toll revenue) in connection with any inspection or test conducted at the State's direction in accordance with this clause 13.3, and the reasonable costs incurred by Project Co will be a debt due and payable from the State to Project Co, unless:
 - (i) the inspection or test reveals a Defect or an O&M Non-Conformance or is in connection with work undertaken to correct or overcome a Defect or an O&M Non-Conformance (excluding any Defect or O&M Non-Conformances which exist as a direct consequence of the status of the Relevant Infrastructure as at the date of the inspection or test);
 - (ii) the inspection or test is in connection with Relevant Infrastructure covered up or made inaccessible without the State's prior approval where such approval was required; or
 - (iii) the inspection or test was otherwise required by this Agreement to be carried out by Project Co or should have been carried out by Project Co in accordance with Best Industry Practices,

in which case Project Co will be responsible for its own costs and all reasonable costs incurred by the State, and the reasonable costs incurred by the State will be a debt due and payable from Project Co to the State.

- (h) **(Revenue loss):** The State will not be liable for loss of toll revenue under clause 13.3(g) to the extent that any inspection or test is carried out during, and does not result in any closure of the Freeway other than, a Low Impact Lane Closure, a period of planned maintenance or any other planned closure.
- (i) **(Certifications):** Subject to clause 13.3(j), if the results of any inspection or test demonstrate that work which has been certified as compliant with the requirements of this Agreement is actually not compliant:
 - (i) the relevant certifications will be void to the extent of the non-compliance; and
 - (ii) the process for the issue of the relevant certifications will reapply.
- (j) **(Exclusion completion certificates):** The parties acknowledge and agree that clause 13.3(i) will not operate to void a Certificate of West Gate Tunnel Completion, Certificate of Tolling Completion or Certificate of Close-Out.
- (k) **(Enterprise-wide Subcontracts):** This clause 13.3 does not entitle the State, its Associates, the Interface Parties (where applicable) or any other person authorised by any of them (including the Independent Reviewer and Environmental Auditor) to:
 - (i) request access to, or a copy of, any Enterprise-wide Subcontract;
 - (ii) inspect, observe or test any goods that are provided or to be provided, or services that are performed or to be performed, under any Enterprise-wide Subcontract other than to the extent the goods or services relate to the O&M Activities;
 - (iii) request any records, reports, documents or other information from any Subcontractor to an Enterprise-wide Subcontract, other than where such request is made to Project Co directly and only insofar as those records, reports, documents or other information relate to the O&M Activities; or
 - (iv) take any other action in connection with an Enterprise-wide Subcontract, other to the extent such action is expressly permitted under another provision of this Agreement.

13.4 Security

Without limiting anything in the PSR, Project Co must provide reasonable security measures in accordance with Best Industry Practices or otherwise as are provided on similar projects or Australian motorways for the protection and security of the Relevant Infrastructure against theft, vandalism, unauthorised entry into the Site and any other unlawful acts.

13.5 Utilities

- (a) **(Project Co obligations):** Project Co must:
 - (i) do all things reasonably necessary to enable the State and the Project Proponent to comply with their obligations under the Relevant Legislation and each Utility Agreement in connection with Relevant Utility Infrastructure, including:

- A. preparing all required notices to Relevant Utilities under the Relevant Legislation and submitting the required notices to the State and the Project Proponent;
 - B. providing with each required notice submitted to the State and the Project Proponent, such information and documentation to enable the Project Proponent to provide the required notice to each Relevant Utility;
 - C. immediately notifying the State and the Project Proponent whenever it discovers Relevant Utility Infrastructure within the Construction Site;
 - D. giving the State and the Project Proponent reasonable notice prior to the removal, relocation or carrying out of works to any Relevant Utility Infrastructure; and
 - E. immediately notifying the State and the Project Proponent whenever it causes damage to any Relevant Utility Infrastructure;
- (ii) ensure that it does not, in connection with Relevant Utility Infrastructure, cause the State or the Project Proponent to be in breach of:
- A. any of their obligations under the Relevant Legislation; or
 - B. a provision of any Utility Agreement; and
- (iii) upon request, provide any information or supporting documentation the State or the Project Proponent may reasonably require in relation to Relevant Utility Infrastructure.
- (b) **(Project Co's risks):** Project Co:
- (i) must obtain and pay for any Utility Infrastructure and all connections for all Utility Infrastructure it needs to carry out its obligations under the State Project Documents;
 - (ii) must investigate, protect, relocate, modify and provide for all Utility Infrastructure necessary for it to comply with its obligations under the State Project Documents;
 - (iii) assumes the risk of the existence, location, condition and availability of Utility Infrastructure in connection with the Project Activities;
 - (iv) must indemnify the State and the Project Proponent against any Claim or Liability arising in connection with:
 - A. any disruption or damage to any Utility Infrastructure; and
 - B. the removal, relocation or carrying out of works to Utility Infrastructure,arising in connection with the Project; and
 - (v) must indemnify the State and the Project Proponent against any Claim or Liability arising in connection with a failure by Project Co to comply with any obligation under:

- A. the State Project Documents with respect to Utility Infrastructure or the Utility Infrastructure Works including Project Co's obligations under section 5.1(k) of Part A of the PSR; and
 - B. any Utility Agreement (to the extent that Project Co has executed a Deed of Accession in respect of that Utility Agreement) or the Relevant Legislation with respect to Relevant Utility Infrastructure or the Relevant Utility Infrastructure Works.
- (c) **(State not liable):** Neither the State nor the Project Proponent will be liable to Project Co in connection with any Claim arising in connection with any Utility Infrastructure, except to the extent that such a Claim is caused by:
 - (i) a breach of any State Project Document by the State;
 - (ii) a breach of a Utility Agreement by the Project Proponent (other than to the extent such breach is caused or contributed to by Project Co); or
 - (iii) a fraudulent, reckless, unlawful, negligent or malicious act or omission of the State or the Project Proponent.
- (d) **(Consultation):** Project Co must:
 - (i) consult with Utilities and any other persons having an interest (such as a licence, or the benefit of an Easement) in land included in the Construction Site, with such consultation to be undertaken in accordance with the requirements of section 1 of Part E of the PSR; and
 - (ii) minimise any disruption to, costs incurred by, and revenue forgone by, all such persons as a result of the undertaking of the Works.
- (e) **(Utility Agreements):** Project Co:
 - (i) must use all reasonable endeavours to negotiate the terms of Utility Agreements required by the Relevant Legislation:
 - A. in a similar form to that set out in the Utilities Schedule; or
 - B. in any other form provided that the rights and obligations of the Project Proponent and Project Co as set out in the Utilities Schedule are not materially adversely affected.

To the extent that any Utility Agreement is in a form other than the Utilities Schedule, any changes must be first approved by the State and the Project Proponent (such approval not to be unreasonably withheld or delayed);

- (ii) must submit to the Project Proponent and the State the agreed terms of each Utility Agreement as negotiated with the Relevant Utility for review and approval in accordance with the Review Procedures and, if approved, execution of the Utility Agreement by the Project Proponent;
- (iii) must, in the event that any changes to the form of the Utility Agreement set out in the Utilities Schedule are not approved by the Project Proponent or the State, renegotiate those changes with the Relevant Utility to the satisfaction of the Project Proponent and the State (which approval must not be unreasonably withheld or delayed);

- (iv) must, in the event that a Utility Agreement with a Relevant Utility has not been entered into within the relevant negotiation period (as defined in the Relevant Legislation), participate in the dispute resolution process set out in Part 7, Division 4 of the Relevant Legislation, including by:
 - A. seeking to agree with the Relevant Utility on a suitable expert to be appointed by the Project Minister (as defined in the Relevant Legislation) to determine the dispute;
 - B. preparing and making submissions to the expert on the matters in dispute;
 - C. providing such information, documentation and assistance as is sought by the Project Proponent to ensure that the procedures determined by the expert for resolving the dispute are complied with; and
 - D. being liable for the costs as set out in section 221 of the Relevant Legislation of any expert appointed under clause 13.5(e)(iv)A;
- (v) must by no later than 5 Business Days after a determination of the expert under the Part 7, Division 4 of the Relevant Legislation, notify the Project Proponent if:
 - A. the determination contains an error of law that, in the opinion of Project Co, ought to be appealed to the Supreme Court of Victoria; or
 - B. compliance with the determination would place Project Co in breach of its obligations under the State Project Documents;
- (vi) must provide such information, documentation and assistance as is sought by the Project Proponent to institute any appeal against the expert's determination or as is considered by the Project Proponent, in consultation with Project Co, to be warranted or necessary to participate in any appeal instituted by the Relevant Utility;
- (vii) must:
 - A. if requested by either the State or the Project Proponent, execute a Deed of Accession within 10 Business Days of being requested to do so; and
 - B. comply with its obligations under the Utility Agreements to which it accedes under clause 13.5(e)(vii)A; and
- (viii) subject to clause 13.5(c), acknowledges that none of:
 - A. the terms of any Utility Agreement (whether entered into before or after the date of this Agreement);
 - B. subject to clause 13.5(f)(i)B, any delay by the Project Proponent in entering into any Utility Agreement; or
 - C. any act or omission of any Relevant Utility, the State or the Project Proponent under or arising in connection with any Utility Agreement or proposed Utility Agreement,will:

- D. relieve Project Co from, or alter or affect, its Liabilities, obligations or responsibilities whether under the State Project Documents or otherwise according to Law;
 - E. prejudice the State's rights against Project Co whether under the State Project Documents or otherwise according to Law; or
 - F. entitle Project Co to make any Claim against the State or the Project Proponent.
- (f) **(State obligations):** The State must:
- (i) ensure that the Project Proponent:
 - A. gives notices under the Relevant Legislation relating to the Project where those notices have been properly prepared by Project Co and are reasonably able or required to be given under the Relevant Legislation;
 - B. promptly enters into any Utility Agreement which is substantially in the form of the Utilities Schedule or has been approved by the Project Proponent in accordance with clause 13.5(e)(ii) or clause 13.5(e)(iii) or is taken to be approved in accordance with section 226 of the Relevant Legislation;
 - C. promptly provides notices received from a Utility under a Utility Agreement to Project Co;
 - D. promptly issues notices to a Utility at the request of Project Co, provided those notices are in accordance with the relevant requirements of the Utility Agreement;
 - E. gives Project Co reasonable prior notice that the dispute resolution process set out in Part 7, Division 4 of the Relevant Legislation has commenced, or that the State or the Project Proponent intend for it to commence (other than where it commences as a result of the notice prepared in accordance with this clause 13.5(f)(i)E);
 - F. upon request of Project Co, and where the Project Proponent and the Utility have not entered into a Utility Agreement, give notice under section 215 of the Relevant Legislation;
 - G. facilitates and permits Project Co's participation in the dispute resolution process set out in Part 7, Division 4 of the Relevant Legislation in accordance with clause 13.5(e)(iv);
 - H. promptly enters into a Deed of Accession executed by Project Co pursuant to clause 13.5(e)(vii); and
 - I. does not vary, amend or terminate a Utility Agreement in relation to which Project Co has executed a Deed of Accession other than with the prior written agreement of Project Co (which must not be unreasonably withheld or delayed); and
 - (ii) use reasonable endeavours to ensure that the relevant Utility enters into a Deed of Accession executed by Project Co.

13.5A Tax Reimbursement Amount

- (a) **(Realignment Works):** The parties acknowledge and agree that the D&C Activities will include the realignment of the 220kV transmission power lines along the West Gate Freeway that are owned by AusNet Services (**Realignment Works**).
- (b) **(Indemnity):** Subject to clause 13.5A(c), the State indemnifies Project Co in respect of any Liability incurred by Project Co or its Associates to the extent that it relates to a Claim by AusNet Services in respect of:
- (i) any net income tax payable by AusNet Services as a consequence of the Realignment Works; and
 - (ii) the net income tax payable by AusNet Services in respect of any payment AusNet Services receives from Project Co or its Associates in respect of a Claim referred to in clause 13.5A(b)(i).
- (c) **(Limitation of indemnity):** The State's Liability to indemnify Project Co in accordance with clause 13.5A(b) is limited to the net present value of any liability of AusNet Services to pay income tax in respect of the matters referred to in clause 13.5A(b) as at the date on which the Realignment Works achieve Handback (**Realignment Works Handback Date**) to the extent, if any, that net present value exceeds \$[not disclosed] (**Tax Reimbursement Amount**). The net present value is to be calculated by reference to:
- (i) the corporate tax rate applicable to AusNet Services;
 - (ii) any amounts to be included in the assessable income of AusNet Services as a consequence of the Realignment Works;
 - (iii) any additional amounts to be included in the assessable income of AusNet Services as a result of payments received from Project Co or its Associates in respect of a Claim referred to in clause 13.5A(b)(i);
 - (iv) the timing and quantum of future tax deductions available to AusNet Services relating to the Realignment Works; and
 - (v) the time at which AusNet Services would have a liability to pay an amount of income tax in respect of or as a result of the Realignment Works having regard to any tax losses available to AusNet Services as at Realignment Works Handback Date,
- with the objective of ensuring that AusNet Services is kept in a neutral position in respect of income tax as a consequence of the Realignment Works.
- (d) **(Structure D&C Activities):** Project Co will use its reasonable endeavours to work with the State, the D&C Subcontractor and AusNet Services to minimise the Tax Reimbursement Amount. In assessing whether Project Co has used "reasonable endeavours", the State acknowledges and agrees that Project Co cannot compel AusNet Services to obtain a private binding ruling from the Commissioner of Taxation in relation to income taxation consequences of the Realignment Works for AusNet Services.
- (e) **(Notification):** Project Co must notify the State as soon as reasonably practicable of:
- (i) the Tax Reimbursement Amount;

- (ii) the breakdown of the calculations to determine the Tax Reimbursement Amount; and
- (iii) any other information reasonably requested by the State to allow it to verify the Tax Reimbursement Amount.

13.6 Schedule of Certificates and Notices

Project Co must provide to the State and, where applicable, the Independent Reviewer and Environmental Auditor, the certificates required by the Schedule of Certificates and Notices in accordance with the terms of the Schedule of Certificates and Notices.

13.7 State right to suspend

- (a) **(Suspension):** Subject to clauses 13.7(c) and 13.7(e), the State:
 - (i) may instruct Project Co to suspend and, after a suspension has been instructed, to recommence, the carrying out of all or a part of the Works or the D&C Activities; and
 - (ii) is not required to exercise its power under clause 13.7(a)(i) for the benefit of Project Co.
- (b) **(Result of suspension):**
 - (i) Subject to clause 13.7(b)(ii), Project Co will not be entitled to make any Claim against the State arising in connection with any suspension under clause 13.7(a) (including as contemplated under clause 13.7(c)).
 - (ii) An instruction to suspend the Works or the D&C Activities by the State under clause 13.7(a) (including as contemplated under clause 13.7(c)) will be deemed to be a Compensable Extension Event, except:
 - A. where section 2.4(k)(i) of the Design Review Section applies; or
 - B. to the extent the circumstances leading to the suspension:
 - 1) were caused or contributed to by breach of any Project Document, by or any fraudulent, reckless, unlawful, negligent or malicious act or omission of Project Co or any of its Associates; or
 - 2) were a Force Majeure Event.
- (c) **(Approval Suspension Period):** If a PSA Event occurs, then the State must, under clause 13.7(a), instruct Project Co to suspend all of the Works and the D&C Activities with effect from the date of the PSA Event. The State must not instruct Project Co to recommence the carrying out of all or a part of the Works or the D&C Activities under clause 13.7(a) until the earlier of the date that:
 - (i) a planning scheme amendment for the West Gate Tunnel comes into operation under section 37 of the *Planning and Environment Act 1987* (Vic);
 - (ii) the State issues a Modification Order addressing the impact of the PSA Event on Project Co's ability to carry out the Project Activities;
 - (iii) an Alternative Approval is procured by the State; or

- (iv) where, by a combination of the processes contemplated in clauses 13.7(c)(i), 13.7(c)(ii) and 13.7(c)(iii), the State addresses the impact of the PSA Event on Project Co's ability to carry out the Project Activities,

(Approval Suspension Period).

- (d) **(State's ability to instruct not limited):** The State's ability to give an instruction to Project Co under clause 13.7(a) (including the ability to instruct Project Co to recommence the carrying out of all or a part of the Works or the D&C Activities) is not subject to or limited by the absence of the Design and Development Overlay which, but for the PSA Event, would have applied.
- (e) **(Further agreement):** During an Approval Suspension Period, the parties may agree, acting reasonably, that Project Co will carry out all or part of the Works or the D&C Activities despite the occurrence of the PSA Event, and upon agreement (and in a manner consistent with that agreement) the State will give a revised instruction under clause 13.7(a). The State acknowledges and agrees that a failure by the parties to reach agreement in accordance with this clause 13.7(a) will not be taken to constitute a failure by Project Co to:
 - (i) satisfy the condition precedent to an extension of time in clause 23.7(b); or
 - (ii) avoid or minimise the consequences of the Extension Event.
- (f) **(PSA Event briefings):** Upon request by Project Co during the Approval Suspension Period, the State must use reasonable endeavours to provide Project Co with regular briefings on the State's proposal to overcome the PSA Event and the status of the proposal, provided that any costs reasonably and properly incurred by the State in doing so will be reimbursed by Project Co to the extent they exceed \$[not disclosed].

13.8 Salvaged materials

As between the State and Project Co, any salvaged materials in respect of the Works will be the absolute property of Project Co unless otherwise specified in or reasonably inferred from the PSR.

14. Transurban / Project Co Deed of Undertaking

- (a) **(Definition):** For the purposes of this clause 14, 'Letter of Credit' has the meaning given in the Transurban / Project Co Deed of Undertaking.
- (b) **(State Consent):** Project Co agrees that it will not:
 - (i) accept a Letter of Credit from Transurban Limited under the Transurban / Project Co Deed of Undertaking in a form substantially different from the form set out in Schedule 1 to the Transurban / Project Co Deed of Undertaking; or
 - (ii) approve a provider of a Letter of Credit under the Transurban / Project Co Deed of Undertaking,without the prior written consent of the State, such consent not to be unreasonably withheld or delayed.
- (c) **(Notification):** In order to facilitate Transurban Limited's undertaking in clause 2 of the Transurban / Project Co Deed of Undertaking, Project Co undertakes to the State that it will notify Transurban Limited when:

- (i) the State exercises its rights under clause 37.1(a) of this Agreement; or
- (ii) Project Co receives notice from the State under clause 37.2 of this Agreement that the State intends to exercise its rights under clause 37.1(a) of this Agreement,

promptly following the occurrence of the relevant event.

- (d) **(Direction to draw down):** Without limiting the State's rights under the State Project Documents or at Law:

- (i) the State may direct Project Co to exercise its right under clause 4(d) of the Transurban / Project Co Deed of Undertaking if Project Co has not done so as and when that right arises; and
- (ii) Project Co must promptly comply with the State's direction.

PART B - D&C PHASE OBLIGATIONS

15. D&C Program

- (a) **(Submission):** Project Co must submit to the State and the Independent Reviewer and Environmental Auditor the D&C Program for review in accordance with the Review Procedures by the times set out in the PSR.
- (b) **(Departure):** Project Co:
 - (i) acknowledges and agrees that the D&C Program does not form part of this Agreement; and
 - (ii) subject to complying with clause 15(c), and without limiting its obligations in accordance with clause 23, may depart from the Bid D&C Program or D&C Program (as applicable) if it is necessary to do so to comply with this Agreement save that any such departure will not relieve Project Co from its obligations to achieve West Gate Tunnel Completion by the Date for West Gate Tunnel Completion under this Agreement.
- (c) **(Notice of departure):** Project Co must give notice to the State and the Independent Reviewer and Environmental Auditor:
 - (i) Monthly of any proposed or likely departure from the Bid D&C Program or D&C Program (as applicable); and
 - (ii) in any event before departing from any critical path in the Bid D&C Program or D&C Program (as applicable),

together with the reasons why it is necessary to do so to comply with this Agreement.
- (d) **(Updated D&C Program):** A notice under clause 15(c) must include:
 - (i) an updated D&C Program submitted in accordance with the PSR for review in accordance with the Review Procedures; and
 - (ii) details of any D&C Program Activity Item not contained within the Bid D&C Program (**New D&C Program Activity Item**) and the Category of Works to which the New D&C Program Activity Item has been allocated.
- (e) **(Assessing Claims):** Neither the State nor the Independent Reviewer and Environmental Auditor is required to use the Bid D&C Program or D&C Program for any purpose, including for the purpose of assessing any Claim made by Project Co, but may do so in their sole and absolute discretion.
- (f) **(Warranties):** At the time of submission of each D&C Program in accordance with this Agreement, Project Co warrants that:
 - (i) each D&C Program Activity Item allocated to a Category of Works in the Bid D&C Program remains allocated to that same Category of Works;
 - (ii) any New D&C Program Activity Item has been appropriately allocated to a Category of Works; and
 - (iii) any New D&C Program Activity Item which has been allocated to a Category of Works has not been reallocated to a different Category of Works.

16. Building Code

- (a) **(D&C Activities):** This clause 16 applies to the D&C Activities (other than the OpCo D&C Phase IRS Activities and the Tolling Works) only.
- (b) **(Compliance):** Project Co must comply with the *Building Code 2013* (Cth) **(Building Code)**. Copies of the Building Code are available at www.employment.gov.au/BuildingCode.
- (c) **(No relief from performance of obligations):** Compliance with the Building Code shall not relieve Project Co from responsibility to perform this Agreement, or from liability for any defect in the works arising from compliance with the Building Code.
- (d) **(Effect on compliance):** Where a change in this Agreement is proposed and that change would affect compliance with the Building Code, Project Co must submit a report to the Commonwealth specifying the extent to which Project Co's compliance with the Building Code will be affected.
- (e) **(Records):** Project Co must maintain adequate records of the compliance with the Building Code by:
 - (i) Project Co;
 - (ii) its Subcontractors;
 - (iii) its consultants; and
 - (iv) its Related Entities (as defined in Section 8 of the Building Code).
- (f) **(Non-compliance):** If Project Co does not comply with the requirements of the Building Code in the performance of this Agreement such that a sanction is applied by the Minister for Employment, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by Project Co or a related entity in respect of work funded by the Commonwealth or its agencies.
- (g) **(Assessing tenders):** While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, Project Co may give preference to subcontractors and consultants that have a demonstrated commitment to:
 - (i) adding and/or retaining trainees and apprentices;
 - (ii) increasing the participation of women in all aspects of the industry; or
 - (iii) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- (h) **(Subcontractors and consultants):** Project Co must not appoint a subcontractor or consultant in relation to the Project where:
 - (i) the appointment would breach a sanction imposed by the Minister for Employment; or
 - (ii) the subcontractor or consultant has had an adverse court or tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers' compensation law

and the subcontractor or consultant has not fully complied, or is not fully complying, with the order.

- (i) **(Access):** Project Co agrees to require that it and its subcontractors or consultants and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, with access to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the Project the subject of this Agreement; and
 - (iii) interview any person,as is necessary to demonstrate its compliance with the Building Code.
- (j) **(Request to produce documents):** Additionally, Project Co agrees that Project Co and its related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, to produce a specified document within a specified period, in person, by fax or by post.
- (k) **(Subcontract obligations):** Project Co must ensure that all Subcontracts impose obligations on Subcontractors equivalent to the obligations under this clause 16.

17. Design

17.1 Design

Project Co must:

- (a) **(FFP Warranty):** design the Works so that the Relevant Infrastructure, when constructed in accordance with the Construction Documentation, will satisfy the FFP Warranty and the Works will otherwise be able to comply with clause 18.1(b); and
- (b) **(Design Documentation):** prepare the Design Documentation:
 - (i) to ensure that it addresses, as far as practicable, all of the operational, maintenance and repair requirements in accordance with the PSR; and
 - (ii) in consultation with all Facility Owners to ensure that it addresses, as far as practicable, the usual requirements of each Facility Owner which, in the case of a Rail Interface Party must be consistent with any corresponding obligations under any relevant Direct Interface Agreement or any Rail Interface Party's Requirements.

17.2 Design Review Process

- (a) **(Project Co agrees):** Project Co agrees that:
 - (i) Project Co must comply with the Design Review Process in developing the Design Documentation; and
 - (ii) the conduct of the Design Review Process itself does not constitute a Modification or otherwise enable Project Co to make any Claim against the State or any of its Associates for any Liabilities incurred by Project Co in connection with the conduct of the Design Review Process.

- (b) **(Design Review Process):** Project Co must conduct and manage all aspects of the Design Review Process in accordance with:
 - (i) the approved Design Management Plan; and
 - (ii) Best D&C Practices,as otherwise required under this Agreement.
- (c) **(Submission):** Project Co must submit the Design Documentation to the State and the Independent Reviewer and Environmental Auditor in accordance with the Design Review Section.
- (d) **(Independent Reviewer and Environmental Auditor review):** The Independent Reviewer and Environmental Auditor will review the Design Documentation submitted or resubmitted by Project Co in accordance with the Design Review Section.

17.3 Preliminary Design Documentation submitted during the Preferred Respondent Phase

- (a) Subject to this clause 17.3, and without limiting Project Co's obligation under section 2.2(d) of the Design Review Section, Project Co is not required to submit Preliminary Design Documentation in accordance with section 2.1(a) of the Design Review Section if it has submitted that Preliminary Design Documentation for review during the Preferred Respondent Phase in accordance with the Western Distributor Commitment Deed.
- (b) Subject to clause 17.3(f), where:
 - (i) Project Co has submitted Preliminary Design Documentation to the State and the Independent Reviewer and Environmental Auditor for review during the Preferred Respondent Phase; and
 - (ii) changes are required to that Preliminary Design Documentation as a result of any change in circumstance relevant to preparation of the Design Documentation in accordance with the State Project Documents (including an Adjustment Trigger, a Change in Law and a Change in Policy) between the date of submission of the Preliminary Design Documentation and the date of this Agreement,

Project Co must re-submit the Preliminary Design Documentation under section 2.1(a) of the Design Review Section.

- (c) Within 10 Business Days after the date of this Agreement, Project Co must submit to the State a design report (**Preferred Respondent Phase Design Report**) detailing for any Preliminary Design Documentation submitted during the Preferred Respondent Phase:
 - (i) the status of the Preliminary Design Documentation; and
 - (ii) a description of any changes (as described in clause 17.3(b)(ii)) that are required to that Preliminary Design Documentation.
- (d) Within 10 Business Days after receiving the Preferred Respondent Phase Design Report, or at any time within 20 Business Days following the date of this Agreement, the State may issue Project Co with a notice requiring Project Co to re-submit the Preliminary Design Documentation under section 2.1(a) of the Design Review Section where:

- (i) the State considers that changes (as described in clause 17.3(b)(ii)) are required to that Preliminary Design Documentation; and
 - (ii) as a consequence, Project Co is not complying with its obligations under clause 17.3(b),
- and, without limiting Project Co's obligation under clause 17.3(b), Project Co must comply with that notice.
- (e) Project Co is not entitled to make any Claim against the State or its Associates in connection with:
 - (i) the resubmission of any Preliminary Design Documentation for review as required by, or Project Co's compliance with, this clause 17.3; or
 - (ii) the State requiring, or not requiring, the resubmission of any Preliminary Design Documentation in accordance with this clause 17.3.
 - (f) The parties acknowledge and agree that:
 - (i) Project Co has submitted the Detailed Design Packages for review during the Preferred Respondent Phase in accordance with the Western Distributor Commitment Deed; and
 - (ii) without limiting any other provisions of the Design Review Section, Project Co is not required to submit any Detailed Design Packages in accordance with section 2.1(a) of the Design Review Section and must instead submit the Detailed Design Packages in accordance with Part H25 of the PSR.

18. Construction

18.1 Construction

Project Co must undertake the Works:

- (a) in accordance with:
 - (i) its obligations in clause 5.1; and
 - (ii) the Construction Documentation; and
- (b) so that:
 - (i) the West Gate Tunnel and the Maintained Off-Freeway Facilities satisfy the FFP Warranty;
 - (ii) the Returned Facilities are Fit for Purpose and comply with all applicable Laws and all applicable Standards at Handback;
 - (iii) the Temporary Works are Fit for Purpose;
 - (iv) no part of the West Gate Tunnel, the Returned Facilities or the Maintained Off-Freeway Facilities is located on those areas marked as "Temporary Works Areas" on the Land Availability Plans; and
 - (v) the Freeway is wholly located within the area identified in the Lease Plan.

18.2 Commencement of construction

Project Co must not commence construction of the Works except as set out in the PSR, including the Design Review Section.

18.3 Allowances

Project Co:

- (a) **(allowance for delay):** is deemed to have allowed in its D&C Program for all delays and disruptions arising in connection with the review of the Design Documentation in accordance with the Design Review Section and the construction review process in clause 23.2, even where the Independent Reviewer and Environmental Auditor's opinion as to any matter may not be correct having regard to the requirements of the State Project Documents; and
- (b) **(no Claim):** will not be entitled to make any Claim against the State arising in connection with any such delay or disruption.

18.4 Division of the Works into separable portions

If Project Co or the State wish to divide the Works into separable portions (**Proposed Change**):

- (a) Project Co may issue a Modification Proposal in accordance with clause 34.6 giving written notice to the State setting out details of the Proposed Change and the provisions of clause 34.6 will apply; or
- (b) the State may issue a Modification Order in accordance with clause 34.1 setting out details of the Proposed Change and the provisions of clause 34.1 will apply.

19. Temporary Operational Completion

- (a) **(Temporary Operational Completion of the Works):** Where Project Co intends to open a part of the Works (which is not currently being used by the public for the purpose of the passage of vehicles) on a temporary basis to be used by the public for the passage of vehicles prior to West Gate Tunnel Completion, Project Co must achieve Temporary Operational Completion of that part of the Works in accordance with this clause 19.
- (b) **(Notice):** Project Co must give the State (with a copy to the Independent Reviewer and Environmental Auditor) separate notices:
 - (i) 10 Business Days (or such lesser notice period as may be agreed between the State and Project Co) before the date upon which it reasonably expects to achieve Temporary Operational Completion; and
 - (ii) when it considers that Temporary Operational Completion has been achieved.
- (c) **(State response):** If, within 5 Business Days of receiving a notice under clause 19(b)(ii), the State advises in writing that it does not agree that Temporary Operational Completion has been achieved (such advice to include the reasons for the State's opinion), Project Co may then request, by written notice, the Independent Reviewer and Environmental Auditor to determine whether Temporary Operational Completion has been achieved. Project Co must provide to the State a copy of any such request at the same time it is provided to the Independent Reviewer and Environmental Auditor.

- (d) **(Independent Reviewer and Environmental Auditor notice):** Upon receipt of a notice under clause 19(c), the Independent Reviewer and Environmental Auditor must review the Works and, within 5 Business Days, notify in writing the State and Project Co that Temporary Operational Completion:
- (i) has been achieved; or
 - (ii) has not been achieved and a listing of the work remaining to be undertaken to achieve Temporary Operational Completion.
- (e) **(Further work):** Upon receipt of a notice from the Independent Reviewer and Environmental Auditor in accordance with clause 19(d)(ii), Project Co must perform that further work and give written notice to the State and the Independent Reviewer and Environmental Auditor on completion of that further work.
- (f) **(Process):** Clauses 19(c) and 19(d) will apply in respect of the notice under clause 19(e), in the same way as if it were a notice provided by Project Co under clause 19(b)(ii).
- (g) **(Temporary Occupation Completion):** If the:
- (i) State advises Project Co in writing that it agrees; or
 - (ii) Independent Reviewer and Environmental Auditor provides notification in accordance with clause 19(d)(i),
- that Temporary Operational Completion has been achieved then, subject to clause 19(h), Project Co may open that part of the Works on a temporary basis and allow the completed Works to be used by the public for the passage of vehicles.
- (h) **(Acknowledgment):** The parties agree and acknowledge that Temporary Operational Completion being achieved does not constitute an acknowledgement by the State or the Independent Reviewer and Environmental Auditor that the completed Works comply with this Agreement.
- (i) **(Obligations following Temporary Operational Completion):** The parties agree and acknowledge that use and occupation of the Works following:
- (i) Temporary Operational Completion; or
 - (ii) [not used],
- does not constitute West Gate Tunnel Completion nor will West Gate Tunnel Completion be deemed to have occurred as a result of use and occupation of the Works (or any part of the Works) following Temporary Operational Completion.

20. Completion

20.1 Notice before completion

- (a) **(Notice):** Project Co must give the State (with a copy to the Independent Reviewer and Environmental Auditor) separate notices:
- (i) 60 Business Days; and
 - (ii) 20 Business Days,
- prior to the date upon which it reasonably expects to achieve West Gate Tunnel Completion or Tolling Completion.

- (b) **(Revised date):** If, after Project Co gives the State and the Independent Reviewer and Environmental Auditor a notice in accordance with clause 20.1(a), the expected date upon which Project Co reasonably expects to achieve West Gate Tunnel Completion or Tolling Completion changes, Project Co must notify the State and the Independent Reviewer and Environmental Auditor promptly of the revised date.

20.2 Completion

- (a) **(Notice by Project Co):** When Project Co considers that it has achieved West Gate Tunnel Completion or Tolling Completion, Project Co must:
 - (i) notify the State and the Independent Reviewer and Environmental Auditor of its opinion;
 - (ii) request the Independent Reviewer and Environmental Auditor to issue a Certificate of West Gate Tunnel Completion or a Certificate of Tolling Completion (as applicable); and
 - (iii) provide the State and the Independent Reviewer and Environmental Auditor with a detailed list of the work (including minor Defect correction and any relevant Remaining Works) remaining to be undertaken in its opinion to achieve Close-Out.
- (b) **(Notice by State):** Notwithstanding that Project Co may not have issued a notice under clause 20.2(a), when the State considers that Project Co has achieved West Gate Tunnel Completion, the State may:
 - (i) notify Project Co and the Independent Reviewer and Environmental Auditor of its opinion; and
 - (ii) request the Independent Reviewer and Environmental Auditor to issue a Certificate of West Gate Tunnel Completion.
- (c) **(Independent Reviewer and Environmental Auditor to make determination):** As soon as reasonably practicable and, in any event, within 15 Business Days of Project Co complying with clause 20.2(a) or the State giving notice under clause 20.2(b), the Independent Reviewer and Environmental Auditor is required to determine whether West Gate Tunnel Completion or Tolling Completion (as the case may be) has been achieved and either:
 - (i) if West Gate Tunnel Completion or Tolling Completion (as the case may be) has been achieved, issue a Certificate of West Gate Tunnel Completion or Certificate of Tolling Completion to the State and Project Co:
 - A. certifying that West Gate Tunnel Completion or Tolling Completion (as the case may be) has been achieved;
 - B. stating the Date of West Gate Tunnel Completion or Date of Tolling Completion;
 - C. listing any Defects of the kind referred to in:
 - 1) paragraph (a) of the definition of West Gate Tunnel Completion (including any Defects in a Returned Facility); and
 - 2) paragraph (b) of the definition of Tolling Completion; and

- D. setting out details of the Independent Reviewer and Environmental Auditor's opinion of the work remaining to be undertaken to achieve Close-Out; or
- (ii) if West Gate Tunnel Completion or Tolling Completion (as the case may be) has not been achieved, issue a notice to the State and Project Co:
 - A. listing the work remaining to be undertaken to achieve West Gate Tunnel Completion or Tolling Completion (as the case may be); or
 - B. stating that West Gate Tunnel Completion or Tolling Completion (as the case may be) is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 20.2(c)(ii)A,

after which Project Co must continue to expeditiously and diligently progress the D&C Activities to achieve West Gate Tunnel Completion or Tolling Completion (as the case may be).
- (ca) **(Functionality dependence):** To the extent a requirement of West Gate Tunnel Completion or Tolling Completion (as the case may be), cannot be achieved as a result of an FMS Failure, then, without otherwise limiting Project Co's obligations under this Agreement but subject to clause 25.9:
 - (i) the requirement will be omitted from the requirements of West Gate Tunnel Completion or Tolling Completion (as the case may be); and
 - (ii) the Independent Reviewer and Environmental Auditor will take such omission into account in making its certification or determination under clause 20.2(c)(i) or clause 20.2(c)(ii).
- (d) **(Further notice by Project Co):** Project Co must give notice to the State and the Independent Reviewer and Environmental Auditor when the work listed in a notice issued by the Independent Reviewer and Environmental Auditor under clause 20.2(c)(ii)A has been completed.
- (e) **(Resubmission):** Clause 20.2(c) will apply in connection with Project Co's notice under clause 20.2(d) in the same way as if it were the original notice given under clause 20.2(a).
- (f) **(No restriction on Independent Reviewer and Environmental Auditor):** The Independent Reviewer and Environmental Auditor, in making its determination as to whether West Gate Tunnel Completion or Tolling Completion (as the case may be) has been achieved, will:
 - (i) not be restricted by any notice which it has previously issued under clause 19(d)(i);
 - (ii) not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 20.2(c); and
 - (iii) be entitled to raise any other items of work (other than the Defects of the kind referred to in paragraph (a) of the definition of West Gate Tunnel Completion or paragraph (b) of the definition of Tolling Completion) as a ground for determining that West Gate Tunnel Completion or Tolling Completion (as the case may be) has not been achieved.

20.3 Progressive completion and Handback of Returned Works

- (a) **(Consultation):** Project Co must:
- (i) fully consult with all Facility Owners as soon as possible during the D&C Phase so as to ensure that:
 - A. Project Co identifies the usual requirements of the Facility Owners for works in the nature of the relevant Returned Works (excluding the CityLink Returned Works) which, in the case of a Rail Interface Party, must be consistent with any corresponding requirements in any relevant Direct Interface Agreement or any Rail Interface Party's Requirements; and
 - B. the requirements of clause 20.3(b) are satisfied;
 - (ii) complete each Returned Facility in accordance with this Agreement and any relevant Direct Interface Agreement or any relevant Rail Interface Party's Requirement; and
 - (iii) at the time that it submits any Certified Design Documentation under section 2.4 of the Design Review Section, provide the necessary evidence in relation to the relevant Returned Facility including as set out in section 2.4(a)(iv)A of the Design Review Section.
- (b) **(General obligations):** Project Co must progressively complete the Returned Works to achieve Handback of each Returned Facility to the relevant Facility Owner as soon as possible:
- (i) so as to ensure that any loss of amenity and inconvenience to the relevant Facility Owner is minimised, except where such loss of amenity or inconvenience is consistent with any relevant Direct Interface Agreement or any relevant Rail Interface Party's Requirement;
 - (ii) so as to ensure that the completion of the Returned Works in relation to each Returned Facility occurs in a smooth and orderly manner (rather than in a compressed period immediately prior to West Gate Tunnel Completion) which:
 - A. is consistent with the D&C Program; and
 - B. in any event will provide the Independent Reviewer and Environmental Auditor with sufficient time to progressively inspect the Returned Works, consider whether the Returned Works have been completed in accordance with the State Project Documents and carry out any reinspection or other activities required by this Agreement or the Independent Reviewer and Environmental Auditor Deed of Appointment to be carried out by the Independent Reviewer and Environmental Auditor in a smooth and orderly manner; and
 - (iii) in any event will use reasonable endeavours to achieve Handback of each Returned Facility by the Date for West Gate Tunnel Completion.
- (c) **(Completion of Returned Works):** Handback of each Returned Facility to the relevant Facility Owner will not be achieved until:
- (i) the Returned Facility has been completed in accordance with the State Project Documents subject only to minor Defects which:

- A. do not prevent the Returned Facility from being Fit for Purpose;
 - B. the Independent Reviewer and Environmental Auditor has determined that Project Co has reasonable grounds for not promptly rectifying; and
 - C. can be corrected without prejudicing the use of the relevant Returned Facility or the West Gate Tunnel for the safe, efficient and continuous passage of vehicles or use by the general public (as the case may be);
- (ii) Project Co has issued a notice in the form required by the Schedule of Certificates and Notices to the State, the Independent Reviewer and Environmental Auditor and the relevant Facility Owner which:
- A. states that it considers that the Returned Facility has been completed in accordance with the State Project Documents; and
 - B. lists any Defects of the kind referred to in clause 20.3(c)(i);
- (iii) Project Co, the Independent Reviewer and Environmental Auditor and the Facility Owner have had the opportunity to jointly inspect the Returned Facility at a time agreed (or in the absence of agreement a time determined by the Independent Reviewer and Environmental Auditor) which will be no more than 5 Business Days after receipt of Project Co's notice under clause 20.3(c)(ii); and
- (iv) the Independent Reviewer and Environmental Auditor has issued to the State, the Facility Owner and Project Co a notice under clause 20.3(e)(i).
- (d) **(Independent Reviewer and Environmental Auditor to consider comments of Facility Owner):** In determining the notice to be issued under clause 20.3(e), the Independent Reviewer and Environmental Auditor will consider any reasonable comments of the relevant Facility Owner provided within 5 Business Days after the time of the inspection under clause 20.3(c)(iii).
- (e) **(Independent Reviewer and Environmental Auditor to make determination):** As soon as reasonably practicable following the inspection under clause 20.3(c)(iii), and in any event within 25 Business Days, the Independent Reviewer and Environmental Auditor is required to determine whether the Returned Facility has been completed in accordance with the State Project Documents (subject only to Defects of the kind referred to in clause 20.3(c)(i)) and issue to the State and Project Co either:
- (i) a notice in the form required by the Schedule of Certificates and Notices confirming that the Returned Facility has been completed (subject only to Defects of the kind referred to in clause 20.3(c)(i)); or
 - (ii) a notice either:
 - A. listing the work remaining to be undertaken in order to complete the Returned Facility in accordance with the State Project Documents or Rail Interface Party's Requirements (subject only to Defects of the kind referred to in clause 20.3(c)(i)); or
 - B. stating that the Returned Facility is so far from being completed in accordance with the State Project Documents

that it is not practicable to provide a list of the type referred to in clause 20.3(e)(ii)A,

after which Project Co must continue to expeditiously and diligently progress the D&C Activities to complete the Returned Facility in accordance with the State Project Documents.

- (f) **(Copy to Facility Owner):** The Independent Reviewer and Environmental Auditor must provide a copy of:
- (i) any notice under clause 20.3(e)(i) to the relevant Facility Owner; and
 - (ii) any notice under clause 20.3(e)(ii), to the relevant Facility Owner where requested by the Facility Owner or where the Facility Owner is the Port Manager.
- (g) **(Further notice by Project Co):** Project Co must give notice to the State, the Facility Owner and the Independent Reviewer and Environmental Auditor when the work listed in a notice issued by the Independent Reviewer and Environmental Auditor under clause 20.3(e)(ii)A has been completed.
- (h) **(Resubmission):** Clauses 20.3(c)(iii), 20.3(d) and 20.3(e) will apply in connection with Project Co's notice under clause 20.3(g) in the same way as if it were the original notice given under clause 20.3(c)(ii).
- (i) **(No restriction on Independent Reviewer and Environmental Auditor):** The Independent Reviewer and Environmental Auditor, in making its determination as to whether the Returned Facility has been completed in accordance with the State Project Documents (subject only to Defects of the kind referred to in clause 20.3(c)(i)), will:
- (i) not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 20.3(e)(ii); and
 - (ii) be entitled to raise any other items of work (other than the Defects of the kind referred to in clause 20.3(c)(i)) as a ground for determining that the Returned Facility has not been completed in accordance with the State Project Documents.
- (j) **(Project Co's Handback obligations):** Upon receipt of a notice from the Independent Reviewer and Environmental Auditor under clause 20.3(e)(i), Project Co must:
- (i) notify the Facility Owner (with a copy to the State and the Independent Reviewer and Environmental Auditor) of the date upon which Handback of the Returned Facility will occur (which date must not be fewer than 5 Business Days from the notice under this clause 20.3(j)(i));
 - (ii) continue to maintain and repair the Returned Facility until Handback is achieved; and
 - (iii) provide the State and the relevant Facility Owner with all such assistance as may be reasonably required in relation to achieving Handback of the relevant Returned Facility.
- (k) **(Correction of Defects which did not prevent Handback):** Without limiting Project Co's other obligations under this Agreement (including in connection with Defects), Project Co must immediately upon receipt of the Independent Reviewer and Environmental Auditor's notice under clause 20.3(e)(i), expeditiously and

diligently correct all of the Defects specified in the Independent Reviewer and Environmental Auditor's notice.

- (l) **(Usual requirements of Facility Owner in respect of the Dynon Road Bridge):** Notwithstanding anything else in this Agreement, including the PSR, the usual requirements of the Facility Owner relating to the Dynon Road Bridge, do not include any requirement to modify, repair, rectify or replace any part of the Dynon Road Bridge beyond:
 - (i) the extent of the Works; and
 - (ii) beyond that which is necessary to ensure that the Returned Facility in respect of the Dynon Road Bridge at the Date of Handback otherwise complies with the requirements of this Agreement.

21. Close-Out

21.1 Close-Out

- (a) **(Progression):** Project Co must expeditiously and diligently undertake the balance of the Works required to achieve Close-Out.
- (b) **(Notice of Close-Out):** When Project Co considers that Close-Out has been achieved, Project Co must:
 - (i) notify the State and the Independent Reviewer and Environmental Auditor of its opinion; and
 - (ii) request the Independent Reviewer and Environmental Auditor to issue a Certificate of Close-Out.
- (c) **(Independent Reviewer and Environmental Auditor to make determination):** Within 15 Business Days of Project Co's notice under clause 21.1(b), the Independent Reviewer and Environmental Auditor is required to inspect the Works to determine whether Close-Out has been achieved and either:
 - (i) if Close-Out has been achieved, issue a Certificate of Close-Out to the State and Project Co:
 - A. certifying that Close-Out has been achieved; and
 - B. stating the Date of Close-Out (being the date of the Certificate of Close-Out); or
 - (ii) if Close-Out has not been achieved, issue a notice to the State and Project Co listing the work remaining to be undertaken to achieve Close-Out, including any relevant Remaining Works.
- (d) **(Project Co to complete work specified in notice):** Without limiting Project Co's other obligations under this Agreement (including in connection with Defects), immediately upon receipt of a notice under clause 21.1(c)(ii), Project Co must expeditiously and diligently progress performance of the work specified in the notice.
- (e) **(Further notice by Project Co):** Project Co must give notice to the State and the Independent Reviewer and Environmental Auditor when the work listed in the Independent Reviewer and Environmental Auditor's notice under clause 21.1(c)(ii) has been completed.

- (f) **(Resubmission):** Clauses 21.1(c) and 21.1(d) will apply in connection with Project Co's notice under clause 21.1(e) in the same way as if it were the original notice under clause 21.1(b).
- (g) **(No restriction by Independent Reviewer and Environmental Auditor):** The Independent Reviewer and Environmental Auditor, in making a determination as to whether Close-Out has been achieved:
 - (i) will not be restricted by any:
 - A. Certificate of West Gate Tunnel Completion, Certificate of Tolling Completion, notice, list or opinion already provided in accordance with this Agreement; or
 - B. obligation of Project Co under this Agreement to correct any Defects; and
 - (ii) will be entitled to raise any items of work as a ground for determining that Close-Out has not been achieved.

21.2 Late Close-Out

- (a) **(Close-Out Bond):** If:
 - (i) Project Co does not achieve Close-Out by the Date for Close-Out,
 - (ii) [not used]then:
 - (iii) the State may issue a notice to the Independent Reviewer and Environmental Auditor and Project Co requiring the Independent Reviewer and Environmental Auditor to:
 - A. identify the work remaining to be undertaken to achieve Close-Out; and
 - B. determine the cost of performing such work;
 - (iv) within 5 Business Days of the State's notice under clause 21.2(a)(iii), the Independent Reviewer and Environmental Auditor must issue a notice to the State and Project Co:
 - A. listing the work remaining to be undertaken to achieve Close-Out; and
 - B. setting out the cost of performing such work (**Outstanding Close-Out Costs**); and
 - (v) if:
 - A. Close-Out does not occur (or has not already occurred) by the Date for Close-Out; and
 - B. the Outstanding Close-Out Costs exceed the amount that the State is entitled to demand, at any time, under clause 24.1(d),

the State may, after the Date for Close-Out, direct Project Co to provide the State with one or more Performance Bonds, for the due performance

of the works set out in Independent Reviewer and Environmental Auditor's notice under clause 21.2(a)(iv)A, in the aggregate amount equal to [not disclosed]% of:

- C. the Outstanding Close-Out Costs; minus
- D. the amount that the State is entitled to demand, at any time, under clause 24.1(d),

(Close-Out Bonds).

- (b) **(Project Co to provide Close-Out Bonds):** Project Co must provide the State with the Close-Out Bonds within 10 Business Days of receiving a direction under clause 21.2(a)(v).
- (c) **(Calling upon Close-Out Bonds):** If Project Co has not achieved Close-Out within 3 months after Project Co is required to provide the Close-Out Bonds to the State in accordance with clause 21.2(b):
 - (i) the State may issue a notice to the Independent Reviewer and Environmental Auditor and Project Co requiring the Independent Reviewer and Environmental Auditor to:
 - A. identify the work remaining to be undertaken to achieve Close-Out; and
 - B. determine the cost of performing such work;
 - (ii) within 5 Business Days of the State's notice under clause 21.2(c)(i), the Independent Reviewer and Environmental Auditor must issue a notice to the State and Project Co:
 - A. listing the work remaining to be undertaken to achieve Close-Out; and
 - B. setting out the cost of performing such work (**Amended Outstanding Close-Out Costs**); and
 - (iii) the State may call upon any Close-Out Bond up to the value of the Amended Outstanding Close-Out Costs.
- (d) **(Acknowledgement):** The parties acknowledge and agree that:
 - (i) upon the State drawing down on any of the Close-Out Bonds in accordance with clause 21.2(c), Close-Out will be deemed to be achieved; and
 - (ii) drawing down upon any of the Close-Out Bonds in accordance with this clause 21.2(c) is the State's sole and exclusive remedy for a failure by Project Co to achieve Close-Out by the Date for Close-Out.
- (e) **(Return of Close-Out Bonds):** Within 10 Business Days after the issue of a Certificate of Close-Out, the State must:
 - (i) to the extent the State has not called upon the Close-Out Bonds in accordance with clause 21.2(c), return the Close-Out Bonds to Project Co; or

- (ii) to the extent the State has called upon the Close-Out Bonds in accordance with clause 21.2(c), return the amount of any Close-Out Bonds (if any) not exhausted to Project Co.

22. Defects

22.1 Defects

- (a) **(All Defects):** Subject to clause 22.1(k), Project Co must rectify all Defects which arise during the D&C Rectification Period.
- (b) **(Notification by Project Co):** If Project Co identifies a Defect at any time during the D&C Rectification Period, Project Co must:
 - (i) notify the State and the Independent Reviewer and Environmental Auditor; and
 - (ii) expeditiously and diligently progress rectification of that Defect.
- (c) **(Project Co's liability reduced):** Project Co has no responsibility to rectify, or Liability in respect of, Defects in each Returned Facility to the extent that such Defect arises as a direct result of:
 - (i) fair wear and tear, except to the extent the Works should have been designed and constructed to withstand the fair wear and tear; or
 - (ii) a failure to comply with the O&M Manuals (where applicable) or the usual practices of the Facility Owner (excluding the CityLink Parties) or its Associates.
- (d) **(Notification by the State):** If the State or the Independent Reviewer and Environmental Auditor believes there is a Defect during the D&C Rectification Period, the State or the Independent Reviewer and Environmental Auditor may give notice to Project Co specifying:
 - (i) that Defect; and
 - (ii) where the Defect identified by the State or the Independent Reviewer and Environmental Auditor is a Defect in a Returned Facility which is identified after the Date of Handback relating to that Returned Facility, the reasonable period of time within which Project Co must rectify that Defect.
- (e) **(Dispute):** If Project Co disagrees with any notice given by the State or the Independent Reviewer and Environmental Auditor in accordance with clause 22.1(d) or any Independent Reviewer and Environmental Auditor's determination in accordance with clause 20.3(e) that there are Defects in a Returned Facility or any Returned Works, then:
 - (i) it must, within 5 Business Days of receipt of the notice given in accordance with clause 22.1(d) or clause 20.3(e) (as applicable), give notice of its disagreement to the State including such supporting documentation to the reasonable satisfaction of the State;
 - (ii) the State and Project Co must use reasonable endeavours to resolve the matter the subject of the disagreement; and
 - (iii) if the matter is not resolved within 10 Business Days after the date of the notice given in accordance with clause 22.1(e)(i), either party may, by

notice to the other and the Independent Reviewer and Environmental Auditor, refer the matter for determination:

- A. where the Independent Reviewer and Environmental Auditor is the original provider of the notice under clause 22.1(d) or 20.3(e), under clauses 43 to 44 and the expert must; or
- B. otherwise, by the Independent Reviewer and Environmental Auditor, who must,

within 10 Business Days after the date of the notice given under this clause 22.1(e)(iii) make a determination as to the matter and notify the parties of its determination and reasons.

- (f) **(Compliance with State notice):** Upon receipt of a notice from the State or the Independent Reviewer and Environmental Auditor under clause 22.1(d), Project Co must, except where determined in accordance with clause 22.1(e)(iii) that a Defect does not exist, rectify the Defect expeditiously and diligently and, where the Defect relates to a Returned Facility, within the time specified in the notice under clause 22.1(d) or as determined in accordance with clause 22.1(e)(iii).
- (g) **(Returned Works):** Where the Defect relates to any Returned Works, Project Co must rectify the Defect:
 - (i) at times agreed with the Facility Owner and in accordance with the requirements of any other relevant Authority or the relevant Facility Owner; and
 - (ii) so as to minimise any adverse effect on any relevant Facility Owner or Authority.
- (h) **(State reimbursement):** If a Defect the subject of a notice given in accordance with clause 22.1(b) or clause 22.1(d) was directly caused by a wrongful act or omission of the State, or any relevant Facility Owner (in the case of a Returned Facility but excluding the CityLink Parties in their capacity as Facility Owners), then the direct costs properly and reasonably incurred in rectifying that Defect will be a debt due and payable from the State to Project Co.
- (i) **(Notice of rectification):** Project Co must give notice to the State and the Independent Reviewer and Environmental Auditor (and, where the Defect relates to any Returned Works, the relevant Facility Owner) that a Defect has been rectified promptly after its rectification by Project Co, or as otherwise described in clause 20.3(k).
- (j) **(Notice of accepted Defects):** If Project Co accepts a Defect in accordance with clause 22.1(i) of the D&C Subcontract, Project Co must promptly notify the State, which notification must include:
 - (i) a detailed description of the Defect;
 - (ii) the reasons why Project Co agreed to accept the Defect; and
 - (iii) any requirements, including the payment of any amount by the D&C Subcontractor to Project Co, that Project Co has nominated under clause 22.1(i)(iii)B of the D&C Subcontract.
- (k) **(Project Co's obligation limited):** Project Co's obligation to rectify Defects in each Returned Facility ends at the end of the D&C Rectification Period.

22.2 Defects list

Project Co must maintain and update a list of all Defects in accordance with section 13 of Part F6 of the PSR.

22.3 Non-Conformances

- (a) **(Non-Conformances):** The parties agree that a **Non-Conformance** means a non-conformance of the Works with the requirements of this Agreement, including:
- (i) a Defect, provided that where the Defect has been identified by Project Co, it has notified the State and the Independent Reviewer and Environmental Auditor of the Defect in accordance with clause 22.1(b)(i);
 - (ii) any Defects or works remaining to be performed to achieve Close-Out, as identified in a Project Co notice under clause 20.2(a);
 - (iii) any Defects or works remaining to be performed to achieve Close-Out, as identified in a Certificate of West Gate Tunnel Completion or Certificate of Tolling Completion;
 - (iv) any Defects or works remaining to be performed to achieve Close-Out, as identified in a notice issued by the Independent Reviewer and Environmental Auditor under clause 20.2(c)(ii);
 - (v) any Defects or works remaining to be performed to complete a Returned Facility, as identified in a Project Co notice under clause 20.3(c)(ii);
 - (vi) any Defects or works remaining to be performed to determine whether a Returned Facility has been completed, as identified in a notice issued by the Independent Reviewer and Environmental Auditor under clause 20.3(e)(ii); or
 - (vii) any matter identified by the Independent Reviewer and Environmental Auditor in a notice of non-compliance under clause 23.2(b).
- (b) **(Request for acceptance):** Project Co may submit a written request to the State (with a copy to the Independent Reviewer and Environmental Auditor) for acceptance of a Non-Conformance, which request must include:
- (i) a detailed description of the specific level of Non-Conformance and the acceptance being sought;
 - (ii) reasons why conformance is not possible or practicable and the consequences of Project Co having to comply with the requirement the subject of the Non-Conformance;
 - (iii) any other impact of the Non-Conformance on the Works or Project Activities or Project Co's ability to carry out the Project Activities in accordance with this Agreement including:
 - A. Project Co's ability to comply with the requirements of West Gate Tunnel Completion, Tolling Completion, Close Out or Handback;
 - B. Project Co's ability to comply with its obligations in relation to Handover;
 - C. Project Co incurring a KPI Liability; and

- D. compliance with the FFP Warranty;
 - (iv) details of how the Non-Conformance is being addressed together with, if relevant to the Non-Conformance, an assessment of the risks associated with the relevant requirement not being complied with; and
 - (v) if relevant to the Non-Conformance, the risk management strategy, including risk mitigation actions, Project Co proposes to implement to address risks identified as part of the risk assessment.
- (c) **(State's discretion):** The State may, in its absolute discretion, accept the Non-Conformance, not accept the Non-Conformance or accept the Non-Conformance subject to reasonable conditions including:
- (i) implementation by Project Co of any reasonable mitigation works; and
 - (ii) any reasonable amendments that are required by the State to the risk management strategy/plan submitted by Project Co,
- and provide notice of such to Project Co (with a copy to the Independent Reviewer and Environmental Auditor) within a reasonable time of receipt of the request referred to in clause 22.3(b) having regard to the nature of the Non-Conformance.
- (d) **(Additional information):** The State may request Project Co provide further information which it reasonably requires in relation to the Non-Conformance in which case Project Co must promptly comply with such request.
- (e) **(Record of Non-Conformances):** Project Co must record any Non-Conformance accepted by the State under this clause 22.3, together with any reasonable conditions imposed by the State under clause 22.3(c), in a register (**Non-Conformance Register**).
- (f) **(Agreed Exceptions):** Except to the extent that the Non-Conformance has an impact that was not identified by Project Co in accordance with clause 22.3(b)(iii), a Non-Conformance accepted by the State will be deemed to be an Agreed Exception, provided that Project Co must comply with any approved or agreed alternative to the Non-Conformance, or conditions in relation to the Non-Conformance, which is documented in the Non-Conformance Register.
- (g) **(Corrective action plan):** Project Co must review and analyse the cause of all Non-Conformances and develop a plan of corrective action to minimise the likelihood of recurrence.

23. Time

23.1 Primary obligation

- (a) Project Co must:
 - (i) **(progress the works):** commence and regularly, expeditiously and diligently carry out and progress the Project Activities to achieve:
 - A. West Gate Tunnel Completion and Close-Out; and
 - B. the M80 Interface Design Activities Milestones in respect of the Draft Certified Design and the IFC Design by the relevant M80 Interface Design Activities Milestone Dates;

- (ii) **(progress the M80 Preliminary Design)**: use reasonable endeavours to achieve each M80 Interface Design Activities Milestone in respect of the Preliminary Design by the relevant M80 Interface Design Activities Milestone Date; and
 - (iii) **(achieve West Gate Tunnel Completion)**: achieve West Gate Tunnel Completion by the Date for West Gate Tunnel Completion.
- (b) Without limiting any Claim by the State for the payment of licence fees in accordance with the Port Land Deed, and subject to clause 23.1(c), Project Co will have no Liability to the State solely in respect of a breach of clause 23.1(a)(iii).
- (c) Clause 23.1(b) does not limit:
 - (i) Project Co's Liability where this Agreement is terminated as a result of a Default Termination Event; or
 - (ii) the State's rights or Project Co's Liability in respect of any event giving rise to a delay to achieving West Gate Tunnel Completion, or the consequences of such an event, other than the delay itself.

23.2 Independent Reviewer and Environmental Auditor's review of progress

- (a) **(Review by Independent Reviewer and Environmental Auditor)**: Project Co agrees that the Independent Reviewer and Environmental Auditor must continually review (by general overview and reasonable checking) and, where requested by the State, undertake a review of, the undertaking of the Works to ensure that:
 - (i) the obligations of Project Co under the State Project Documents relating to the Works are being complied with;
 - (ii) West Gate Tunnel Completion will be achieved by the Date for West Gate Tunnel Completion;
 - (iii) West Gate Tunnel Completion will be achieved by the Sunset Date; and
 - (iv) the D&C Program accurately reflects the actual progress of the Works.
- (b) **(Notice of non-compliance)**: Subject to clause 23.2(ba) and 23.2(m) , if the Independent Reviewer and Environmental Auditor is of the opinion that:
 - (i) the obligations of Project Co under the State Project Documents in relation to the construction of the Works are not being complied with;
 - (ii) subject to clause 23.2(k), West Gate Tunnel Completion will not be achieved by the Date for West Gate Tunnel Completion;
 - (iii) West Gate Tunnel Completion will not be achieved by the Sunset Date; or
 - (iv) the D&C Program does not accurately reflect the actual progress of the Works in a manner which is false or misleading,

the Independent Reviewer and Environmental Auditor may give notice to the State and Project Co of its opinion together with its reasons for forming that opinion (**Non-Compliance Notice**).

- (ba) **(Non-Compliance Notice):** Subject to clause 23.2(bb), the Independent Reviewer and Environmental Auditor must not issue a Non-Compliance Notice during the period commencing on Financial Close until 18 months after Financial Close.
- (bb) **(Failure to progress the works):** If the Independent Reviewer is of the opinion that Project Co is in breach of clause 23.1(a) at any time during the period commencing on Financial Close until 18 months after Financial Close, the Independent Reviewer may issue a notice under clause 23.2(b).
- (c) **(Project Co's response):**
- (i) Within 20 Business Days of receipt of the Independent Reviewer and Environmental Auditor's notice in accordance with clause 23.2(b), Project Co must:
- A. notify the State and the Independent Reviewer and Environmental Auditor of any matters in connection with which it disagrees with the Independent Reviewer and Environmental Auditor's opinion together with its reasons for doing so (**Explanation**); and
- B. to the extent it does not disagree, provide to the State and the Independent Reviewer and Environmental Auditor a plan and a program for:
- 1) the rectification of any non-compliance; or
- 2) in the case of a notice issued pursuant to clause 23.2(b)(ii) or clause 23.2(b)(iii), overcoming the effects of the non-compliance,
- (Remediation Plan),**
- for review in accordance with the Review Procedures.
- (ii) If Project Co fails to provide an Explanation or Remediation Plan in the required 20 Business Days, this will constitute a Major Default.
- (d) **(Notice by Independent Reviewer and Environmental Auditor):** Within 10 Business Days of receipt of the Explanation or Remediation Plan, the Independent Reviewer and Environmental Auditor must give notice to the State and Project Co of its opinion, taking into account any comments of the State provided in accordance with the Review Procedures, as to whether or not the Explanation or the Remediation Plan satisfactorily addresses its concerns together with its reasons for forming that opinion. Without limiting the State's rights under clause 41 in relation to a Major Default, to the extent that a Remediation Plan has been prepared in response to a notice issued pursuant to clause 23.2(b)(ii), 23.2(g) or clause 23.2(i), a Remediation Plan will:
- (i) satisfactorily address the Independent Reviewer and Environmental Auditor's concern if:
- A. it identifies a date on which West Gate Tunnel Completion will be achieved, which date must be as early as reasonably practicable in the circumstances and otherwise prior to the Sunset Date; and
- B. it contains a detailed plan and reasoning which properly demonstrates how Project Co will achieve West Gate Tunnel Completion by the Sunset Date; and

- (ii) not satisfactorily address the Independent Reviewer and Environmental Auditor's concern if it identifies a date, on which West Gate Tunnel Completion will be achieved, which is after the Sunset Date.
- (e) **(Explanation):** If the Independent Reviewer and Environmental Auditor notifies Project Co and the State that in its opinion:
 - (i) the Explanation is satisfactory such that:
 - A. the obligations of Project Co under the State Project Documents in relation to the construction of the Works are being complied with;
 - B. the D&C Program is not false or misleading and accurately reflects the actual progress of the Works;
 - C. subject to clause 23.2(k), West Gate Tunnel Completion will be achieved by the Date for West Gate Tunnel Completion; and
 - D. West Gate Tunnel Completion will be achieved by the Sunset Date,

Project Co must proceed with the Works: or
 - (ii) the Explanation is not satisfactory, this will, unless Project Co submits an amended Explanation, or replaces the Explanation with a Remediation Plan, in accordance with clause 23.2(g), constitute a Major Default.
- (f) **(Compliance):** If the Independent Reviewer and Environmental Auditor notifies the State and Project Co that, in its opinion:
 - (i) a Remediation Plan satisfactorily addresses its concerns, Project Co must diligently pursue the Remediation Plan and if:
 - A. Project Co does not diligently pursue the Remediation Plan; or
 - B. the D&C Program is not consistent with the Remediation Plan,

this will, subject to clause 23.2(ib), constitute a Major Default; or
 - (ii) a Remediation Plan does not address its concerns, this will, unless Project Co submits an amended Remediation Plan, or replaces the Remediation Plan with an Explanation, in accordance with clause 23.2(g), constitute a Major Default.
- (g) **(Submission of amended Explanation or Remediation Plan):** If the Independent Reviewer and Environmental Auditor gives notice under clause 23.2(e)(ii) or clause 23.2(f)(ii), Project Co may, within 10 Business Days of the date of the Independent Reviewer and Environmental Auditor's notice, submit an amended Explanation or Remediation Plan (as applicable), or replacement Explanation or Remediation Plan (as applicable), to the State and the Independent Reviewer and Environmental Auditor for review in accordance with the Review Procedures.
- (h) **(Notice by Independent Reviewer and Environmental Auditor):** Within 5 Business Days of receipt of the Explanation or Remediation Plan in accordance with clause 23.2(g), the Independent Reviewer and Environmental Auditor must give notice to the State and Project Co of its opinion, taking into account any

comments of the State provided in accordance with the Review Procedures, as to whether or not the Explanation or the Remediation Plan satisfactorily addresses its concerns together with its reasons for forming that opinion.

(i) **(Amended Explanation or Remediation Plan):** If Project Co:

(i) submits an Explanation in accordance with clause 23.2(g) and the Independent Reviewer and Environmental Auditor notifies Project Co and the State that in its opinion:

- A. subject to clause 23.2(k), the Explanation is satisfactory such that:
- 1) the obligations of Project Co under the State Project Documents in relation to the construction of the Works are being complied with;
 - 2) the D&C Program is not false or misleading and accurately reflects the actual progress of the Works;
 - 3) West Gate Tunnel Completion will be achieved by the Date for West Gate Tunnel Completion; and
 - 4) West Gate Tunnel Completion will be achieved by the Sunset Date,

Project Co must proceed with the Works; or

B. the Explanation is not satisfactory, then subject to clause 23.2(ia) this will constitute a Major Default; or

(ii) submits a Remediation Plan in accordance with clause 23.2(g) and the Independent Reviewer and Environmental Auditor notifies Project Co and the State that in its opinion:

A. the Remediation Plan satisfactorily addresses its concerns, Project Co must diligently pursue the amended Remediation Plan and, subject to clause 23.2(ib), if Project Co does not diligently pursue the amended Remediation Plan this will constitute a Major Default; or

B. the Remediation Plan does not satisfactorily address its concerns, then subject to clause 23.2(ia), this will constitute a Major Default.

(ia) **(Dispute):** If the Independent Reviewer and Environmental Auditor gives notice:

(i) under clause 23.2(i)(i)B that an Explanation submitted under clause 23.2(g) is not satisfactory; or

(ii) under clause 23.2(i)(ii)B that a Remediation Plan submitted under clause 23.2(g) does not satisfactorily address its concerns,

this will not constitute a Major Default if within a further 10 Business Days of such notice Project Co refers the matter to dispute resolution in accordance with clauses 43 to 44 and the outcome of the Dispute is a determination that the Independent Reviewer and Environmental Auditor erred in finding that:

(iii) an Explanation submitted under clause 23.2(g) was not satisfactory; or

- (iv) a Remediation Plan submitted under clause 23.2(g) did not satisfactorily address its concerns.
- (ib) **(Compliance with a Remediation Plan):** If at any time the State or the Independent Reviewer and Environmental Auditor notifies Project Co that:
 - (i) Project Co is not diligently pursuing a Remediation Plan approved under clauses 23.2(f)(i), 23.2(i)(ii)A or 23.2(j)(ii); or
 - (ii) the D&C Program is not consistent with a Remediation Plan approved under clauses 23.2(f)(i), 23.2(i)(ii)A or 23.2(j)(ii),

this will not constitute a Major Default if within 10 Business Days of receipt of the such notice Project Co refers the matter to dispute resolution in accordance with clauses 43 to 44 and the outcome of the Dispute is a determination that:
 - (iii) Project Co is diligently pursuing the Remediation Plan; and/or
 - (iv) the D&C Program is consistent with the Remediation Plan,

(as applicable).
- (j) **(Submission of amended Explanation or Remediation Plan):** In respect of an Explanation approved under clauses 23.2(e)(i) or 23.2(i)(i)A or a Remediation Plan approved under clauses 23.2(f)(i) or 23.2(i)(ii)A, Project Co may, at any time, submit an amended Explanation or amended Remediation Plan (as applicable) to the State and the Independent Reviewer and Environmental Auditor for review in accordance with the Review Procedures and if in the opinion of the Independent Reviewer and Environmental Auditor:
 - (i) (if applicable) the amended Explanation is satisfactory such that:
 - A. the obligations of Project Co under the State Project Documents in relation to the construction of the Works are being complied with;
 - B. the D&C Program is not false or misleading and accurately reflects the actual progress of the Works;
 - C. West Gate Tunnel Completion will be achieved by the Date for West Gate Tunnel Completion; and
 - D. West Gate Tunnel Completion will be achieved by the Sunset Date,

then the amended Explanation will replace the previous Explanation; or
 - (ii) (if applicable) the amended Remediation Plan satisfactorily addresses its concerns under the initial notice given by it under clause 23.2(b), then the amended Remediation Plan will replace the previous Remediation Plan.
- (k) **(Past determinations of the Independent Reviewer and Environmental Auditor):** Subject to Project Co complying with the relevant Remediation Plan in accordance with clauses 23.2(f)(i) and 23.2(i)(ii)A, in reviewing the undertaking of the Works in accordance with clause 23.2(a)(ii), the Independent Reviewer and Environmental Auditor must take into consideration any Remediation Plan previously considered satisfactory in accordance with clauses 23.2(f)(i) and 23.2(i)(ii)A.

- (l) **(Diligent pursuit):** For the purposes of this clause 23.2, in assessing what can be achieved by diligent pursuit and in assessing whether there has been a failure to diligently pursue an approved Remediation Plan:
- (i) regard must be had to:
 - A. the time necessary, if to do so would be consistent with the required steps and actions being diligently pursued, to conduct a tender process in accordance with the Change Compensation Principles (where required to do so by the State) or otherwise engage Subcontractors to carry out the repair or rebuilding (where applicable), recognising that Project Co is not a design and construction contractor;
 - B. the context of the actual circumstances prevailing at all relevant times; and
 - C. the effect on the carrying out of the Project of wilful default by the State of a State Project Document and of any Force Majeure Event;
 - (ii) any lack of financial or technical resources will be disregarded; and
 - (iii) the standard of pursuit must not be less than what might reasonably be expected of the State, having regard to the resources (including technical resources) that the State might reasonably be expected to devote (or procure be devoted) were the State to have an obligation to achieve or implement that thing, promptly.
- (m) **(Determinations of the Sub-Independent Reviewer and Environmental Auditor):** The parties agree that the Independent Reviewer and Environmental Auditor must not give notice under:
- (i) clause 23.2(b):
 - A. to the extent that the Sub-Independent Reviewer and Environmental Auditor has reviewed the corresponding matters under the D&C Subcontract and has not issued a notice under clause 23.2(b) of the D&C Subcontract; or
 - B. to the extent that the Independent Reviewer and Environmental Auditor's notice would be inconsistent with a notice issued under clause 23.2(b) of the D&C Subcontract where the Independent Reviewer and Environmental Auditor's notice relates to the same subject matter identified in the notice submitted by the Sub-Independent Reviewer and Environmental Auditor under clause 23.2(b) of the D&C Subcontract; and
- clauses 23.2(e)(ii), 23.2(f)(ii), 23.2(h), 23.2(i)(i)B or 23.2(i)(ii)B, that an Explanation, amended Explanation, Remediation Plan or amended Remediation Plan (as applicable) is not satisfactory or does not satisfactorily address its concerns, if the Sub-Independent Reviewer and Environmental Auditor has notified Project Co and the D&C Subcontractor that an equivalent, explanation, amended explanation, remediation plan or amended remediation plan (as applicable) relating to the same subject matter identified in the notice submitted by the Sub-Independent Reviewer and Environmental Auditor under clause 23.2(b) of the D&C Subcontract is satisfactory to the Sub-Independent Reviewer and Environmental Auditor.

23.3 Delay to West Gate Tunnel Completion

If Project Co becomes aware of any matter which will, or is likely to, give rise to a delay in achieving an M80 Interface Design Activity Milestone, West Gate Tunnel Completion or Tolling Completion, it must promptly give the State and the Independent Reviewer and Environmental Auditor notice of that matter.

23.4 Delay entitling Claim

Subject to clause 23.5, if Project Co will be delayed by an Extension Event, in a manner which will delay Project Co in achieving an M80 Interface Design Activity Milestone, West Gate Tunnel Completion, Tolling Completion or Close-Out, Project Co may claim an extension of time to the M80 Interface Design Activity Milestone Date, Date for West Gate Tunnel Completion, Date for Tolling Completion or Date for Close-Out for the period of delay in accordance with this clause 23.

23.5 Modifications

If a delay in achieving an M80 Interface Design Activity Milestone, West Gate Tunnel Completion, Tolling Completion or Close-Out is caused by an event which is the subject of a Modification Order, then:

- (a) **(application of Modifications clause):** Project Co's entitlement to an extension of time and any compensation for any such extension of time will be determined in accordance with clause 34 and the Change Compensation Principles and not this clause 23; and
- (b) **(extension of time):** the relevant M80 Interface Design Activity Milestone Date, Date for West Gate Tunnel Completion, Date for Tolling Completion or Date for Close-Out (as applicable) will be extended by the period of time set out in a Modification Order issued in accordance with clause 34.1.

23.6 Change Notice

To claim an extension of time to an M80 Interface Design Activity Milestone Date, the Date for West Gate Tunnel Completion, Date for Tolling Completion or Date for Close-Out, Project Co:

- (a) **(submission of Change Notice):** must, within 15 Business Days from the date Project Co became aware, or ought reasonably to have become aware, of a delay of the type referred to in clause 23.4, submit a Change Notice to the State and the Independent Reviewer and Environmental Auditor which:
 - (i) complies with the Change Compensation Principles;
 - (ii) sets out detailed particulars of the delay or likely delay and the occurrence causing the delay;
 - (iii) sets out the number of days of extension of time claimed, together with the basis of calculating that period, including evidence that it will be delayed in achieving an M80 Interface Design Activity Milestone, West Gate Tunnel Completion, Tolling Completion or Close-Out in the manner set out in clause 23.4;
 - (iv) describes the action Project Co has taken and proposes to take to avoid or minimise the consequences of the Extension Event;
 - (v) where the Extension Event is a Compensable Extension Event, contains details of any amount, calculated in accordance with the Change Compensation Principles, to which Project Co considers it is entitled; and

- (vi) contains any other information reasonably required by the State; and
- (b) **(updated Change Notice)**: must, if the effects of the delay continue beyond the period of 15 Business Days referred to in the Change Notice submitted under clause 23.6(a), and Project Co wishes to claim an additional extension of time in connection with the further delay, submit an updated Change Notice to the State:
 - (i) every 15 Business Days after the first Change Notice until 5 Business Days after the end of the delay caused by the Extension Event; and
 - (ii) containing the information required by clause 23.6(a).

23.7 Conditions precedent to extension

Subject to clause 23.9, it is a condition precedent to Project Co's entitlement to an extension of time that:

- (a) **(submission of Change Notice)**: Project Co submits its Change Notice, and in respect of any further delay an updated Change Notice, in the manner required by clause 23.6;
- (b) **(beyond Project Co control)**: the cause of the delay was beyond the reasonable control of Project Co and its Associates;
- (c) **(effect of delay)**: Project Co can demonstrate to the Independent Reviewer and Environmental Auditor's satisfaction that:
 - (i) it has actually been delayed in achieving an M80 Interface Design Activity Milestone, West Gate Tunnel Completion, Tolling Completion or Close-Out (as applicable) by an Extension Event; and
 - (ii) the Extension Event has caused or will cause activities on the relevant critical path contained in the then current D&C Program to be delayed; and
- (d) **(compliance with updated program)**: Project Co is, at the time it submits the relevant Change Notice and any updated Change Notice (taking into account the impact of the Extension Event in connection with which an extension of time is being claimed) fully complying with its obligations in connection with the D&C Program in accordance with clause 15 (or has remedied any outstanding breach of clauses 15(c) or 15(d) by providing an updated D&C Program at the time of submission of the relevant Change Notice or updated Change Notice).

23.8 Extension of Time determined by Independent Reviewer and Environmental Auditor

- (a) **(State right to provide information)**: The State may provide any evidence to the Independent Reviewer and Environmental Auditor it considers relevant to the Independent Reviewer and Environmental Auditor's consideration of Project Co's Change Notice under clause 23.6.
- (b) **(Extension of time)**: If the conditions precedent in clause 23.7 have been satisfied, the Independent Reviewer and Environmental Auditor:
 - (i) will extend the relevant M80 Interface Design Activity Milestone Date, Date for West Gate Tunnel Completion, Date for Tolling Completion or Date for Close-Out (as applicable) by a reasonable period determined by the Independent Reviewer and Environmental Auditor and in doing so

must take into account all relevant evidence presented by the parties but is not bound by the D&C Program; and

- (ii) must notify the State and Project Co of:
 - A. the period of time that the relevant M80 Interface Design Activity Milestone Date, Date for West Gate Tunnel Completion, Date for Tolling Completion or Date for Close-Out (as applicable) is extended as determined in accordance with clause 23.8(b)(i); and
 - B. the applicable maximum daily rate(s) for the Prolongation Costs for the period of time notified under clause 23.8(b)(ii)A as determined in accordance with the Change Compensation Principles.

23.9 Unilateral extensions

- (a) **(Unilateral extensions):** The State may, at any time and from time to time, by notice to Project Co, unilaterally extend any M80 Interface Design Activity Milestone Date, the Date for West Gate Tunnel Completion, Date for Tolling Completion or Date for Close-Out.
- (b) **(Discretion not alternative to extension):** The State's discretion under clause 23.9(a) must not be used:
 - (i) where the Independent Reviewer and Environmental Auditor would be otherwise required to extend any M80 Interface Design Activity Milestone Date, the Date for West Gate Tunnel Completion, Date for Tolling Completion or Date for Close-Out in accordance with clause 23.8 and has not done so; or
 - (ii) as an alternative to the State compensating Project Co in respect of a Compensable Extension Event in accordance with clause 23.10.
- (c) **(Acknowledgements):** The parties acknowledge that:
 - (i) the State may exercise its discretion under clause 23.9(a) whether or not Project Co has claimed or is entitled to claim an extension of time, or has performed or observed its obligations under or in accordance with this clause 23;
 - (ii) the State is not required to exercise the State's discretion under clause 23.9(a) for the benefit of Project Co;
 - (iii) an extension under this clause 23.9 is not a Compensable Extension Event; and
 - (iv) the exercise or failure to exercise the State's discretion under this clause 23.9 is not capable of being the subject of a dispute for the purposes of clauses 43 to 44 or otherwise subject to review.

23.10 Entitlement to Costs

To the extent that Project Co is granted an extension of time under clause 23.8 (or pursuant to the exercise by the State of its discretion under clause 23.9(a) in the circumstances described in clause 23.9(b)(i)) for a Compensable Extension Event, Project Co will be entitled to payment of costs and other amounts (including under section 3.6 of the Change Compensation Principles) in accordance with the Change Compensation Principles.

23.11 Concurrent delays

Project Co is not entitled to claim an extension of time under clause 23.8 or costs in accordance with the Change Compensation Principles in respect of a delay to an M80 Interface Design Activity Milestone, West Gate Tunnel Completion, Tolling Completion or Close-Out caused by an Extension Event to the extent that any period of that delay is contemporaneous with a delay to the relevant M80 Interface Design Activity Milestone, West Gate Tunnel Completion, Tolling Completion or Close-Out (respectively) caused by an event which is not an Extension Event, CMR Modification, Contamination Modification Event, Key Approval Event, Alternative Approval Event or the carrying out of Proximate State Works.

23.12 Acceleration by Project Co

If Project Co chooses to compress the D&C Activities or otherwise accelerate progress:

- (a) **(no State action):** the State will not be obliged to take any action to assist or enable Project Co to achieve any particular sequencing or rate of progress of the Project Activities; and
- (b) **(State obligations not affected):** the time for the carrying out of the State's obligations will not be affected.

23.13 Project Co's obligation not affected

Project Co's obligations and Liabilities under this Agreement, including under clause 23.1, and the State's rights, obligations and Liabilities under this Agreement are not affected by Project Co accelerating under clause 23.12.

23.14 Force Majeure prior to the Date of West Gate Tunnel Completion

- (a) **(Obligations to be suspended):** Where the Extension Event is a Force Majeure Event, in addition to their rights and obligations under this clause 23, the obligations of each party in accordance with this Agreement which are affected by the Force Majeure Event will be suspended, but only to the extent that, and for so long as, the Force Majeure Event prevents that party from meeting its relevant obligations in accordance with this Agreement.
- (b) **(Party not in breach):** A party's failure to carry out its obligations in accordance with this Agreement which are suspended under clause 23.14(a) will not be a breach of this Agreement by that party, a Major Default or Default Termination Event during the period of suspension under clause 23.14(a).
- (c) **(Payment during an uninsurable Force Majeure Event):** Without limiting clause 23.14(d), if:
 - (i) the suspension of Project Co's obligations in accordance with clause 23.14(a) results in the Date for West Gate Tunnel Completion, Date for Tolling Completion or Date for Close-Out to be extended in accordance with clause 23.8; and
 - (ii) the Force Majeure Event is not a risk which:
 - A. a prudent owner and operator of works and services similar to the Works and the Project Activities would customarily insure; or
 - B. is, or is required to be, insured by Project Co in accordance with this Agreement,

Project Co will be entitled to payment of an amount calculated in accordance with the Change Compensation Principles provided that Project Co is complying with its obligations under clause 23.7.

- (d) **(Exceptions):** If the Force Majeure Event is also:
- (i) an Uninsurable Risk (as agreed or determined in accordance with clause 40.14); or
 - (ii) a Day 1 Uninsurable Risk,
- clause 40.15 will apply.

23.15 Extension of time disputes

If either party disputes a determination of the Independent Reviewer and Environmental Auditor under clause 23.8, either party may refer the matter for resolution in accordance with clauses 43.4 to 43.8 and 44 provided that:

- (a) the matter is a bona fide dispute; and
- (b) the party disputing the Independent Reviewer and Environmental Auditor's determination under clause 23.8 gives a notice to the other party.

23.16 Extension of Sunset Date

- (a) **(Claim for extension to Sunset Date):** No later than 3 Months prior to the date which is 36 months after the Date for West Gate Tunnel Completion, Project Co may claim an extension of time to the Sunset Date by submitting a notice to the State and the Independent Reviewer and Environmental Auditor which:
 - (i) sets out detailed particulars of the delay or likely delay to achieving West Gate Tunnel Completion by the Sunset Date and the occurrence causing the delay;
 - (ii) subject to clause 23.16(e), sets out the number of days of extension of time claimed, together with the basis of calculating that period (the last day of that period being the **Extended Sunset Date**);
 - (iii) describes the action Project Co has taken and proposes to take to diligently pursue the D&C Activities to achieve West Gate Tunnel Completion as early as reasonably practicable and in any event by the Extended Sunset Date; and
 - (iv) contains any other information reasonably required by the State or the Independent Reviewer and Environmental Auditor.
- (b) **(State right to provide information):** The State may provide any evidence to the Independent Reviewer and Environmental Auditor it considers relevant to the Independent Reviewer and Environmental Auditor's consideration of Project Co's notice under clause 23.16(a).
- (c) **(Independent Reviewer and Environmental Auditor to make determination):** As soon as reasonably practicable following Project Co's notice under clause 23.16(a) and, in any event, prior to the date which is 36 months after the Date for West Gate Tunnel Completion, the Independent Reviewer and Environmental Auditor is required to determine whether:

- (i) West Gate Tunnel Completion can be achieved by the Extended Sunset Date; and
 - (ii) Project Co is diligently pursuing the D&C Activities to achieve West Gate Tunnel Completion.
- (d) **(Extension of Sunset Date):** Subject to clause 23.16(e), if the Independent Reviewer and Environmental Auditor has determined that:
- (i) West Gate Tunnel Completion can be achieved by the Extended Sunset Date; and
 - (ii) Project Co is diligently pursuing the D&C Activities to achieve West Gate Tunnel Completion,
- the Independent Reviewer and Environmental Auditor will extend the Sunset Date by a reasonable period determined by the Independent Reviewer and Environmental Auditor.
- (e) **(Maximum extension of Sunset Date):** The parties acknowledge and agree that the:
- (i) Extended Sunset Date claimed by Project Co under clause 23.16(a) cannot be later than 42 Months after the Date for West Gate Tunnel Completion; and
 - (ii) Independent Reviewer and Environmental Auditor cannot extend the Sunset Date under clause 23.16(d) beyond 42 Months after the Date for West Gate Tunnel Completion.

23.17 Affected OpCo D&C Phase IRS Activities

- (a) **(OpCo D&C Phase IRS Activities suspended):** On the occurrence of an Extension Event (other than a Force Majeure Event), in addition to its rights and obligations under this clause 23, the obligations of Project Co to carry out the OpCo D&C Phase IRS Activities in accordance with this Agreement which are affected by the Extension Event will be suspended, but only to the extent that, and for so long as, the Extension Event prevents Project Co from carrying out the OpCo D&C Phase IRS Activities in accordance with this Agreement.
- (b) **(Project Co not in breach):** Project Co's failure to carry out the OpCo D&C Phase IRS Activities in accordance with this Agreement which are suspended under clause 23.17(a) will not be a breach of this Agreement by Project Co, a Major Default or Default Termination Event during the period of suspension under clause 23.17(a).

24. Security

24.1 State right to require Project Co to call on Construction Bond

Without limiting the State's rights under this Agreement or at Law, the State may require Project Co to exercise any rights it has to call on any Construction Bond that it holds to satisfy any debt due and payable by Project Co to the State under this Agreement which is referable to the D&C Activities (other than the Tolling Works and the OpCo D&C Phase IRS Activities) and which has not been paid within 10 Business Days of receipt of the demand:

- (a) prior to the Date of West Gate Tunnel Completion:

- (i) subject to clause 24.1(a)(ii), up to an amount no greater than [not disclosed]% of the D&C Subcontract Price; or
 - (ii) for such time as the D&C Subcontractor has provided a Performance Bond in accordance with clause 64(i)(ii) of the D&C Subcontract, up to an amount no greater than [not disclosed]% of the D&C Subcontract Price; and
- (b) prior to the expiry of the last defect liability period under the D&C Subcontract:
- (i) subject to clause 24.1(b)(ii), up to an amount no greater than [not disclosed]% of the D&C Subcontract Price; or
 - (ii) for such time as the D&C Subcontractor has provided a Performance Bond in accordance with clause 64(i)(ii) of the D&C Subcontract, up to an amount no greater than [not disclosed]% of the D&C Subcontract Price; or

in relation to a Default Termination Event caused by an act or omission of the D&C Subcontractor and which has not been paid within 10 Business Days of receipt of the demand:

- (c) prior to the Date of West Gate Tunnel Completion:
- (i) subject to clause 24.1(c)(ii), up to an amount no greater than [not disclosed]% of the D&C Subcontract Price; or
 - (ii) for such time as the D&C Subcontractor has provided a Performance Bond in accordance with clause 64(i)(ii) of the D&C Subcontract, up to an amount no greater than [not disclosed]% of the D&C Subcontract Price; and
- (d) prior to the expiry of the last defect liability period under the D&C Subcontract:
- (i) subject to clause 24.1(d)(ii), up to an amount no greater than [not disclosed]% of the D&C Subcontract Price; or
 - (ii) for such time as the D&C Subcontractor has provided a Performance Bond in accordance with clause 64(i)(ii) of the D&C Subcontract, up to an amount no greater than [not disclosed]% of the D&C Subcontract Price,

and without limiting the unconditional nature of the Construction Bonds, if Project Co draws down on one or more of the Construction Bonds, Project Co will provide to the State a written notice informing it that the relevant Construction Bond has been drawn down on no later than the next Business Day.

24.2 Funding to be paid into Secured Account

Project Co must:

- (a) ensure that all amounts received or receivable by it:
 - (i) as a result of drawing debt under the WGT Co Loan Facility Agreement or NewCo Loan Facility Agreement;
 - (ii) as a result of Transurban Holdings Limited or Transurban Holding Trust subscribing for equity in Project Co under the Equity Subscription Deed; or

- (iii) from the Company or Clepco in accordance with the Concession Enhancement Payment Deed (other than the Initial Payment under and as defined in the Concession Enhancement Payment Deed); and
 - (b) procure that all amounts received or receivable by NewCo as a result of drawing debt under the NewCo Loan Facility Agreement,
- are paid directly into a Secured Account.

PART C - O&M PHASE OBLIGATIONS

25. O&M Phase

25.1 Opening of the Freeway

Subject to clause 19, the Works may not be opened for public use prior to the Date of West Gate Tunnel Completion.

25.2 Open as soon as practicable

As soon as practicable after West Gate Tunnel Completion has been achieved, the Freeway must be open to public use for the safe, efficient and continuous passage of vehicles.

25.3 Even if no Tolling Completion

- (a) Subject to clause 25.3(b), Project Co must comply with clause 25.2 even if Tolling Completion has not been achieved.
- (b) If Tolling Completion has not been achieved, the State may direct Project Co not to comply with clause 25.2 and Project Co must comply with the State's direction.

25.4 Project Co to keep Freeway open

- (a) **(Continuous opening):** Subject to clause 25.4(b), after the West Gate Tunnel Opening Date until the Expiry Date, Project Co must keep the Freeway open to Users for the safe, efficient and continuous passage of vehicles.
- (b) **(Permitted closures):** Project Co may close all or part of the Freeway if it is necessary to do so as a result of:
 - (i) the requirements of any Law or relevant Authority which have the effect of Law and which necessitate the closing of all or part of the Freeway;
 - (ii) the requirements of this Agreement or the FMS Agreement;
 - (iii) maintenance of and/or repairs to the Freeway carried out in accordance with this Agreement;
 - (iv) responding to an Incident in accordance with this Agreement or the FMS Agreement; or
 - (v) responding to an incident on the road network surrounding the Freeway in accordance with this Agreement, the FMS Agreement or the IRS Agreement,

or as otherwise contemplated by the State Project Documents or agreed in writing by the State.

- (c) **(Notice of closure):** If Project Co closes or proposes to close any part of the Freeway, Project Co must:
 - (i) where this Agreement or the FMS Agreement prescribes a requirement or form of notification in respect of such closure, implement the closure in accordance with that requirement or form;
 - (ii) in all other cases, promptly notify the State in writing specifying the reasons for such closure; and

- (iii) take all reasonable steps to reopen the Freeway as soon as possible after any closure has occurred.
- (d) **(Public use):** Project Co must not use or permit the use of any part of the Freeway for any purpose other than as a public road or as permitted by the State.

25.5 Carrying out O&M Activities

- (a) **(General obligation):** Project Co must carry out the O&M Activities throughout the O&M Phase:
 - (i) so that the performance standards and relevant design lives specified in the PSR are met (including those specified in section 1 of Part B of the PSR);
 - (ii) so that the Relevant Infrastructure is in a condition which satisfies the PSR and meets the FFP Warranty;
 - (iii) without limiting clauses 25.6(d) and 25.6(e), so that all Defects are rectified as soon as reasonably possible;
 - (iv) subject to section 2.1(d) of Part A of the PSR, in accordance with Best O&M Practices; and
 - (v) so that if, in carrying out the O&M Activities, it is required to replace any worn, failed or defective parts, the replacement parts will be:
 - A. of equal quality to those required under this Agreement; and
 - B. Fit For Purpose.
- (b) **(Minimum disruption):** Without limiting clause 25.5(a), Project Co must, in carrying out the O&M Activities:
 - (i) commence and proceed with the O&M Activities in a timely manner and take all steps reasonably available to it (including rescheduling the commencement of other O&M Activities) to minimise any disruption or risk to Users and to users of CityLink;
 - (ii) give priority to and minimise the impact on the safety of Users, users of the transport network and persons or property; and
 - (iii) on completion of any O&M Activities, remove all temporary protection or other structures or equipment erected in connection with those O&M Activities as soon as practicable, and in accordance with Best O&M Practices.
- (c) **(Minimum requirements):** Project Co acknowledges and agrees that the standards, tasks, obligations and other provisions contained or referred to in the PSR (including in Part F7 of the PSR and the Code of Maintenance Standards) do not limit its obligations under clause 25.5(a).
- (d) **(State Assets):** The State and Project Co acknowledge and agree that:
 - (i) notwithstanding any other provision of this Agreement, Project Co has no obligation to operate, maintain, repair or, on the Expiry Date, Handover the State Assets; and

- (ii) the State and any of its Associates may enter the Leased Area to carry out any maintenance of or repairs to the State Assets in accordance with, and subject to, clause 13.3.
- (e) **(Maintained Off-Freeway Facilities):** Project Co must perform the O&M Activities in respect of each Maintained Off-Freeway Facility on and from the earlier of the date of:
 - (i) any licence granted in accordance with clause 6.5(b);
 - (ii) any licence granted in accordance with clause 6.5(ba) in respect of the Maintained Off-Freeway Facilities which are the subject of that licence; and
 - (iii) any other licence granted in respect of the relevant part of the Maintained Off-Freeway Facilities,for the term of the relevant licence.

25.6 O&M Non-Conformances

- (a) **(State notice of potential O&M Non-Conformance):** If the State reasonably considers that there is an O&M Non-Conformance, the State may issue to Project Co a notice requiring Project Co to, within 15 Business Days of receipt of the notice from the State, provide any information reasonably requested by the State in order for the State to ascertain whether there is an O&M Non-Conformance.
- (b) **(Notification by the State of O&M Non-Conformance):** Subject to clause 25.6(c), if the State reasonably believes that there is an O&M Non-Conformance, the State may give notice to Project Co specifying:
 - (i) details of the O&M Non-Conformance; and
 - (ii) a reasonable period of time within which Project Co must rectify that O&M Non-Conformance.
- (c) **(No notice following Project Co notice):** The State will not be entitled to issue a notice under clause 25.6(b) in respect of any O&M Non-Conformance which has previously been notified to the State by Project Co under clause 25.6(d).
- (d) **(Notification by Project Co):** If Project Co identifies an O&M Non-Conformance, Project Co must notify the State as soon as reasonably practicable.
- (e) **(Rectification of O&M Non-Conformance):** Project Co must expeditiously and diligently progress the rectification of each O&M Non-Conformance.
- (f) **(Notice of rectification):** Project Co must give notice to the State when each O&M Non-Conformance has been rectified promptly after rectification by Project Co.
- (g) **(O&M Bond):** If Project Co has failed to rectify an O&M Non-Conformance:
 - (i) which was notified by the State to Project Co under clause 25.6(b) within the time specified in that notice; or
 - (ii) which was notified by Project Co to the State under clause 25.6(d) within 12 months of that notification,

then the State may direct Project Co to provide to the State a Performance Bond for an amount determined by the State (which must be reasonable having regard to the

nature of the O&M Non-Conformance) up to \$[not disclosed] (Indexed), as security for Project Co's performance of its obligations under clause 25.6(e) in relation to that O&M Non-Conformance (**O&M Bond**).

(h) **(Project Co to provide an O&M Bond)**: Project Co must provide the State with an O&M Bond within 10 Business Days of receiving a direction under clause 25.6(g).

(i) **(Replacement of O&M Bond)**: If:

- (i) the State is in possession of an O&M Bond;
- (ii) an additional O&M Non-Conformance is identified in accordance with clause 25.6(b) or clause 25.6(c); and
- (iii) Project Co has failed to rectify that additional O&M Non-Conformance within the relevant time period set out in clause 25.6(g),

the State may direct Project Co to replace the O&M Bond with a replacement Performance Bond with a value equal to:

- (iv) the value of the O&M Bond currently being held by the State; plus
- (v) an amount determined by the State (which must be reasonable having regard to the nature of the additional O&M Non-Conformance) up to \$[not disclosed] (Indexed),

as security for Project Co's performance of its obligations under clause 25.6(e) in relation to the O&M Non-Conformances for which the O&M Bond and replacement Performance Bond are provided (**Replacement O&M Bond**).

(j) **(Project Co to provide a Replacement O&M Bond)**: Project Co must provide the State with a Replacement O&M Bond within 10 Business Days of receiving a direction under clause 25.6(i).

(k) **(Additional O&M Non-Conformances)**: If:

- (i) the State is in possession of a Replacement O&M Bond;
- (ii) an additional O&M Non-Conformance is identified in accordance with clause 25.6(b) or clause 25.6(d); and
- (iii) Project Co has failed to rectify that O&M Non-Conformance within the relevant time period set out in clause 25.6(g),

clause 25.6(i) will apply in respect of the Replacement O&M Bond.

(l) **(Drawing on bonds)**: The parties acknowledge and agree that, without limiting the unconditional nature of any O&M Bond or Replacement O&M Bond (as applicable) that has been provided by Project Co in accordance with this clause 25.6, upon the State drawing down on the O&M Bond or Replacement O&M Bond (as applicable) to recover an amount that the State reasonably considers is required to be spent to rectify the O&M Non-Conformance for which the O&M Bond or Replacement O&M Bond (as applicable) is provided, the O&M Non-Conformance will be deemed to have been rectified by Project Co. For the avoidance of doubt, this clause 25.6(l) does not apply to other amounts drawn down by the State to the extent that such amounts recover other costs incurred or losses suffered by the State in connection with the O&M Non-Conformance.

(m) **(Return of O&M Bond or Replacement O&M Bond)**: The State must return the balance of the undrawn value of an O&M Bond or Replacement O&M Bond (as

applicable) to Project Co no later than 20 Business Days after the date on which Project Co demonstrates to the State's satisfaction (acting reasonably) that the O&M Non-Conformance referred to in clause 25.6(g) or clause 25.6(i) (as applicable) has been rectified to the full extent to which it can be rectified.

- (n) **(KPI liability)**: This clause 25.6 does not apply to any event or circumstance giving rise to a KPI Event including a breach of a State Project Document for which Project Co has accrued a KPI Point in accordance with clause 32.

25.6A Relief from O&M Non-Conformances

- (a) **(Modification Proposal)**: If Project Co considers (acting reasonably) that an O&M Non-Conformance which is identified in accordance with clause 25.6(b) or clause 25.6(d) is an O&M Non-Conformance that:
- (i) cannot be rectified;
 - (ii) cannot be rectified on commercially reasonable terms; or
 - (iii) relates to a change to the Tolling Back Office System which has been approved by the State in accordance with clause 30.4,

Project Co may propose a Modification Proposal in accordance with clause 34.6, provided that the Modification Proposal contains details of a commercial proposal to seek relief from the obligation to rectify part or all of the O&M Non-Conformance.

- (b) **(State response)**: Subject to clause 25.6A(c), clause 34.6(b) will apply to the Modification Proposal submitted by Project Co under this clause 25.6A.
- (c) **(State considerations)**: In considering the Modification Proposal submitted by Project Co under this clause 25.6A, the State must:
- (i) act reasonably; and
 - (ii) have regard to Best O&M Practices and the standards and practices in use on other privately operated roads in Australia.

25.7 Incidents

Project Co must respond to all Incidents in accordance with this Agreement, including the PSR.

25.8 Force Majeure during the O&M Phase

- (a) **(Obligations to be suspended)**: On the occurrence of a Force Majeure Event during the O&M Phase, in addition to their rights and obligations under clause 27, the obligations of each party in accordance with this Agreement which are affected by the Force Majeure Event will be suspended, but only to the extent that, and for so long as, the Force Majeure Event prevents that party from meeting its relevant obligations in accordance with this Agreement.
- (b) **(Party not in breach)**: A party's failure to carry out its obligations in accordance with this Agreement which are suspended under clause 25.8(a) will not be a breach of this Agreement by that party, a Major Default or Default Termination Event during the period of suspension under clause 25.8(a).
- (c) **(Exceptions)**: If the Force Majeure Event is also:
- (i) an Uninsurable Risk (as agreed or determined in accordance with clause 40.14); or

- (ii) a Day 1 Uninsurable Risk,
clause 40.15 will apply.

25.9 Suspension of obligations during O&M Phase

- (a) **(Obligations suspended):** To the extent that:
 - (i) a Key Risk Event;
 - (ii) a State Act of Prevention; or
 - (iii) an FMS Failure,

prevents or delays Project Co from performing the O&M Activities or otherwise meeting its obligations in accordance with this Agreement, then:
 - (iv) the relevant obligations of Project Co will be suspended, but only until the date the Key Risk Event, the State Act of Prevention or FMS Failure and the consequences of the Key Risk Event, the State Act of Prevention or the FMS Failure (as applicable) cease to prevent or delay Project Co from carrying out the relevant obligations; and
 - (v) the failure to carry out such suspended obligations will not be a breach of this Agreement by Project Co, a Major Default or a Default Termination Event.
- (b) **(Obligation to keep Freeway open):** In the case of a Key Risk Event described in paragraph (k) of the definition of Key Risk Event or an FMS Failure, clause 25.9 will only suspend Project Co's obligation under clause 25.4 to keep the Freeway open to the extent that the occurrence of the Key Risk Event or FMS Failure prevents or delays the safe passage of vehicles.

25.10 Updating the Separation Plans

- (a) **(Initial submission):** Project Co must, no later than 120 days prior to the Date of West Gate Tunnel Completion, submit to the State for its approval Separation Plans which are consistent with the Separation Principles and take into account (to the extent relevant to the matters contemplated by the Separation Principles) any changes to the Relevant Infrastructure or the O&M Activities that have occurred since Financial Close).
- (b) **(Further submissions):** Project Co must within 60 Business Days after the end of each full Financial Year during the O&M Phase either:
 - (i) submit to the State for its approval Separation Plans which are consistent with the Separation Principles and take into account (to the extent relevant to the matters contemplated by the Separation Plans) any changes to the Relevant Infrastructure or the O&M Activities that have occurred since the previous submission under clause 25.10(a) or subsequent submission under this clause 25.10(b); or
 - (ii) notify the State that no updates are required to the Separation Plans since the previous submission provided that the Separation Plans are consistent with the Separation Principles and take into account (as far as relevant to the matters contemplated by the Separation Plans) any changes to the Relevant Infrastructure or the O&M Activities that have occurred since the previous submission under clause 25.10(a) or this clause 25.10(b).

- (c) **(Single Asset Handover (WGT)):** Without limiting clause 25.10(a) or clause 25.10(b), where at the relevant time, it is anticipated that Single Asset Handover (WGT) will occur, Project Co must:
- (i) where this Agreement is anticipated to end on the Final Expiry Date, at least 5 years and 6 months before the Final Expiry Date; or
 - (ii) where this Agreement is anticipated to end earlier than the Final Expiry Date, within such period before the Expiry Date as is reasonably practicable,
- update each Separation Plan:
- (iii) to include details of the tests that are proposed to be conducted for the Handover Reviewer to verify that the Separated Systems meet the Handover Condition in respect of those systems; and
 - (iv) for any matters usually the subject of its scheduled updates under clause 25.10(a),
- and submit each updated Separation Plan to the State for approval, with a copy to the Handover Reviewer.
- (d) **(State response):** Within:
- (i) 60 Business Days after receiving a Separation Plan in accordance with clause 25.10(a); or
 - (ii) 30 Business Days after receiving an updated Separation Plan in accordance with clause 25.10(b) or 25.10(c) (as applicable),
- the State must (acting reasonably and with regard to the opinion of the Handover Reviewer (if the Handover Reviewer is engaged at that time)) notify Project Co that:
- (iii) it approves the updated Separation Plan; or
 - (iv) it does not approve the updated Separation Plan, including the reasons for its decision, in which case Project Co must update the Separation Plan to address any reasonable concerns of the State and resubmit the updated Separation Plan to the State, and this clause 25.10(d) will continue to apply to any updated Separation Plan until it has been approved by the State.
- (e) **(Deemed approval):** If in respect of a Separation Plan or updated Separation Plan submitted by Project Co under this clause 25.10, the State fails to give its approval (or otherwise) within the time period specified in clause 25.10(a) or clause 25.10(d) (as applicable), the State will be deemed to have given its approval to that updated Separation Plan.
- (f) **(Handover Reviewer):** As part of the engagement of the Handover Reviewer as contemplated by clause 28, the parties must provide the Handover Reviewer with a copy of the Separation Plans and must thereafter provide the Handover Reviewer with copies of all subsequently updated and approved Separation Plans.

25.11 Accident Towing Licence Event

Project Co will be relieved from its incident clearance obligations under this Agreement to the extent it is prevented from complying with those obligations due to an Accident Towing Licence Event.

26. Interaction with transport network

26.1 Transport network support

- (a) **(Principal Road Interfaces):** On and from the Date of West Gate Tunnel Completion, the State must afford support, or procure that support is afforded, to the Freeway equivalent to the support the State affords to other freeways by:
- (i) subject to clause 26.1(a)(v), managing the Principal Road Interfaces having regard to the status of the Freeway as a freeway and to a level comparable to that afforded to other freeways;
 - (ii) expeditiously and diligently progressing maintenance (including incident management and obstruction removal) and repair of the Principal Road Interfaces in a manner and to a level similar to that afforded to other principal road interfaces (being operated and maintained by or on behalf of the State) for freeways;
 - (iii) if upgrading a Principal Road Interface expeditiously and diligently progressing that upgrading, in a manner and to a level similar to that afforded to other principal road interfaces (being operated and maintained by or on behalf of the State) for freeways;
 - (iv) procuring in a manner and to a level similar to that afforded to other freeways, that there will be no interference with the flow of traffic on a Principal Road Interface due to damage to, or a failure to expeditiously and diligently progress the repair of damage to, such parts of the Principal Road Interface as are reasonably required by the public for access to or from the Freeway using that Principal Road Interface (other than damage caused by Project Co or any of its Associates); and
 - (v) procuring that:
 - A. there shall be no removal of or closure of a lane on a Principal Road Interface (other than a Principal Road Interface (Freeway)); or
 - B. in respect of a Principal Road Interface (Freeway), there shall be no removal of or closure of a lane on that Principal Road Interface (Freeway), to the extent that this will have an adverse impact on the capacity of that Principal Road Interface (Freeway) to feed traffic onto the Freeway, other than where that removal or closure is temporary in nature and required for, due to, or part of:
 - C. any maintenance (including incident management and obstruction removal), repair or upgrading of the Principal Road Interface; or
 - D. any other development, project or works procured by the State or any Authority.

- (b) **(Exception to transport network support):** The State will not be considered to have failed to provide the support required under clause 26.1(a):
- (i) because of a failure to undertake new road works, unless that failure was due to discrimination against the Freeway relative to other freeways;
 - (ii) because of a failure to upgrade the capacity of a Principal Road Interface;
 - (iii) because of an act done in the course of the day to day activities of the State or its Associates in the management of the transport network, being activities which are expeditiously and diligently progressed and applied, as appropriate, throughout equivalent aspects of the transport network;
 - (iv) to the extent the failure is due to Project Co or any of its Associates breaching a Project Document; or
 - (v) because of a failure caused by an event beyond the reasonable control of the State or its Associates except to the extent that the State or its relevant Associates do not seek to overcome or mitigate the effects of that event in a manner and to a level comparable to that which would be afforded to other freeways in similar circumstances.

26.2 Consequences of failure to provide State support

Without limiting clause 27, a failure by the State to provide the support required of it under clause 26.1 will not constitute a breach of this Agreement.

26.3 No restrictions

- (a) **(No restriction on changes to transport network):** Nothing in the Project Documents will restrict, or require the exercise of, any right of the State, directly or through any Authority, to develop, manage or change Victoria's transport network.
- (b) **(Examples):** Without limiting clause 26.3(a), the State and all Authorities may on their own account exercise or not exercise (and may authorise others to exercise or not exercise) any right they would otherwise have had including to:
- (i) construct new roads;
 - (ii) extend, alter or upgrade existing roads;
 - (iii) connect new or existing roads to the Freeway;
 - (iv) construct new public transport routes or services;
 - (v) extend, alter or upgrade existing public transport routes or services;
 - (vi) implement a Relevant Price or Restriction;
 - (vii) otherwise implement government transport policies; or
 - (viii) otherwise do anything which, subject to this Agreement, they are empowered to do by Law.
- (c) **(Project Co's risk):** The parties agree that subject to:
- (i) clause 26.4;

- (ii) any entitlement to relief as a Compensable Extension Event, Key Risk Event or Modification; and
- (iii) any Claim Project Co may have as a consequence of a State Act of Prevention,

Project Co will have no Claim against the State arising in connection with any consequence of the State or any other Authority exercising, or not exercising, any right of a type referred to in this clause 26.3.

26.4 Proximate State Work

- (a) **(State may undertake Proximate State Work):** The State or any person authorised by the State may, at any time during the Term, undertake Proximate State Work.
- (b) **(Proximate State Works Notice):** The State must provide reasonable notice to Project Co of its intention to undertake Proximate State Works (**Proximate State Works Notice**).
- (c) **(Proximate State Works obligation):** In respect of any Proximate State Work the subject of a Proximate State Works Notice:
 - (i) Project Co must:
 - A. comply with its obligations under clauses 10.7 and 10.8;
 - B. give the State, its Associates and any person authorised by the State sufficient access to the Construction Areas, Maintenance Areas or Leased Area to enable the State to plan, design, investigate or undertake the Proximate State Work;
 - C. fully co-operate with the State, its Associates and any person authorised by the State to facilitate the implementation of the Proximate State Work, including permitting temporary closures, or closures of other parts of the West Gate Tunnel, and otherwise allowing the management of traffic on, entering or leaving the Freeway to facilitate the State, its Associates and any person authorised by the State managing traffic on or in the vicinity of the West Gate Tunnel; and
 - D. use its best endeavours to minimise any interference with, or disruption or delay to, the activities associated with the Proximate State Work; and
 - (ii) the State must:
 - A. use its reasonable endeavours to co-ordinate and interface all activities associated with the Proximate State Work with the Project Activities;
 - B. minimise any interference with, or disruption or delay to, the Project Activities;
 - C. to the extent the Proximate State Works are located on the Construction Areas, Maintenance Areas or Leased Areas, comply with the usual and reasonable requirements of Project Co relating to obtaining access to the Site;

- D. ensure that its Associates and any person authorised by the State comply with the requirements of this clause 26.4(c)(ii); and
 - E. ensure that the entity undertaking the Proximate State Work has an obligation to fully co-operate with Project Co and its Associates to facilitate the implementation of the Project.
- (d) **(Entitlement to costs):** In respect of any Proximate State Work the subject of a Proximate State Works Notice:
- (i) that are undertaken prior to the Date of Tolling Completion, the State must issue a Modification Order in accordance with clause 34.1; and
 - (ii) that are undertaken on or after the Date of Tolling Completion, Project Co will be entitled to payment of amounts as calculated in accordance with the Change Compensation Principles.
- (e) **(Maintenance responsibility):** If the State constructs any Proximate State Work upon the Leased Area (or authorises another person to do so), the State may at any time issue to Project Co a Modification Order in accordance with clause 34.1 or Modification Request in accordance with clause 34.2, in relation to the maintenance and repair of that Proximate State Work, in which case the procedures in clause 34 will apply.

27. Key Risk Events

27.1 Notice of Key Risk Event

If, on or after the Date of Tolling Completion, a Key Risk Event occurs which has had, has started to have or will have, a Relevant Effect, Project Co may give the State a notice, including such details as the State may reasonably require as to the effect of the Key Risk Event on the Project, within 12 months after Project Co becomes aware of the occurrence of the Key Risk Event (**Key Risk Event Notice**).

27.2 Occurrence of a Key Risk Event

- (a) **(Obligation to negotiate):** If Project Co provides a Key Risk Event Notice, then as soon as practicable, but no later than 20 Business Days after the State has received the Key Risk Event Notice, the parties must negotiate in good faith with a view to agreeing:
- (i) whether or not the Key Risk Event Notice is valid and was given within the time period set out in clause 27.1;
 - (ii) whether or not the relevant Key Risk Event has occurred; and
 - (iii) if it has, whether or not the Key Risk Event has had, has started to have, or will have, a Relevant Effect.
- (b) **(Determination of matter):** If the parties do not reach agreement within 60 Business Days after commencing the negotiations contemplated by clause 27.2(a), then either the State or Project Co may refer the matter for resolution in accordance with clauses 43 and 44.

27.3 Good faith negotiations

- (a) **(Obligation to negotiate):** As soon as practicable, but no later than 20 Business Days after it has been agreed or determined that:

- (i) the Key Risk Event Notice was validly given within the time period set out in clause 27.1;
- (ii) the Key Risk Event has occurred; and
- (iii) the Key Risk Event has had, has started to have, or will have, a Relevant Effect,

the parties must negotiate in good faith to determine a redress which restores Project Co to the position that it would be in were the impact of the Key Risk Event overcome so that the Adjusted Net Operating Cashflow is restored to:

- (iv) in relation to all Key Risk Events, other than an event described in paragraph (a)(ii), (a)(iii), (a)(iv), (a)(v), (a)(vi) or (h) of the definition of Key Risk Event, the lower of:
 - A. the Net Operating Cashflow immediately before the occurrence of the Key Risk Event; and
 - B. the Base Case Net Operating Cashflow immediately before the occurrence of the Key Risk Event; and
 - (v) in relation to a Key Risk Event described in paragraph (a)(ii), (a)(iii), (a)(iv), (a)(v), (a)(vi) or (h) of the definition of Key Risk Event, the Net Operating Cashflow immediately before the occurrence of the Key Risk Event.
- (b) **(Determination of matter):** If the parties do not reach agreement within 60 Business Days after commencing the negotiations contemplated by clause 27.3(a), then either the State or Project Co may refer the matter for resolution in accordance with clauses 43 and 44.

27.4 Redress

- (a) **(Form and timing of redress):** Subject to clause 27.4(b), if the amount of the redress in respect of the Key Risk Event:
- (i) is agreed in accordance with clause 27.3(a); or
 - (ii) is determined in accordance with clause 27.3(b),
- then Project Co will be entitled to such redress, and the parties acknowledge and agree that sections 4.1, 4.2(a), 4.2(b)(ii), 4.2(b)(iii) and 4.2(c) of the Change Compensation Principles will apply.
- (b) **(Consideration regarding form of redress):** If the parties are required to negotiate in accordance with section 4.2(a)(ii) of the Change Compensation Principles, the parties acknowledge and agree that regard must be had to:
- (i) the timing of cashflow requirements related to operation, maintenance, tolling and debt commitments (based on the Notional Cost Profile and the Notional Debt Profile) of Project Co; and
 - (ii) efficient application and structuring of the redress (so as, for example, not to create or increase any Liability for Taxes, the Liability for which need not be incurred or need only be incurred to a limited extent).
- (c) **(Determination of matter):** Subject to clause 27.4(d), if the parties do not reach agreement within 20 Business Days after commencing the negotiations

contemplated by section 4.2(a)(ii) of the Change Compensation Principles, then either the State or Project Co may refer the matter for resolution in accordance with clauses 43 and 44.

- (d) **(Limitation on form of disputed redress):** In making the determination in relation to a Dispute that has been referred to dispute resolution in accordance with clause 27.4(c), the expert or the arbitrator (as applicable) must ensure, and the parties must require, that his or her determination as to any redress does not involve a method of redress other than those identified in sections 4.2(a)(ii)A to 4.2(a)(ii)C of the Change Compensation Principles.
- (e) **(No over compensation):** The State will not be obliged under any circumstances to make available or be bound by a method of redress to the extent that:
 - (i) it will achieve an outcome in excess of that which is necessary to provide the redress which restores Project Co to the position described in clause 27.3(a); or
 - (ii) any other reasonable payment, compensation or redress has been made by the State arising out of or in connection with the Key Risk Event or the circumstances relating to the Key Risk Event.
- (f) **(Implementation of redress):** If a redress is agreed or determined on the basis that a Key Risk Event will have, but has not had or started to have, a Relevant Effect, then no redress will be implemented before the Key Risk Event has had or has started to have a Relevant Effect, unless the State agrees otherwise.
- (g) **(Financial contribution):** To the extent that the redress agreed or determined to be appropriate involves the making of a financial contribution by the State, the amount of that contribution is to be determined net of moneys due and payable to the State under the State Project Documents.

28. Handover

28.1 Separation Plan Services

- (a) **(Notification):** If at any time after the Date of Tolling Completion, a party considers that Single Asset Handover (WGT) will occur, that party may notify the other party, provided such notice must not be given any earlier than 12 months prior to the anticipated Expiry Date (**Separation Notice**).
- (b) **(Dispute):** If the party receiving a Separation Notice disagrees that Single Asset Handover (WGT) will occur, it may refer the matter for resolution in accordance with clauses 43 and 44.
- (c) **(State notice of intention to terminate):** Without limiting the State's rights under clause 28.1(a) or clause 42, the State may at any time give Project Co written notice that it intends to terminate this Agreement prior to the Final Expiry Date in accordance with clause 42.2 or clause 42.5 (**State Notice of Intention to Terminate**).
- (d) **(Separation Plan Services):** Upon agreement by the parties or determination that Single Asset Handover (WGT) will occur or upon receipt of a State Notice of Intention to Terminate, Project Co must carry out the Separation Plan Services in accordance with the requirements of the Separation Plans so that the Separation Plan Services are completed upon the Final Expiry Date or, where this Agreement is terminated earlier than the Final Expiry Date, as soon as reasonably practicable following the Expiry Date.

- (e) **(Integration Services):** Project Co must carry out the Integration Services so that the Integration Services are completed upon the Final Expiry Date or, where this Agreement is terminated earlier than the Final Expiry Date, as soon as reasonably practicable following the Expiry Date.

28.2 State obligations

Upon agreement by the parties or determination that Single Asset Handover (WGT) will occur, or upon the issue of a State Notice of Intention to Terminate, the State must perform its obligations under the Separation Plans in accordance with the requirements of the Separation Plans.

28.3 Meaning of Handover Condition

For the purposes of this clause 28 **Handover Condition** means:

- (a) if handover of all or any part of the Relevant Infrastructure is to occur prior to the Date of Tolling Completion, the condition that the Relevant Infrastructure and the Construction Areas (or the relevant parts of the Relevant Infrastructure and Construction Areas) should be in if Project Co had complied with all of its obligations in connection with the Relevant Infrastructure and the Construction Areas (or the relevant parts of them) in accordance with this Agreement, having regard to the time and circumstances of the termination;
- (b) if handover of all or any part of the Relevant Infrastructure is to occur on or after the Date of Tolling Completion and before the Final Expiry Date, the condition that the Relevant Infrastructure, Maintenance Areas and Leased Area (or the relevant parts of the Relevant Infrastructure, Maintenance Areas and Leased Areas) would be in if Project Co had complied with all of its obligations in connection with the Relevant Infrastructure, Maintenance Areas and Leased Area (or the relevant parts of them) in accordance with this Agreement up to the time of termination having regard to the time and circumstances of the termination (except where the Agreement is terminated in accordance with clause 42.4); or
- (c) if handover of all or any part of the Relevant Infrastructure is to occur on the Final Expiry Date, the condition that the Relevant Infrastructure, Maintenance Areas and Leased Areas (or the relevant parts of the Relevant Infrastructure, Maintenance Areas and Leased Areas) would be in as at that date if Project Co had complied with all of its obligations in connection with the Relevant Infrastructure, Maintenance Areas and Leased Area (or the relevant parts of them) in accordance with this Agreement,

which will in relation to clauses 28.3(b) and 28.3(c) have regard to any modifications or changes required to be made to the Separated Systems and the FCC by Project Co in accordance with the requirements of the Separation Plans.

28.4 Obligations approaching end of O&M Phase

- (a) **(Handover Reviewer):** No later than 12 months before the inspections to be undertaken in accordance with clause 28.4(d)(i), or as soon as reasonably practicable before the inspections to be undertaken in accordance with clause 28.4(d)(ii):
 - (i) the parties must meet to determine the identity of a Handover Reviewer to be appointed jointly by Project Co and the State to carry out the tasks identified in this clause 28;

- (ii) if the parties are unable to agree the identity of a Handover Reviewer in accordance with clause 28.4(a)(i) within 20 Business Days of meeting, the State will appoint a Handover Reviewer; and
- (iii) the State and Project Co must jointly engage the Handover Reviewer in accordance with the terms of this Agreement,

provided that the Handover Reviewer to be engaged must:

- (iv) be independent of the Transurban Group and the State;
 - (v) be reasonably acceptable to the State and Project Co;
 - (vi) have appropriate qualifications and experience; and
 - (vii) have no interest or duty which conflicts or may conflict with its functions as a Handover Reviewer.
- (b) **(Costs):** The costs and expenses of the Handover Reviewer (including the Handover Reviewer's professional fees and any other costs incurred in accordance with the terms of its joint engagement) will be paid to the Handover Reviewer by the State.
- (c) **(Payment of costs):** Project Co must pay to the State on demand, from time to time, [not disclosed]% of the costs and expenses of the Handover Reviewer paid by the State under clause 28.4(b).
- (d) **(Joint inspection):** Project Co, the State and the Handover Reviewer appointed under clause 28.4(a) must carry out joint inspections of the Relevant Infrastructure:
- (i) where this Agreement is to end on the Final Expiry Date, at least:
 - A. 5 years before the Final Expiry Date; and
 - B. every 6 months after that initial inspection until the end of the O&M Phase; or
 - (ii) where this Agreement is to end following the Date of Tolling Completion and earlier than the Final Expiry Date, within such shorter period before the date of termination as is required by the State,
- (each a **Condition Review Date**).
- (e) **(Program to achieve proper Handover):** Following each inspection undertaken in accordance with clause 28.4(d), the Handover Reviewer must give to the State and Project Co a report (**Outstanding Matters Report**) specifying:
- (i) the details of:
 - A. the maintenance and repair work required to be carried out by Project Co to meet the Handover Condition and a program for undertaking such works, having regard to the time and circumstances of the inspection and ensuring that, where reasonably practicable, the program is consistent with any planned maintenance or repair work scheduled to be undertaken by Project Co in accordance with the Project Plans and O&M Manuals;

- B. where applicable in accordance with clause 28.1(d), the Separation Plan Services to be carried out by Project Co in order to comply with its obligations under clause 28.1(d) and a program for undertaking such services, having regard to the time and circumstances of the inspection and ensuring that the program is consistent with Project Co's obligations under the Separation Plans; and
- C. all other obligations, services and activities to be carried out by Project Co in order for Handover to occur, including the Integration Services,
- collectively the **Handover Services**;
- (ii) the Handover Reviewer's opinion (together with its reasons for forming that opinion) of whether Handover will occur by the Expiry Date;
- (iii) if the Handover Reviewer forms the opinion that Handover will not occur by the Expiry Date, the Handover Reviewer's opinion (together with its reasons for forming that opinion) of the likely duration of Project Co's obligation to perform Transition Services in accordance with clause 28.9(a) (**Anticipated Transition Services Period**); and
- (iv) an estimate of the total costs of undertaking the Handover Services and where applicable, the Transition Services, for the Anticipated Transition Services Period (**Handover Bond Reference Amount**).
- (f) (**Dispute**): If either party does not agree with any of the matters determined by the Handover Reviewer in the Outstanding Matters Report, that party may refer the matter for resolution in accordance with clauses 43 and 44 within 20 Business Days of the Outstanding Matters Report being received by it.
- (g) (**Condition Review Date**): Notwithstanding the terms of this clause 28, the State Representative may by notice to Project Co:
- (i) adjust the Condition Review Date to an alternative date which may not be earlier than 5 years before the Final Expiry Date;
- (ii) elect to relieve Project Co from any obligation to undertake any of the Handover Services; or
- (iii) acting reasonably, increase the number of times and frequency with which the Handover Reviewer, the State and Project Co must inspect and assess the condition of the Relevant Infrastructure (or the relevant part of the Relevant Infrastructure), assess any Handover Services or prepare the Outstanding Matters Report, provided that the costs of undertaking such additional inspections will be borne by the State and will not be subject to recovery by the State under clause 28.4(c).
- (h) (**Review of Condition Review Date**): If the State Representative exercises its rights in accordance with clause 28.4(g)(ii):
- (i) the PSR and any other relevant parts of the State Project Documents will be varied to the extent agreed by the parties or, where not agreed, as determined by the Handover Reviewer; and
- (ii) the amount calculated in accordance with the Change Compensation Principles will be a debt due and payable by Project Co to the State and will also be subtracted from the Handover Bond Reference Amount.

- (i) **(Implement program):** Without limiting Project Co's obligations in accordance with this Agreement, Project Co must:
 - (i) undertake the Handover Services and implement the program identified in the latest Outstanding Matters Report (or as otherwise determined under clause 28.4(f)), other than any Handover Services which the State has agreed to relieve Project Co from under clause 28.4(g)(ii); and
 - (ii) within 20 Business Days after receiving an Outstanding Matters Report under clause 28.4(e), provide to the State a Performance Bond having a face value equal to [not disclosed]% of the Handover Bond Reference Amount or such lower amount agreed by the State (**Handover Bond**), as security for the performance of Project Co's obligations to perform the Handover Services and, where applicable, the Transition Services. Where the Handover Bond Reference Amount is disputed by a party and subsequently agreed between the parties or determined under clause 28.4(f), Project Co must provide a replacement Handover Bond having a face value equal to [not disclosed]% of the revised Handover Bond Reference Amount agreed or determined. Where Project Co provides a replacement Handover Bond in these circumstances, or after the issue of a subsequent Outstanding Matters Report, the State must return the Handover Bond which is being replaced within 10 Business Days upon receiving the replacement Handover Bond.

28.5 Reaching Handover

- (a) **(Notice of expected Handover):** Project Co must:
 - (i) at least 60 Business Days prior to the date upon which it reasonably expects Handover to occur, give the State (with a copy to the Handover Reviewer) a notice setting out that date on which it expects Handover to occur; and
 - (ii) if, after Project Co gives the State and the Handover Reviewer a notice under clause 28.5(a)(i), the expected date upon which Project Co reasonably expects Handover to occur changes, promptly give a notice the State (with a copy to the Handover Reviewer) revising that date.
- (b) **(Notice by Project Co):** When Project Co considers that Handover has occurred, Project Co must:
 - (i) notify the State and the Handover Reviewer of its opinion; and
 - (ii) request the Handover Reviewer to issue a Handover Matters Notice.
- (c) **(Notice from Handover Reviewer to parties):** Within 45 Business Days after receiving a notice from Project Co under clause 28.5(b), (or within 20 Business Days where Project Co has previously given a notice under clause 28.5(b)) the Handover Reviewer must issue a notice to the parties:
 - (i) stating that in its reasonable opinion, Handover has occurred; or
 - (ii) which:
 - A. states that in its reasonable opinion, Handover has not occurred;
 - B. provides details of matters or things (if any) which it considers are required to be remedied or rectified by the State or its

Associates in order for the Relevant Infrastructure to meet the Handover Condition;

- C. specifies any Separation Plan Services or other Handover Services which it considers have not been completed by Project Co in accordance with the requirements of this clause 28; and
- D. specifies the amount which it reasonably considers is required to be spent by the State or its Associates to remedy or rectify the matters or things specified in clauses 28.5(c)(ii)B and 28.5(c)(ii)C,

(Handover Matters Notice).

- (d) **(Project Co response):** Project Co must, within 20 Business Days after receiving the Handover Matters Notice, notify the State that it:
 - (i) agrees with the matters set out in the Handover Matters Notice **(Handover Matters Agreement Notice)**; or
 - (ii) disagrees with the matters set out in the Handover Matters Notice, together with details of why Project Co disagrees **(Handover Matters Disagreement Notice)**.
- (e) **(Handover Matters Agreement Notice):** If Project Co gives the State a Handover Matters Agreement Notice or fails to give a Handover Matters Disagreement Notice in accordance with clause 28.5(d), then:
 - (i) the amount (if any) set out in the Handover Matters Notice will be a debt due and payable by Project Co to the State; and
 - (ii) the State may (at its absolute discretion):
 - A. make a demand under the Handover Bond to recover the amount (if any) set out in the Handover Matters Notice; or
 - B. direct Project Co to carry out any Handover Services the subject of the Handover Matters Notice, in which case Project Co will be entitled to provide a further notice to the Handover Reviewer under clause 28.5(b) when it considers that Handover has occurred.
- (f) **(Handover Matters Disagreement Notice):** If Project Co gives the State a Handover Matters Disagreement Notice, the parties must consult in good faith and use their reasonable endeavours to agree on the details or the amount referred to in the Handover Matters Notice.
- (g) **(Consequences of consultation):** If the parties, following the consultation under clause 28.5(f):
 - (i) reach agreement that an amount is payable in respect of a Handover Matters Notice, then:
 - A. the agreed amount will be a debt due and payable by Project Co to the State; and
 - B. the State may (in its absolute discretion):

- 1) make a demand under the Handover Bond to recover the agreed amount; or
 - 2) direct Project Co to carry out any Handover Services the subject of the Handover Matters Notice, in which case Project Co will be entitled to provide a further notice to the Handover Reviewer under clause 28.5(b) when it considers that Handover has occurred;
- (ii) reach agreement that no amount is payable in respect of a Handover Matters Notice, then the State will return the Handover Bond to Project Co within 5 Business Days of such agreement; or
- (iii) are unable to reach agreement as to whether an amount is payable in respect of a Handover Matters Notice and the amount of any payment within 10 Business Days after service of the Handover Matters Disagreement Notice, then:
- A. the State may (in its absolute discretion):
 - 1) make a demand under the Handover Bond up to the amount set out in the Handover Matters Notice; or
 - 2) direct Project Co to carry out any Handover Services the subject of the Handover Matters Notice, in which case Project Co will be entitled to provide a further notice to the Handover Reviewer under clause 28.5(b) when it considers that Handover has occurred; and
 - B. either party may refer the matter for resolution in accordance with clauses 43 and 44.
- (h) **(State to reimburse Project Co):** The State must pay Project Co the difference between:
- (i) the amount drawn from the Handover Bond following a demand under clause 28.5(g)(iii)A.1); and
 - (ii) any lesser amount which is determined following the resolution of the dispute to be the amount referred to in the Handover Matters Notice,
- within 5 Business Days of the resolution of the dispute.
- (i) **(No obligation in respect of monies):** Project Co acknowledges and agrees that the State is under no obligation to apply any monies it receives under this clause 28.5 towards the cost of satisfying the Handover Conditions or performing the Handover Services.
- (j) **(Acknowledgment):** The parties acknowledge and agree that:
- (i) upon the State drawing down on the Handover Bond in accordance with clause 28.5(e)(ii)A clause 28.5(g)(i)B.1), or clause 28.5(g)(iii)A.1) the Handover Services will be deemed to have been carried out by Project Co; and
 - (ii) drawing down on the Handover Bond in accordance with clause 28.5(e)(ii)A, clause 28.5(g)(i)B.1) or clause 28.5(g)(iii)A.1) is the State's

sole and exclusive remedy for a failure by Project Co to carry out the Handover Services.

- (k) **(No limitation of rights):** Nothing in this clause 28.5 will limit the State's rights against Project Co, whether under this Agreement or otherwise according to Law, in respect of any Defect or other failure to comply with clause 28.
- (l) **(Return of Handover Bond):** The State must:
 - (i) return the Handover Bond within 10 Business Days of the Handover Reviewer giving notice under clause 28.5(c)(i); or
 - (ii) where the Handover Reviewer has given a notice under clause 28.5(c)(ii), return the balance of the undrawn value of the Handover Bond to Project Co no later than 20 Business Days after:
 - A. it has drawn on the Handover Bond; or
 - B. the parties have agreed, or it has been determined, that no amount is payable in respect of a Handover Matters Notice.

28.6 Handover of Relevant Infrastructure and Site

Without limiting clauses 28.7, 28.8 and 28.12, upon the Final Expiry Date or, where this Agreement is terminated earlier than the Final Expiry Date, as soon as reasonably practicable following the Expiry Date, Project Co must:

- (a) **(handover of Relevant Infrastructure and Site):** handover:
 - (i) the Relevant Infrastructure, the Construction Areas, Maintenance Areas and Leased Area (as applicable), other than the Tolling Back Office System or the Asset Management System;
 - (ii) the FCC and the Alternate Traffic Control Room (where the Alternative Traffic Control Room has been leased to Project Co in accordance with clause 6.10(h)); and
 - (iii) a replica of the Tolling Back Office System and Asset Management System,

including (subject to clause 52 and the terms of the Subcontractor IP Exceptions Schedule and Schedule 33) all rights and interest in them, and with regard to the requirements of the relevant Separation Plan, to the State or its nominee free from any encumbrances and in the Handover Condition;
- (b) **(transfer of rights):** subject to clause 52 and the terms of the Subcontractor IP Exceptions Schedule and Schedule 33, to the extent that it has not already been transferred, transfer to the State or its nominee all rights, title and interest in plant and equipment owned or held by Project Co or OpCo which is required to allow the State or its nominee to operate, maintain and repair the Relevant Infrastructure to the standards required of Project Co in accordance with this Agreement free from any encumbrances;
- (c) **(delivery of information):** deliver to the State or its nominee all manuals, records, plans and other information under the control of Project Co, including Project Co Material, which are relevant to the Project;
- (d) **(payment of insurance proceeds):** pay to the State or its nominee any insurance proceeds from any Insurances for the repair and rebuilding of the Relevant

Infrastructure to the extent not already repaired or rebuilt, and assign to the State any rights available to Project Co under the Insurances;

- (e) **(transfer of approvals)**: do all acts and things necessary to enable the State or its nominee to have transferred to it all Approvals necessary to deliver the Project or assist the State or its nominee to obtain such Approvals; and
- (f) **(delivery of project)**: do all other acts and things to enable the State or its nominee to be in a position to deliver the Project to the standards specified in accordance with this Agreement, with minimum disruption.

28.7 Subcontracts and Roaming Agreement

Upon the Final Expiry Date or, where this Agreement is terminated earlier than the Final Expiry Date, as soon as reasonably practicable following the Expiry Date (having regard to any Subcontracts required to be retained by Project Co for the period of time which Project Co is required to perform any Transition Services under this Agreement), Project Co must:

- (a) **(novation of Subcontracts)**: subject to clause 28.7(b) and clause 28.7(c), procure the novation or, if such novation cannot be procured, the assignment to the State or its nominee of:
 - (i) such Subcontracts (excluding the Operating Services Agreement and any Service Agreements) as they relate to the Relevant Infrastructure as the State may nominate;
 - (ii) any leases, subleases and licences proposed to be novated or assigned by Project Co and agreed to by the State; and
 - (iii) the Roaming Agreement;
- (b) **(novation of Subcontracts (O&M – CityLink / WGT))**:
 - (i) upon Consolidated Handover, procure the novation or, if such novation cannot be procured, the assignment to the State or its nominee of all Subcontracts (O&M – CityLink/WGT) (other than the Operating Services Agreement); or
 - (ii) upon Single Asset Handover (WGT), either:
 - A. procure the partial novation or, if such partial novation cannot be procured, the partial assignment to the State or its nominee of those aspects of the Subcontracts (O&M – CityLink/WGT) (other than the Operating Services Agreement) that relate to the Project; or
 - B. procure from each Subcontractor who is a party to a Subcontract (O&M – CityLink/WGT) (other than the Operating Services Agreement) a new subcontract (**New WGT Subcontract**) which is to be entered into by that Subcontractor with the State or its nominee which:
 - 1) relates only to the provision of operation, maintenance, repair and/or tolling goods or services (including, where applicable, the provision of licensed materials) in relation to the Project; and

- 2) is on the same terms as the relevant Subcontract (O&M – CityLink/WGT), other than in relation to pricing; and
 - (iii) in relation to pricing under the New WGT Subcontract, use reasonable endeavours to procure from the relevant Subcontractor an agreement to provide the relevant goods or services (including, where applicable, the provision of licensed materials) to the State or its nominee for a price that is no less favourable than the price for which those goods or services were provided to the Project and the CityLink Project under the relevant Subcontract (O&M – CityLink/WGT), having regard to the proposed level of consumption of the goods or services by the State or its nominee under the New WGT Subcontract compared to the consumption of those goods or services by the Project and the CityLink Project; and
- (c) **(Enterprise-wide Subcontracts):**
- (i) provide the State with the following information in relation to each Enterprise-wide Subcontract:
 - A. the identity of the counterparties to the Enterprise-wide Subcontract; and
 - B. the nature of the goods or services provided or to be provided, or rights granted or to be granted, under the Enterprise-wide Subcontract;
 - (ii) use reasonable endeavours to procure from each Subcontractor who is a party to an Enterprise-wide Subcontract a new subcontract (**New WGT Subcontract**) which is to be entered into by that Subcontractor with the State or its nominee which:
 - A. relates only to the provision of operation, maintenance, repair and/or tolling goods or services (including, where applicable, the provision of licensed materials) in relation to the Project; and
 - B. is on the same terms as the relevant Enterprise-wide Subcontract, other than in relation to pricing; and
 - (iii) in relation to pricing under the New WGT Subcontract, use reasonable endeavours to procure from the relevant Subcontractor an agreement to provide the relevant goods or services (including, where applicable, the provision of licensed materials) to the State or its nominee for a price that is no less favourable than the price for which those goods or services were provided to the Transurban Group under the relevant Enterprise-wide Subcontract, having regard to the proposed level of consumption of the goods or services by the State or its nominee under the New WGT Subcontract compared to the consumption of those goods or services by the Transurban Group.

28.8 Material for exercise of Intellectual Property Rights

- (a) Upon Final Expiry Date or, where this Agreement is terminated earlier than the Final Expiry Date, as soon as reasonably practicable following the Expiry Date, Project Co must:
 - (i) to the extent not already granted or procured under clause 52.2, grant or procure the grant to the State or its nominee of such Intellectual Property

Rights as will enable the State or its nominee to deliver the Project to the standards specified in this Agreement;

- (ii) to the extent not already granted or procured under clause 52.2, grant to or procure for the State or its nominee a licence on the same terms as the licence in respect of Project Co Material and Project Intellectual Property Rights that is required under clause 52.2, to all Intellectual Property Rights in all computer software, computer hardware, data, equipment, materials and documentation forming part of, or necessary or desirable in order for the State or its nominee to use, operate and maintain, the Critical Systems fully, effectively and efficiently for the purposes set out in clause 52.2; and
- (iii) to the extent not already granted or procured under clause 52.2 or clause 52.6, grant to or procure for the State or its nominee an assignment or sublicense of all licences relating to any computer software (other than Third Party Back Office Software) in which any Third Party Intellectual Property Rights subsist, which forms part of, relates to or is necessary or desirable to permit the State or its nominee to use and operate any aspect of the West Gate Tunnel (other than the Critical Systems) fully, effectively and efficiently, with each such assigned or sublicensed licence being on terms that grant to the State or its nominee the same rights in that computer software as are required to be granted to or procured for the State or its nominee in respect of Project Co Material and Project Intellectual Property Rights under clause 52.2,

solely in relation to where the rights in those Intellectual Property Rights or Third Party Intellectual Property Rights are required to be, or have been, provided by the D&C Subcontractor to Project Co under the D&C Subcontract (**D&C Subcontractor IPR**).

- (b) Other than in respect of the D&C Subcontractor IPR, upon the Final Expiry Date or, where this Agreement is terminated earlier than the Final Expiry Date, as soon as reasonably practicable following the Expiry Date, Project Co must, to the extent not already provided under this Agreement (but without limiting the Separation Plans), provide to the State or its nominee all reasonable documentation, information, assistance and materials as the State may reasonably require for the State's:
 - (i) use or enjoyment of the Works, Project Co Material or Relevant Infrastructure; or
 - (ii) use and enjoyment of the Project Intellectual Property Rights,

to the extent such use or enjoyment is consistent with a licence granted to the State or its nominee under clause 52.2 in respect of the relevant Project Co Material or Project Intellectual Property Rights (in the same manner to which Project Co used or enjoyed or was required to use or enjoy that Project Co Material or Project Intellectual Property Rights), including for Project Co Material that consists of computer software:

- (iii) a copy of that computer software (in object code and, subject to any exceptions in the Subcontractor IP Exceptions Schedule, Schedule 33 or agreed pursuant to clause 52.6, source code format) and object code of computer software, together with all data (other than financial records stored within the Finance System) and, documentation forming part of the Project Co Material that relates to that computer software, as installed on any computer hardware forming part of the Relevant Infrastructure or otherwise located within the FCC, Alternate Traffic

Control Room (where the Alternative Control Room has been leased to Project Co in accordance with clause 6.10(h)) provided that:

- A. except as set out in clause 28.8(b)(iii)B, where that computer software is Third Party Software that is provided to Project Co on an 'as-a-service' or similar basis, Project Co's obligation to provide a copy of that computer software will be satisfied by procuring for the State or its nominee access to that computer software; and
 - B. where that computer software forms part of the Tolling Back Office System or Asset Management System, Project Co's obligation to provide a copy of that computer software will be satisfied by providing a replica of the Tolling Back Offices System or Asset Management System (as applicable) in accordance with the applicable Separation Plan and the Handover Condition; and
- (iv) all information and assistance necessary for the State or its nominee to use, operate and maintain (in the same manner to which Project Co used, operated, and maintained or was required to use, operate or maintain) the computer software Project Co Material for the purposes for which they are licensed under clause 52.2.

28.9 Transition Services

- (a) **(Transition Services):** If Handover has not occurred by the Expiry Date, Project Co must perform the Transition Services on and from the day after the Expiry Date until Handover has occurred.
- (b) **(Standard of Transition Services):** The Transition Services must be carried out to a standard that is the higher of:
 - (i) the standard of performance required by this Agreement; and
 - (ii) the standard of performance achieved by Project Co immediately prior to the Expiry Date,

in respect of the relevant O&M Activities comprising the Transition Services, provided that Project Co is relieved from complying with:

- (iii) the requirements set out in paragraph (g) of the definition of "Best O&M Practices";
- (iv) any requirements relating to design life;
- (v) a new Standard or a material change in a Standard introduced or made after the Expiry Date; and
- (vi) the KPI Regime,

and the parties agree that Project Co will not be entitled to retain toll revenue collected while carrying out the Transition Services and will act as agent of the State in collecting any toll revenue.

- (c) **(Agreement of Commercial Terms):** As soon as reasonably practicable following the earlier of the:
 - (i) Separation Notice (where applicable);

- (ii) State Notice of Intention to Terminate (where applicable); and
- (iii) date of the Handover Reviewer's first Outstanding Matters Report,
Project Co and the State must meet to agree:
 - (iv) the Transition Services Fee (if any) to be calculated in accordance with clause 28.16; and
 - (v) the terms upon which the Transition Services will be performed consistent with the requirements of clause 28.9(b) and having regard to:
 - A. the time and circumstances of the termination;
 - B. the Anticipated Transition Services Period; and
 - C. standard terms and conditions at the time of termination on which a competent and reasonable operator of a toll road carrying out services similar to the Transition Services would be engaged, including:
 - 1) applicable key performance indicators; and
 - 2) risk allocation.

28.10 Licence to perform Handover Services and Transition Services

- (a) **(Grant of access to Post Expiry Licensed Area):** The State must grant or procure the grant to Project Co and its Associates of a non-exclusive licence to those parts of the Maintenance Areas and the Leased Areas (or the areas which formed the Maintenance Areas and the Leased Areas on the Expiry Date) which are required by Project Co to carry out:
 - (i) any Handover Services not completed by the Expiry Date; and
 - (ii) to the extent Project Co is required to carry out the Transition Services in accordance with clause 28.9(a), the Transition Services,

(the **Post Expiry Licensed Area**), with effect on and from the day after the Expiry Date until Handover occurs.
- (b) **(No interference):** When accessing or utilising the Post Expiry Licensed Area, the State must not, and must ensure that its Associates and any other person permitted by it to access or utilise the Post Expiry Licensed Area do not, unnecessarily interfere with the carrying out of Project Co's obligations in relation to the Handover Services or the Transition Services (as applicable).

28.11 Deferral of handover

- (a) **(Deferral of Shared Infrastructure):** At any time after the parties have agreed or it is determined that Single Asset Handover (WGT) will occur under clause 28.1(a), the State may notify Project Co that it proposes that any part of the Relevant Infrastructure which is utilised for the operation and maintenance of CityLink (the **Shared Infrastructure**) be removed from the requirements of this clause 28 and be handed over to the State by the CityLink Parties at the expiry of the CityLink Concession Period.
- (b) **(Negotiate in good faith):** Upon receipt of a notice under clause 28.11(a), the parties will negotiate in good faith to agree whether, and how such deferral of

handover of the Shared Infrastructure, could be achieved, including the allocation of costs and savings incurred and any amendments to the State Project Documents and the CityLink Project Documents required to give effect to the arrangement.

28.12 Assistance in securing continuity

Without limiting Project Co's other obligations in respect of Handover in accordance with this clause 28, Project Co must:

- (a) in the final 3 months before the Final Expiry Date (or such other period required by the State where the Expiry Date occurs on or after the Date of Tolling Completion but earlier than the Final Expiry Date), train suitably qualified personnel nominated by the State in respect of the operation, maintenance and repair of the Relevant Infrastructure to a level of competency to operate, maintain and repair the Relevant Infrastructure to the standards required of Project Co in accordance with this Agreement from the relevant Expiry Date; and
- (b) before the Expiry Date, do all things reasonably required by the State to ensure the smooth and orderly transfer of responsibility for delivering the Project to the State or its nominee in accordance with this clause 28, including:
 - (i) **(meetings)**: meeting with the State and such other persons notified by the State to discuss the Project;
 - (ii) **(access)**: providing access to its operations for managers and supervisors of the State or its nominee for the purpose of familiarisation; and
 - (iii) **(information)**: providing sufficient information to the State or its nominee to determine the status and condition of the Project and any works program in place at the time.

28.13 Power of attorney

Project Co irrevocably:

- (a) **(attorney appointment)**: appoints the State, and the State's nominees from time to time, jointly and severally, as its attorney with full power and authority:
 - (i) with effect from the end of the O&M Phase, to execute any agreement or novation contemplated by clause 28.7;
 - (ii) to exercise the State's rights in accordance with clause 37; and
 - (iii) to undertake Project Co's obligations in accordance with clause 42.8; and
- (b) **(ratification)**: ratifies and confirms whatever action is taken by the attorney appointed by Project Co under clause 28.13(a).

28.14 No double up

The parties acknowledge that the CityLink Parties may discharge Project Co's obligations to:

- (a) transfer, deliver or provide any benefit; and
- (b) provide any services, access, information or training,

under this clause 28, and the State agrees that discharge of such obligations by the CityLink Parties will constitute full and final discharge of those obligations by Project Co and the State will have no Claim against Project Co in relation to a failure by Project Co to perform those obligations.

28.15 Standard of performance

For the purposes of this clause 28, in relation to the O&M Activities, references to “the standards specified in accordance with this Agreement” or “the standards required of Project Co in accordance with this Agreement” means the higher of:

- (a) the standards of performance required by this Agreement; and
- (b) the standards of performance achieved by Project Co immediately prior to the Expiry Date.

28.16 Separation Fee and Transition Services Fee

- (a) **(Obligation to pay Separation Fee):** Subject to clause 28.16(b):
 - (i) in the case of Single Asset Handover (WGT), Project Co will be entitled to payment of the Separation Fee upon the occurrence of Handover; and
 - (ii) Project Co will be entitled to payment of the Transition Services Fee (if any) monthly during the Transition Services Fee Entitlement Period.
- (b) **(Termination for default or natural expiry):** The parties acknowledge and agree that:
 - (i) the Separation Fee and Transition Services Fee will not be payable by the State where this Agreement has been terminated prior to the Final Expiry Date due to a Default Termination Event in accordance with clause 42.4;
 - (ii) the Transition Services Fee will not be payable by the State where this Agreement expires on the Final Expiry Date; and
 - (iii) where this Agreement:
 - A. has been terminated prior to the Final Expiry Date due to a Default Termination Event in accordance with clause 42.4; or
 - B. expires on the Final Expiry Date,

the parties are not required to comply with clauses 28.16(c) to 28.16(j).

- (c) **(Calculation of Separation Fee):** The parties agree that the Separation Fee will comprise the following:
 - (i) the actual internal and external costs reasonably and properly incurred by Project Co in carrying out the Separation Plan Services; and
 - (ii) the actual net incremental internal and external costs reasonably and properly incurred by Project Co in carrying out any part of the Handover Services which would not have been required to be carried out by it had a Consolidated Handover been performed.
- (d) **(Calculation of the Transition Services Fee):** The parties agree that:

- (i) the Transition Services Fee will comprise the following:
- A. the actual internal and external costs reasonably and properly incurred by Project Co in carrying out the Transition Services during the Transition Services Fee Entitlement Period, including the cost of effecting and maintaining insurances which a prudent service provider would maintain when providing services of a similar nature to the Transition Services; and
 - B. a margin of [not disclosed]% applied to the amount described in clause 28.16(b)(i);

- (ii) Project Co will be entitled to payment of the Transition Services Fee for the period calculated using the following formula:

$$Y = X - Z$$

where:

- A. Y is the period for which Project Co is entitled to payment of the Transition Services Fee;
- B. X is 6 months; and
- C. Z is the period between the date of the State Notice of Intention to Terminate and the Expiry Date,

(Transition Services Fee Entitlement Period); and

- (iii) where the value of Y, as calculated in accordance with clause 28.16(d)(ii), is zero or a negative number, the Transition Services Fee will not be payable by the State.

- (e) **(Applicable rates):** As soon as reasonably practicable following the earlier of the Separation Notice (where applicable), the State Notice of Intention to Terminate (where applicable) and the date of the Handover Reviewer's first Outstanding Matters Report:

- (i) Project Co and the State will meet to agree:
- A. the rates applicable to the calculation of the Separation Fee and, where applicable, the Transition Services, which must be reasonable having regard to (at the time of the calculation):
 - 1) in respect of internal costs of Separation Plan Services and Transition Services, the costs of a competent and reasonable operator of a toll road carrying out services similar to those Separation Plan Services and Transition Services (as applicable); and
 - 2) in respect of external costs of Separation Plan Services and Transition Services, the costs of a competent and reasonable third party provider of services similar to those Separation Plan Services or Transition Services (and who would be qualified to undertake those Separation Plan Services or Transition Services) engaged on arm's length terms, unless it is only feasible for the relevant

Separation Plan Services or Transition Services to be undertaken by Project Co's existing service provider, then at their existing rates; and

- B. the internal and external costs to be incurred by Project Co in carrying out any part of the Handover Services which would not have been required to be carried out by it had a Consolidated Handover been performed; and
- (ii) if the parties cannot agree on the applicable rates within 3 months of their first meeting under this clause 28.16(d), either party may refer the matter for resolution in accordance with clauses 43 to 44.
- (f) **(Update to applicable rates):** If, at any time following an agreement or determination under clause 28.16(d), either party (acting reasonably) considers that:
 - (i) the rates so agreed or determined are no longer reasonable; or
 - (ii) subsequent to the initial agreement or determination the Handover Reviewer forms the opinion that Handover will not occur by the Expiry Date and therefore Project Co will be required to provide Transition Services,it may give notice of this to the other party and the process in clause 28.16(d) will reapply.
- (g) **(Payment claim (Separation Fee)):** If Project Co wishes to be paid the Separation Fee, Project Co must:
 - (i) within 40 Business Days after the occurrence of Handover, provide to the State a notice setting out its calculation of the Separation Fee, together with a valid tax invoice from Project Co in respect of such amount; and
 - (ii) upon request by the State (acting reasonably), provide further information or documentation necessary to substantiate the Separation Fee, on an open book basis.
- (h) **(State payment (Separation Fee)):** Within 30 Business Days after receiving a notice from Project Co under clause 28.16(g), the State must:
 - (i) pay to Project Co the Separation Fee set out in Project Co's notice under clause 28.16(g); or
 - (ii) if it disagrees with the amount of the Separation Fee set out in the notice, pay the undisputed amount to Project Co and either party may refer the matter for resolution in accordance with clauses 43 to 44.
- (i) **(Payment claim (Transition Services Fee)):** If Project Co wishes to be paid the Transition Services Fee, Project Co must:
 - (i) by the 20th day of a calendar month in which Transition Services are carried out, submit to the State:
 - A. a breakdown of the Transition Services carried out since the previous claim submitted by Project Co under this clause 28.16(i)(i) (or in the case of the first claim, since the Expiry Date);

- B. the calculation of the Transition Services Fee payable in respect of such Transition Services; and
 - C. a valid tax invoice from Project Co in respect of such amount; and
- (ii) upon request by the State (acting reasonably), any further information or documentation necessary to substantiate the Transition Services Fee, on an open book basis.
- (j) **(State payment (Transition Services Fee)):** Within 10 Business Days after receiving a notice from Project Co under clause 28.16(i)(i), the State must:
- (i) pay to Project Co the Transition Services Fee set out in Project Co's notice under clause 28.16(i)(i); or
 - (ii) if it disagrees with the amount of the Transition Services Fee set out in the notice, pay the undisputed amount to Project Co (and either party may refer the matter for resolution in accordance with clauses 43 to 44).
- (k) **(No time bar):** The parties acknowledge and agree that a failure by Project Co to submit the information (including the valid tax invoice) required by clause 28.16(g) or clause 28.16(i) within the required time period will not:
- (i) constitute a breach of this Agreement by Project Co; or
 - (ii) disentitle Project Co to subsequently claim payment for the relevant amount, provided it submits the required information (including the valid tax invoice).

PART D - PAYMENT, TOLLING AND KPI

29. Payment

29.1 Not used

29.2 Interest

- (a) **(Interest):** If a party:
 - (i) fails to pay any amount payable by that party to the other party within the time required in accordance with this Agreement or the Lease; or
 - (ii) disputes any amount payable by that party to the other party and the disputed amount or part thereof is found to be ultimately owing by that party to the other party,then the party owing the amount must pay interest on that amount:
 - (iii) from the date on which payment was due and payable until the date on which payment is made; and
 - (iv) calculated on daily balances at the Overdue Rate.
- (b) **(Sole entitlement to interest):** The amount specified in this clause 29.2 will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

29.3 Approach to Relevant Circumstances

- (a) **(Discuss):** If a Relevant Circumstance arises:
 - (i) the parties must promptly meet to discuss the manner in which a payment made by Project Co will or is likely to be treated for income tax purposes from the perspective of the relevant taxpayer. For the avoidance of doubt, if Project Co is a subsidiary member of a tax consolidated group, the relevant taxpayer will be the head company of that tax consolidated group;
 - (ii) Project Co must notify the State if it considers that there is a material risk of the amounts not being deductible, including having regard to previous private rulings from the Commissioner of Taxation in relation to similar circumstances, issues or questions of law;
 - (iii) the State may notify Project Co no later than 20 Business Days prior to the first Relevant Circumstances Payment Date in respect of that Relevant Circumstance whether it requires a private ruling to be sought from the Commissioner of Taxation to confirm whether the Relevant Circumstances Amount is deductible for income tax purposes and if the State fails to notify Project Co by that date, the State will be deemed to have notified Project Co that a private ruling is to be sought from the Commissioner of Taxation to confirm whether the Relevant Circumstances Amount is deductible for income tax purposes;
 - (iv) Project Co must comply with a notice from the State under clause 29.3(a)(iii); and

- (v) the State will provide reasonable assistance to Project Co to enable a private ruling to be sought from the Commissioner of Taxation to confirm whether the Relevant Circumstances Amount is deductible for income tax purposes, and Project Co will have regard to any reasonable comments or requests of the State in relation to the form or content of the private ruling request.
- (b) **(ATO fails to rule or State does not require private ruling):** If, on a Relevant Circumstances Payment Date:
- (i) the State notifies or is deemed to have notified Project Co under clause 29.3(a)(iii) that it requires a private ruling to be sought from the Commissioner of Taxation to confirm whether the Relevant Circumstances Amount is deductible for income tax purposes but the Commissioner of Taxation has not ruled on the application; or
 - (ii) the State has not required a private ruling to be sought in relation to the Relevant Circumstances Amount and Project Co considers that there is a material risk of the amounts not being deductible, including having regard to previous private rulings from the Commissioner of Taxation in relation to similar circumstances, issues or questions of law,
- then,
- (iii) Project Co must pay the portion of the Relevant Circumstances Amount equal to a factor of one minus the then current applicable tax rate on the Relevant Circumstances Payment Date;
 - (iv) where clause 29.3(b)(i) applies, Project Co's obligation to pay the remainder of the Relevant Circumstances Amount on the Relevant Circumstances Payment Date will be deferred until the later of the date that is 20 Business Days after the earlier of the date on which the Commissioner of Taxation:
 - A. issues a private ruling confirming that the Relevant Circumstances Amount is deductible for income tax purposes; or
 - B. notifies the applicant of the private ruling that the Commissioner of Taxation declines to hear or rule on the application for the private ruling; and
 - (v) where clause 29.3(b)(ii) applies, Project Co will not be required to pay the remainder of the Relevant Circumstances Amount unless Project Co, or the head company of the tax consolidated group of which Project Co is a subsidiary member, lodges a tax return with the Australian Taxation Office that claimed an amount of the Relevant Circumstances Amount as deductible for income tax purposes in which case Project Co must pay the remainder of the Relevant Circumstances Amount within 20 Business Days of the date that the relevant tax return is lodged with the Australian Taxation Office.
- (c) **(Interest on deferred amount):** Project Co must pay to the State interest on the remainder of any Relevant Circumstances Amount that is payable in accordance with clause 29.3(b)(iv) or clause 29.3(b)(v) (as applicable):
- (i) from the date on which the portion of the Relevant Circumstances Amount was paid under clause 29.3(b)(iii) until the date on which the remainder of the Relevant Circumstances Amount is paid in accordance with clause 29.3(b)(iv) or clause 29.3(b)(v) (as applicable); and

- (ii) calculated on daily balances at the Bank Bill Rate.
- (d) **(Acknowledgment):** The State acknowledges and agrees that payments deferred pursuant to clause 29.3(b)(iv) may not be set-off against any amounts payable by the State and will not be payable on termination of this Agreement other than to the extent such amounts have become payable in accordance with clause 29.3(b)(iv).
- (e) **(Private ruling outcome):** If the State notifies or is deemed to have notified Project Co that a private ruling from the Commissioner of Taxation is required in accordance with clause 29.3(a)(iii), and following the application for a private ruling, the Commissioner of Taxation:
 - (i) rules that the Relevant Circumstances Amount is not deductible for income tax purposes, then the Relevant Circumstances Amount payable to the State will be adjusted by a factor of one minus the then current applicable tax rate;
 - (ii) rules that the Relevant Circumstances Amount is deductible for income tax purposes, then the Relevant Circumstances Amount payable to the State will not be adjusted and clause 29.3(b)(iv) will apply; or
 - (iii) declines to hear or rule on the application for the private ruling, then the Relevant Circumstances Amount will not be adjusted and clause 29.3(f)(ii) will apply.
- (f) **(Relevant Circumstances Tax Liability):** If:
 - (i) the State notifies Project Co that no private ruling from the Commissioner of Taxation is required in accordance with clause 29.3(a)(iii); or
 - (ii) the Commissioner of Taxation declines to hear or rule on the application for private ruling as contemplated by clause 29.3(e)(iii),

and Project Co, or the head company of the tax consolidated group of which Project Co is a subsidiary member, subsequently incurs a tax liability as a result of:
 - (iii) lodging a tax return with the Australian Taxation Office that claimed an amount of the Relevant Circumstances Amount as deductible for income tax purposes; and
 - (iv) the Commissioner of Taxation determining that an amount of the Relevant Circumstances Amount claimed as a deduction is not tax deductible for income tax purposes in that period,

the State must (to the extent that it has received the Relevant Circumstances Amount in full from Project Co) pay to Project Co an amount equal to the net amount, including taxes, fines, penalties and/or interest, payable to the Commissioner of Taxation by Project Co (or the head company of the tax consolidated group of which Project Co is a subsidiary member) as a consequence of the Relevant Circumstances Amount not being deductible for income tax purposes (**Relevant Circumstances Tax Liability**) within 20 Business Days of receiving a notice under clause 29.3(g).
- (g) **(Notification of Relevant Circumstances Tax Liability):** Project Co must notify the State as soon as reasonably practicable:
 - (i) that it, or the head company of which it is a subsidiary member, has incurred a tax liability as contemplated by clause 29.3(f);

- (ii) the breakdown of the calculations to determine the Relevant Circumstances Tax Liability; and
- (iii) any other information reasonably requested by the State to allow it to verify the Relevant Circumstances Tax Liability.

29.4 Survival

Clauses 29.2 and 29.3 will survive termination or expiry of this Agreement.

29.5 Payments on early termination of CityLink Concession Deed

On the occurrence of:

- (a) a State election to acquire the CityLink Project under paragraph 12.8(e) of the CityLink Concession Deed because of crystallisation of a risk under sub-paragraph 12.8(b)(ii) relating to a Law of Victoria; or
- (b) termination of the CityLink Concession Deed by the CityLink Parties pursuant to clause 15.5 of the CityLink Concession Deed or a State election to acquire the CityLink Project under paragraph 12.8(e) of the CityLink Concession Deed because of crystallisation of a risk under sub-paragraph 12.8(b)(ii) of the CityLink Concession Deed relating to a Law (but not a Law of Victoria),

the State must pay to Project Co the aggregate of the:

- (c) unpaid Concession Extension Purchase Amounts under the Concession Enhancement Payment Deed that would have been payable after the termination of the CityLink Concession Deed had the CityLink Concession Deed not been terminated; and
- (d) unpaid Concession Enhancement Purchase Amounts under the Concession Enhancement Payment Deed that would have been payable after the termination of the CityLink Concession Deed had the CityLink Concession Deed not been terminated;

at the times that the amounts were otherwise due to be paid to Project Co under the Concession Enhancement Payment Deed, plus:

- (e) the unpaid portion of the Trustee Works Price (as defined in the D&C Subcontract) that would have been payable after the termination of the CityLink Concession Deed had the CityLink Concession Deed not been terminated, at the times that the amounts were otherwise due to be paid to the D&C Subcontractor under the D&C Subcontract; and
- (f) any amounts outstanding under the CLUT Works Loan (as defined in the CLUT Works Loan Agreement) at that time that would have been payable after the termination of the CityLink Concession Deed had the CityLink Concession Deed not been terminated, at the times that the outstanding amounts were otherwise due to be paid to Project Co under the CLUT Works Loan Agreement (had the CityLink Concession Deed not been terminated).

30. Tolling

30.1 Tolls

- (a) **(Tolls):** Subject to clause 30.1(b), on and from the Date of Tolling Completion Project Co may levy and collect tolls, administrative fees and charges for the use of

the Freeway (or part of it) for the passage of vehicles in accordance with the Toll Calculation Schedule.

- (b) **(Toll Calculation Schedule):** Project Co must not (and must ensure that any party with whom it contracts, including OpCo, does not) levy or impose any charge, toll or fee for or in connection with the use of the Freeway other than in accordance with the Toll Calculation Schedule or, to the extent applicable to use of the Freeway, as permitted under the CityLink Concession Deed.
- (c) **(Expiry of CityLink):** The parties acknowledge and agree that if the CityLink Concession Deed expires or terminates prior to the Expiry Date, Project Co may, on and from the expiry or termination of the CityLink Concession Deed, levy or impose fees and charges for the use or in connection with the Freeway that would have been permitted to be charged by the Company under the CityLink Concession Deed had the CityLink Concession Deed continued.

30.2 Entitlement to toll revenue

As between the State and Project Co, Project Co will be entitled to all tolls, administrative fees and charges levied in accordance with clause 30.1(a).

30.3 Interoperability

Project Co must ensure that, during the Term, it complies with the document entitled "Memorandum of Understanding – Electronic Toll Collection" dated 30 October 2009 (as amended or updated from time to time).

30.4 Changes to Tolling Back Office System

- (a) **(State approval):** Project Co must obtain the prior approval of the State to any material change in the Tolling Back Office System.
- (b) **(Conditions for approval):** For the purposes of clause 30.4(a), the State may only withhold its approval to a material change in the Tolling Back Office System where the material change would or would be reasonably likely to result in any of the following:
 - (i) a non-compliance with any requirements under this Agreement which is not immaterial;
 - (ii) a breach of any Laws;
 - (iii) a material adverse change to the ability of Project Co to operate the Tolling Back Office System to the higher of the performance standard set out in the State Project Documents and the performance standard to which Project Co was operating the Tolling Back Office System immediately prior to the implementation of the change;
 - (iv) a material adverse impact on Users, including their ability to access or manage their accounts; or
 - (v) a material adverse change to the net operating cashflow of the State or an incoming operator on the basis that the State or incoming operator is operating the road as a toll road in the same or a substantially similar manner as it was operated by Project Co immediately prior to Handover under this Agreement.
- (c) **(No limitation):** Approval under this clause 30.4 does not limit any obligation of Project Co under any other provision of this Agreement.

- (d) **(Request information):** Project Co must provide the State with information reasonably requested by the State in relation to any request for approval to a material change to the Tolling Back Office System under this clause 30.4.
- (e) **(No delay):** The State must not unreasonably withhold or delay its approval under clause 30.4(a) having regard to the bureau nature of the Tolling Back Office System.
- (f) **(Dispute):** The parties may refer a matter arising under this clause 30.4 for resolution in accordance with clauses 43 and 44.

30.5 Tolling System

From the Date of Tolling Completion, Project Co must ensure that the Tolling System complies with the requirements set out in the PSR at all times.

30.6 Civil Debt Recovery

Project Co must ensure that its civil debt recovery arrangements in respect of tolls and fees imposed in connection with the Freeway comply with the minimum requirements for civil debt recovery as approved by the Minister and published in the Government Gazette for the purpose of the Project Legislation from time to time.

31. Regulations

31.1 Definitions

In this clause 31, the following terms have the following meanings:

Addressee means the person named on a Request For Payment or Further Request For Payment.

Debt Recovery Cycle Requirement means that if Project Co or an authorised person of Project Co provides notification to the Enforcement Agency within 180 days of the use of a vehicle in the toll zone which appears to be liable to pay the toll and fee, the Enforcement Agency must not refuse to:

- (a) serve an infringement notice under section 46(1)(b)(i) of the Project Legislation; or
- (b) commence proceedings against a person in accordance with section 46(1)(b)(ii) of the Project Legislation,

solely on the basis of the timing of the notification by Project Co.

Enforcement Agency has the meaning given to it under the Project Legislation.

Exempt Vehicle is:

- (a) a police vehicle;
- (b) an ambulance;
- (c) a fire service unit;
- (d) a State Emergency Service vehicle;
- (e) a vehicle of the Australian Defence Force, conveying any of its members or property while on march or duty; or

- (f) a vehicle being utilised in the performance of emergency services under authority of a statute or the State.

Further Request For Payment means a further Request for Payment sent to an Addressee following the sending of a Request For Payment to that Addressee in relation to any or all of the Trips (in accordance with the meaning of Trip in the Toll Calculation Schedule) the subject of that Request For Payment.

Request For Payment means a request for payment within the meaning of Part 3 of the Project Legislation.

Toll Administration Fee means a toll administration fee within the meaning of Part 3 of the Project Legislation which must be equal to the fees and charges as determined in accordance with clause 9.1 of the Toll Calculation Schedule.

Vehicle has the same meaning as motor vehicle has in the Road Safety Act.

31.2 Tolling system

- (a) Subject to clause 31.2(b), the State must use reasonable endeavours to cause to be prescribed by regulation under section 79(1) of the Project Legislation:
- (i) the systems, equipment or things (including the equipment or things to be placed in or on a vehicle) that are to be tolling devices for recording the use of a vehicle or a trailer in a toll zone;
 - (ii) the manner in which tolling devices are to be installed, set up, tested, operated used, maintained or repaired; and
 - (iii) the manner in which information from tolling devices is to be processed, stored, transferred, produced, re-configured, used to produce reports, images or other forms of information, destroyed or otherwise handled,
- so that evidence of a vehicle being driven or a trailer being towed in a toll zone, as indicated or determined by a tolling device that was used in the prescribed manner or an image or message used by a prescribed process is, under section 60 of the Project Legislation, admissible in evidence (each a **Requirement for Tolling**).
- (b) Subject to clause 31.2(c), the State is not required to use reasonable endeavours to cause to be prescribed a Requirement for Tolling by regulation under clause 31.2(a) unless:
- (i) the State and Project Co have agreed at any time prior to the Date of Tolling Completion that the relevant Requirement for Tolling should be prescribed; or
 - (ii) the prescribing of the relevant Requirement for Tolling:
 - A. has been requested by Project Co in a notice to the State which identifies the relevant Requirement for Tolling in sufficient detail to enable it to be prescribed;
 - B. is capable of being prescribed by regulation under section 79(1) of the Project Legislation; and
 - C. is reasonably necessary to attract the operation of section 60 of the Project Legislation.

- (c) To the extent that the State and Project Co are unable to agree in accordance with clause 31.2(b) prior to the Date of Tolling Completion that the relevant Requirement for Tolling is to be prescribed, the State must use reasonable endeavours to cause to be prescribed by regulation under section 79(1) of the Project Legislation the Requirement for Tolling that are used by Project Co or proposed to be used by Project Co (provided that the relevant Requirement for Tolling meets the requirements of this Agreement and is substantively equivalent to what is in place with respect to CityLink).
- (d) The State must use reasonable endeavours to cause to be prescribed regulations under section 79(1) of the Project Legislation:
 - (i) prescribing requirements with respect to placing of notices on or in the vicinity of the Freeway and the information to be provided on those notices in a manner consistent with this Agreement (including the PSR);
 - (ii) exempting vehicles and classes of vehicles that may be exempted from the requirement to be registered under Part 3 of the Project Legislation in a manner consistent with the *Melbourne City Link Regulations 2009 (Vic)*;
 - (iii) conferring power on Project Co to register vehicles and to exempt vehicles from the requirement to be registered under Part 3 of the Project Legislation in a manner consistent with the *Melbourne City Link Regulations 2009 (Vic)*;
 - (iv) prescribing the form of a certificate for the purposes of section 63 of the Project Legislation in a manner consistent with the *Melbourne City Link Regulations 2009 (Vic)*; and
 - (v) prescribing methods of recording the payment of tolls in a manner consistent with the *Melbourne City Link Regulations 2009 (Vic)*.

31.3 Prescribed administrative amount

- (a) The State shall use reasonable endeavours to cause to be prescribed by regulation under section 79(1) of the Project Legislation:
 - (i) the prescribed administrative amount of administrative costs for the purpose of section 45(1) of the Project Legislation; and
 - (ii) with the agreement of Project Co, criteria for determining financial hardship and special circumstances for the purposes of section 45(2) of the Project Legislation.
- (b) For the purposes of clause 31.3(a), the prescribed administrative amount:
 - (i) shall be determined from time to time by the State in accordance with the methodology used generally in determining fees and charges for the purposes of regulatory impact statements under the *Subordinate Legislation Act 1994 (Vic)*;
 - (ii) shall fairly reflect the administrative costs likely to be incurred by Project Co in undertaking the steps which need to be undertaken to produce evidence to a court of the commission of an offence under section 37(1) of the Project Legislation, and for that purpose may specify of two amounts, being:
 - A. an amount payable with respect to one offence found proven at a hearing; and

- B. a lower amount payable with respect to any other offence found proven at the same hearing;
- (iii) shall be reconsidered by the State at intervals of no greater than 3 years since the later of the Date of Tolling Completion and the last reconsideration of them under this clause 31.3(b)(iii) with each party bearing costs incurred or payable by it in connection with such a reconsideration;
- (iv) shall be reconsidered by the State within a reasonable time of being requested by Project Co to do so, provided that costs incurred or payable by the State in connection with such a reconsideration are paid by Project Co promptly after demand for them; and
- (v) may be reconsidered from time to time by the State, at the cost of the State, provided that costs incurred or payable by Project Co in connection with such a reconsideration are paid by the State promptly after demand for them.
- (c) In any reconsideration of the appropriateness of any amount so prescribed, the State shall re-determine that amount in accordance with the methodology outlined in clause 31.3(b)(i), with the objective outlined in clause 31.3(b)(ii).
- (d) Project Co shall provide such information to the State as may be reasonably necessary in order to enable or facilitate such a reconsideration, promptly after being requested to do so.

31.4 Process for requesting payment

- (a) The parties acknowledge the Project Co may, under section 46(1)(a) of the Project Legislation, in respect of the use of a Vehicle in a toll zone (within the meaning of the Project Legislation), send a Request For Payment to the Addressee, in the circumstances described in section 37(1) of the Project Legislation.
- (b) Project Co will not in respect of a particular Vehicle send a Request For Payment to the relevant Addressee under section 46(1)(a) of the Project Legislation where:
 - (i) at the time of the relevant use the Vehicle is, or ought reasonably to have been, registered by Project Co under section 38 of the Project Legislation (including by way of registration subsequent to the use in accordance with section 40 of the Project Legislation);
 - (ii) the Vehicle is covered by a tollway billing arrangement (within the meaning of the Project Legislation);
 - (iii) the Vehicle is exempt from the requirement to be registered under section 37(8) of the Project Legislation; or
 - (iv) the Vehicle is an Exempt Vehicle.
- (c) Where Project Co (or a person authorised by Project Co) has the belief described in section 46(1) of the Project Legislation in respect of a Vehicle, Project Co agrees, that it will not, and will procure that any such authorised person will not, request the Enforcement Agency to serve an infringement notice under section 46(1)(b)(i) of the Project Legislation or commence proceedings against a person in accordance with 46(1)(b)(ii) of the Project Legislation in respect of the use of the Vehicle in a toll zone (within the meaning of the Project Legislation) unless Project Co (or a person authorised by Project Co) has either sent a Request For Payment to that person in accordance with section 46(1)(a) of the Project Legislation, and that Request For Payment has been sent to the Addressee and either:

- (i) that Request For Payment has not been paid in full for 4 days from the due date for payment as shown on that Request For Payment in the case where the Addressee:
 - A. has previously sought registration of a Vehicle under section 38 of the Project Legislation;
 - B. has previously been issued with a Request For Payment;
 - C. has previously been served with an infringement notice under section 46(1)(b)(i); or
 - D. has previously had proceedings commenced against them under section 46(1)(b)(ii); or
- (ii) in any other case:
 - A. a Further Request For Payment has been sent to that Addressee subsequent to the expiry of the due date for payment for that Request For Payment; and
 - B. that Further Request For Payment has not been paid in full for 4 days from the due date as shown on that Further Request For Payment.
- (d) A Request For Payment sent by Project Co (or a person authorised by Project Co) to an Addressee must:
 - (i) be in writing and must separately identify each use for which a toll is payable and separately identify the Toll Administration Fee payable;
 - (ii) be in a form approved by the State, which approval:
 - A. must not to be unreasonably withheld or delayed; and
 - B. will be granted where the form is consistent with the form approved by the State under the clause 9.2A(d)(ii) of the CityLink Concession Deed.
 - (iii) be sent promptly, having regard to the systems of operation referred to in clause 35, after the expiry of the 3 day period commencing on the day of the last use of the Freeway to which that Request for Payment relates, but not before the expiry of that period;
 - (iv) relate to relevant uses of the Vehicle for which a Request For Payment may be sent in accordance with clause 31.4(c) within three consecutive days from the commencement of the day of the earliest use identified on the Request For Payment;
 - (v) be sent no later than the 35 days (or such other timeframe as agreed between the State and the Company pursuant to clause 9.2A(d)(v) of the CityLink Concession Deed, or otherwise such other timeframe as is agreed between the parties) after the date of the earliest use identified on that Request For Payment; and
 - (vi) not state a due date for payment of less than 16 days from the date of the Request For Payment.
- (e) Project Co must ensure that only one Request for Payment, or one Request for Payment as defined in the CityLink Concession Deed, is sent to a person in any

period of three consecutive days from the commencement of the day of the earliest use of either the Freeway or CityLink, such Request for Payment covering use on both the Freeway and CityLink for the relevant three day period.

- (f) A Further Request For Payment sent by Project Co (or a person authorised by Project Co) to an Addressee must:
- (i) specify the applicable Request For Payment, and may include the applicable Toll Administration Fee;
 - (ii) be in a form approved by the State, such approval not to be unreasonably withheld or delayed;
 - (iii) without limiting Project Co's undertakings set out in clause 35, be sent not later than 71 days (or such other timeframe as agreed between the State and the Company pursuant to clause 9.2A(e)(iii) of the CityLink Concession Deed, or otherwise such other timeframe as is agreed between the parties) after the date of the earliest use identified on the applicable Request For Payment; and
 - (iv) not state a due date for payment of less than 16 days from the date of the Further Request For Payment.
- (g) Where a Request For Payment or a Further Request For Payment is paid in full by the due date for payment as specified in the Request For Payment or Further Request For Payment as applicable, then Project Co will not request that the Enforcement Agency:
- (i) serve an infringement notice under section 46(1)(b)(i) of the Project Legislation; or
 - (ii) commence proceedings against a person in accordance with section 46(1)(b)(ii) of the Project Legislation,
- in respect of the use of a Vehicle the subject of the Request for Payment or the Further Request for Payment as applicable.
- (h) Any Request For Payment or Further Request For Payment sent in accordance with clause 31.4(c) that is the final request for payment to be sent to that Addressee must clearly state on its face that it is the final request for payment that will be sent.
- (i) Where a Request For Payment or Further Request For Payment is sent to an Addressee and that Addressee gives, in accordance with section 31(1) of the Project Legislation, an illegal user statement, known user statement or sold vehicle statement to an authorised person which the authorised person accepts as an effective statement in relation to a use of the Vehicle to which the Request For Payment or Further Request for Payment relates, then:
- (i) where the effective statement is in relation to all of the uses of the Vehicle the subject of the Request For Payment or Further Request for Payment, Project Co will cause the Request For Payment or Further Request For Payment, as applicable, to be cancelled, and cancel any Toll Administration Fees levied or imposed by reason of the issue of that Request For Payment or Further Request For Payment; or
 - (ii) otherwise, Project Co agrees, that it will not, and will procure that any such authorised person will not, request the Enforcement Agency to serve an infringement notice under section 46(1)(b)(i) of the Project Legislation or commence proceedings against a person in accordance with section 46(1)(b)(ii) of the Project Legislation in respect of the use of

the Vehicle that was not the subject of the effective statement, unless it cancels the Request For Payment or Further Request For Payment, and any Toll Administration Fees levied or imposed by reason of the issue of that Request For Payment or Further Request For Payment, and issues a new Request For Payment (in respect of which a Toll Administration Fee may be levied or imposed) under this clause 31.4 to the Addressee in respect of that use, and any other such use, that was not the subject of the effective statement.

- (j) Project Co may, at any time, cause a Request For Payment or Further Request For Payment, as applicable, to be cancelled, and where it does so it must also cancel any Toll Administration Fees levied or imposed by reason of the issue of that Request For Payment or Further Request For Payment.
- (k) If, while Project Co is complying with its undertaking set out in clause 35:
 - (i) matters beyond Project Co's reasonable control prevent Project Co from complying with timeframes in either clause 31.4(d)(v), 31.4(f)(iii) or 31.4(q)(i), where those matters or their consequences could not have been prevented by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking Project Co's obligations; or
 - (ii) a complaint or enquiry by a member of the public that results in an investigation by Project Co in connection with use of a Vehicle for which a Request For Payment or Further Request For Payment may be sent, prevents Project Co from complying with timeframes in either clause 31.4(d)(v) or 31.4(f)(iii), where that complaint or enquiry or its consequences could not have been prevented by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking Project Co's obligations,

then provided that Project Co takes all reasonable steps to minimise any delays caused by such matters for investigations, the time periods set out in those clauses will be extended, but only to the extent that Project Co is so prevented from complying.

- (l) For the purposes of clause 31.4(k)(i), all acts and omissions of Project Co's contractors, agents or employees (and their respective contractors, agents or employees) are deemed to be matters within Project Co's control.
- (m) If, at the request of a member of the public, Project Co and the member of the public enter into an arrangement in relation to an extension of the due date for payment for the amount payable under a Request For Payment then the time periods set out in clause 31.4(f)(iii) will be extended by an amount of time equivalent to the extension the subject of that arrangement.
- (n) The State must procure that the Enforcement Agency meets the Debt Recovery Cycle Requirement.
- (o) Project Co will provide a notice to the State if it considers that the Enforcement Agency is failing to meet the Debt Recovery Cycle Requirements.
- (p) On receipt of a notice under clause 31.4(o) the State must procure that the Enforcement Agency meets the Debt Recovery Cycle Requirement.
- (q) Where Project Co requests disclosure of registration information in relation to a Vehicle under section 64(2) of the Project Legislation or from NEVDIS:

- (i) such request must be made not more than 24 days after the Trip (in accordance with the meaning of Trip in the Toll Calculation Schedule) to which that request relates; and
 - (ii) Project Co may only make one such request in relation to a Vehicle in any one day.
- (r) If, as a result of a change in State policy, VicRoads or a relevant person within the meaning of section 90I of the Road Safety Act:
- (i) ceases disclosure to Project Co of registration information under section 64(2) of the Project Legislation; or
 - (ii) discloses to Project Co registration or ownership information under section 64(2) of the Project Legislation or from NEVDIS in a manner or to an extent materially different to the manner or extent of disclosure provided to enforcement agencies responsible for enforcement of offences based on traffic surveillance devices, and that difference adversely affects Project Co's ability to issue Requests for Payment,
- then clause 31.4(c) will not apply to Project Co for so long and to the extent that the circumstances in clauses 31.4(r)(i) or 31.4(r)(ii) (as applicable) apply.

31.5 Declarations

The State must procure that the Governor in Council, by order published in the Victorian Government Gazette, declares that any local law is inoperative to the extent it falls within the ambit of section 258(4) of the Relevant Legislation.

32. KPI assessment and liability

32.1 KPI Assessment System

Project Co must:

- (a) establish, develop and administer appropriate and effective processes to capture, measure, record, report and assess Project Co's performance against the KPI Benchmarks (**KPI Assessment System**); and
- (b) ensure that the KPI Assessment System is established, developed and administered in accordance with Best O&M Practices.

32.2 Achievement of KPI Benchmark

- (a) (**Achievement of KPI Benchmarks**): Project Co must use its best endeavours to achieve the KPI Benchmarks from the Date of West Gate Tunnel Completion.
- (b) (**No limitation on other standards or requirements**): For the avoidance of doubt, the parties acknowledge and agree that:
 - (i) some KPIs and KPI Benchmarks reflect standards or requirements set out in the PSR, or elsewhere in this Agreement; and
 - (ii) subject to clause 32.8, Project Co's obligation to achieve these standards or requirements is not limited or affected by the KPI Regime.

32.3 Requirements of KPI Assessment System

- (a) **(KPI Assessment System):** The KPI Assessment System must:
- (i) monitor the O&M Activities which are subject to the KPI Regime;
 - (ii) be capable of recording all incidents, events or circumstances in which the O&M Activities which are subject to the KPI Regime do and do not achieve the relevant KPI Benchmark with sufficient particularity to permit unique identification of:
 - A. the incident, event or circumstance;
 - B. the date, time and location of the incident, event or circumstance; and
 - C. the action taken to remedy the incident, event or circumstance (where relevant);
 - (iii) detail Project Co's achievement or otherwise of a KPI Benchmark in each Assessment Period, including the actual performance standard achieved for each KPI, the amount of KPI Points incurred and any other information that the State reasonably requires in relation to the applicable KPI; and
 - (iv) collect and store all source information, documentation, reports and data relevant to Project Co's performance in relation to the KPI Benchmarks (including the information contemplated by Schedule 3).
- (b) **(Copy of KPI Data):** To the extent permitted by Law, a copy of all KPI Data must be kept and maintained by Project Co for 3 years after it is created, produced or prepared.
- (c) **(Accuracy and fitness for purpose):** Project Co must ensure that:
- (i) the KPI Data will at all times be accurate, complete and correct; and
 - (ii) the KPI Assessment System will be at all times fit for its intended purpose.
- (d) **(Co-operation with the State):** Subject to clause 13.3 and the State providing reasonable prior notice to Project Co, Project Co must fully and promptly co-operate with the State to, and must procure that its Associates fully and promptly co-operate with Project Co in order to enable Project Co to, provide the State with access to, and copies of, the KPI Assessment System and the KPI Data.

32.4 Audit

- (a) **(Provision of audit report):** Project Co must provide to the State within 45 Business Days of the end of each Financial Year after the Date of West Gate Tunnel Completion an audit report, prepared by an independent and reputable auditor, who has audited the accuracy, completeness and correctness of the Quarterly KPI Reports and Annual KPI Report, and the fitness for intended purpose of the KPI Assessment System for that Financial Year.
- (b) **(State may require audit):** At any time up to 12 months following the end of the Term, the State may give notice to Project Co requiring an audit of the Quarterly KPI Reports, the Annual KPI Reports or the KPI Assessment System (**KPI Audit Notice**) for the purpose of reviewing the Quarterly KPI Reports, the Annual KPI

Reports and the KPI Assessment System and verifying their accuracy, correctness and completeness and fitness for intended purpose (as applicable).

- (c) **(KPI Audit):** If the State gives a KPI Audit Notice under clause 32.4(b):
- (i) the State will appoint, and notify Project Co of, a person to carry out and complete the audit (**KPI Auditor**), at the State's cost and expense, on terms and conditions of appointment determined by the State;
 - (ii) Project Co must, within a reasonable period, make the KPI Data available to the KPI Auditor, and make the Quarterly KPI Reports, Annual KPI Reports and the KPI Assessment System available for audit by the KPI Auditor and provide all necessary assistance to the KPI Auditor consistent with the requirements of this clause 32, and Project Co must procure that its Associates, fully and promptly co-operate with the KPI Auditor; and
 - (iii) Project Co must provide such access to its senior management and other relevant personnel and procure such access to Project Co's auditor appointed under clause 32.4(a) as the KPI Auditor may reasonably require for the purpose of conducting its functions set out in clause 32.4(b).
- (d) **(Quarterly KPI Report or Annual KPI Report not accurate):** If the report of the KPI Auditor or the report prepared by the auditor under clause 32.4(a) (each a **KPI Auditor's Report**) concludes or reports that a Quarterly KPI Report or Annual KPI Report is not accurate, complete or correct, or that the KPI Assessment System is not fit for its intended purpose, then Project Co must:
- (i) rectify the inaccuracy, incorrectness, incompleteness or lack of fitness for intended purpose (as applicable) in the affected data, report or system and reissue the data or report to the State or advise the State of any change to the system;
 - (ii) reassess any KPI Event affected by the inaccurate, incorrect or incomplete data or report or lack of fitness for intended purpose in the affected system, and notify the State of and pay for any necessary adjustment to the KPI Points or the KPI Liability (as applicable); and
 - (iii) to the extent the reassessment of a KPI Event under clause 32.4(d)(ii) results in a requirement for Project Co to make a payment to the State, pay the costs and expenses of the KPI Auditor or reimburse the State for any costs and expenses of the KPI Auditor incurred by the State (in either case, to the extent those costs and expenses relate to an audit by the KPI Auditor of the Quarterly KPI Reports, the Annual KPI Reports or the KPI Assessment System in accordance with this clause 32.4) within 20 Business Days of a request being made by the State which is accompanied by a valid tax invoice.
- (e) **(Deemed O&M Non-Conformance):** If the KPI Auditor's Report concludes or reports that an Annual KPI Report or a Quarterly KPI Report is materially inaccurate, incomplete or incorrect, or that the KPI Assessment System is not fit for its intended purpose in a material respect:
- (i) this will be deemed:
 - A. an O&M Non-Conformance notified by Project Co under clause 25.6(d), where the inaccuracy, incorrectness, incompleteness or lack of fitness for intended purpose (as

applicable) was first reported by the auditor under clause 32.4(a); or

- B. an O&M Non-Conformance notified by the State under clause 25.6(b) where the inaccuracy, incorrectness, incompleteness or lack of fitness for intended purpose (as applicable) was first reported by the KPI Auditor, provided the relevant matter has not previously been notified by Project Co to the State; and
- (ii) Project Co must reimburse the State for all actual costs incurred by the State in relation to any procurement of a KPI Auditor's Report, within 20 Business Days of a request being made by the State which is accompanied by a valid tax invoice.

32.5 Acknowledgment

Subject to clause 32.8, the terms of Schedule 3, including obligations in respect of monitoring and reporting, do not limit or otherwise affect Project Co's obligations under this Agreement.

32.6 Payment of KPI Liability

A KPI Liability will be calculated in accordance with section 2 of Part B of Schedule 3 and paid by Project Co in accordance with section 5 of Part B of Schedule 3 into a community fund established and administered by the State, details of which will be notified to Project Co prior to the Date of West Gate Tunnel Completion.

32.7 Review of KPI Regime

- (a) **(Review of KPI Regime and KPI Benchmarks):** Upon the occurrence of each consecutive 5 year period following the Date of West Gate Tunnel Completion, Project Co must, in consultation with the State, review:
 - (i) the KPI Regime; and
 - (ii) whether the KPI Benchmarks imposed by the KPI Regime are consistent with Best O&M Practices, the nature of the O&M Activities that are subject to the KPI Regime, and how those O&M Activities are being performed.
- (b) **(Changes to KPI Regime):** The parties must negotiate in good faith to determine and agree in writing the necessary changes to the KPI Regime (if any) arising from the review under clause 32.7(a), provided that such changes:
 - (i) are consistent with Best O&M Practices;
 - (ii) other than with the consent of the State, do not result in the KPI Regime and KPI Benchmarks specifying a standard that is less than the standard that Project Co is otherwise required to comply with in accordance with this Agreement; and
 - (iii) have been considered in the context of the whole KPI Regime.
- (c) **(Effect of change):** The parties acknowledge and agree that any changes to the KPI Regime as contemplated under this clause 32.7 will take effect on the date the parties agree to the relevant changes in writing (or such other date agreed by the parties).

32.8 Payment under KPI Regime is the sole remedy

- (a) **(KPI Liability only monetary compensation):** Subject to clauses 32.8(b) and 32.9, the KPI Liability (if any) paid in accordance with section 5 of Part B of Schedule 3 will be the only monetary compensation payable by Project Co to the State in relation to the events or circumstances giving rise to a KPI Event.
- (b) **(Exceptions):** Clause 32.8(a) does not limit or exclude:
- (i) Project Co's Liability to the State, or any other rights and remedies of the State:
 - A. under clause 28;
 - B. under clause 25.6 to the extent clause 32.4(e) applies;
 - C. under clause 37.4 on exercise of the State's step-in rights in connection with a breach of the KPI Regime;
 - D. to indemnify the State or any of its Associates under clause 39.9 to the extent that the State has not already been fully compensated for any such Claim or Liability by the amount of any KPI Liability under clause 32.8(a) (excluding for any loss of availability or any unavailability of the Relevant Infrastructure or internal costs of the State or any of its Associates relating to the events or circumstances giving rise to the KPI Event); or
 - E. in respect of Liability suffered or incurred by the State as a result of a fraudulent, reckless, unlawful or malicious act or omission or wilful misconduct of Project Co;
 - (ii) the State's rights under clause 39.3 in respect of Project Co's obligation to repair and rebuild the Relevant Infrastructure or the State's right to approve whether Project Co should repair or compensate a third party for damage to the third party's property under clause 39.7;
 - (iii) the State's or any of its Associate's entitlement to a Claim under this Agreement or at Law in respect of:
 - A. any third party damage; or
 - B. any personal injury or death,for which Project Co or any of its Associates are liable;
 - (iv) the State's or any of its Associate's entitlement to recover any costs or expenses incurred by them as a consequence of the State exercising its rights under clauses 37, 41 or 42;
 - (v) any Termination Payment; or
 - (vi) any other right or remedy of the State under this Agreement or any other State Project Document or at Law in relation to any non-monetary compensation.

32.9 Payment of KPI Liability for a breach of the KPI Regime

The State and Project Co acknowledge and agree that:

- (a) it is difficult, and in some instances impossible, to calculate with precision the diminution in value the State or Users may suffer in connection with a KPI Event;
- (b) notwithstanding clause 32.9(a), the application of the KPI Regime associated with a KPI Event reflects a genuine pre-estimate of the diminution in value of the applicable O&M Activities to the State or Users in connection with such KPI Event and associated costs;
- (c) both the State and Project Co require a formula for calculation of that diminished value to the State and the Users that is able to be readily applied without unnecessary administrative costs, delay or difficulty;
- (d) it is in the economic interests of both parties that a formula of the nature referred to in clause 32.9(c) be adopted and the KPI Regime meets the requirements of such a formula;
- (e) the State and Project Co have entered into this Agreement on the basis of and in reliance on the acknowledgements given by the other party in this clause 32.9;
- (f) to the extent permissible:
 - (i) they exclude and waive any right to the benefit of the application of any legal rule or norm, including under statute, equity and common law, relating to the enforceability of the KPI Regime; and
 - (ii) they will not raise or allege in any dispute or proceedings (including a Claim by the State under or relating to the KPI Regime), any argument or defence relating to the enforceability of the KPI Regime; and
- (g) to the extent the KPI Regime (or any part thereof) is held to be void or unenforceable for any reason, the State will be entitled to Claim at Law as a result of the KPI Event, provided that Project Co's Liability at Law will not be any greater than the Liability it would have had if the KPI Regime (or any part thereof) had not been void or unenforceable.

32.10 Relief from KPI Liability

- (a) If a Key Risk Event, State Act of Prevention, FMS Failure, Utility Interruption or a Force Majeure Event occurs and results in a circumstance or event giving rise to a KPI Event, then notwithstanding this clause 32, Project Co will be relieved of the KPI Liability and KPI Points will not accrue in relation to the KPI Event, to the extent the KPI Event is caused or contributed to by the Key Risk Event, State Act of Prevention, FMS Failure, Utility Interruption or Force Majeure Event.
- (b) If the State grants Project Co a waiver in respect of any of its rights relating to:
 - (i) a KPI Event; or
 - (ii) a circumstance or event giving rise to a KPI Event,then notwithstanding this clause 32, Project Co will be relieved of the KPI Liability, and KPI Points will not accrue, in relation to that KPI Event or circumstance or event giving rise to that KPI Event.

32.11 Relief from KPI Event

- (a) **(Modification Proposal):** If Project Co considers (acting reasonably) that the cause of a KPI Event:

- (i) cannot be rectified; or
- (ii) cannot be rectified on commercially reasonable terms,

Project Co may propose a Modification Proposal in accordance with clause 34.6, provided that the Modification Proposal contains details of a commercial proposal to mitigate or overcome the cause of that KPI Event.

- (b) **(State response):** Subject to clause 32.11(c), clause 34.6(b) will apply to the Modification Proposal submitted by Project Co under this clause 32.11.
- (c) **(State considerations):** In considering the Modification Proposal submitted by Project Co under this clause 32.11, the State must:
 - (i) act reasonably; and
 - (ii) have regard to the standards and practices in use on other privately operated roads in Victoria.

PART E - COMMERCIAL OPPORTUNITIES

33. Commercial opportunities

- (a) **(Project Co's revenue):** Without limiting clause 48(a), Project Co may only derive revenue or other returns from:
 - (i) tolls, administrative fees and charges levied or imposed in accordance with this Agreement;
 - (ii) interest or other returns on moneys held by or on behalf of Project Co under this Agreement; and
 - (iii) other activities approved by the State where such approval may be subject to any conditions the State thinks fit, including a State determined share of net revenues.

- (b) **(Obligations in relation to Associates):** Project Co must ensure that, after the date of this Agreement, none of its Associates (excluding consultants, advisers and the Equity Investors) derive revenue or other returns in connection with the West Gate Tunnel other than revenue or returns derived:
 - (i) directly or indirectly from payments made by Project Co;
 - (ii) under commercial arrangements approved by the State; or
 - (iii) in accordance with the Project Documents.

PART F - CHANGE IN CIRCUMSTANCES

34. Modifications

34.1 Modification Orders

- (a) **(Directing a Modification):** At any time, whether or not it has issued a Modification Request, the State may direct Project Co to undertake a Modification by issuing a Modification Order.
- (b) **(Mandatory Modification Orders):** Notwithstanding this clause 34.1, and without limiting the State's rights under clauses 34.4(b)(iii) and 34.4(b)(iv), the State must issue a Modification Order for:
- (i) a CMR Modification; and
 - (ii) any Modification in respect of:
 - A. a Contamination Modification Event;
 - B. a Key Approval Event; and
 - C. a Proximate State Works Notice,that occurs prior to the Date of Tolling Completion, and in respect of a Contamination Modification Event of a kind described in paragraph (c) of the definition of Contamination Modification Event that occurs on or after the Date of Tolling Completion, provided Project Co has otherwise complied with the obligations in this Agreement relevant to the Modification.
- (c) **(Contents of Modification Order):** A Modification Order issued by the State must include the terms on which the Modification is required to be undertaken and completed including:
- (i) the amount payable to or by Project Co for the Modification, calculated in accordance with the Change Compensation Principles;
 - (ii) the time for completion of the Modification (including whether the Modification is required to be completed prior to an M80 Interface Design Activity Milestone, West Gate Tunnel Completion or Tolling Completion);
 - (iii) any extension to any M80 Interface Design Activity Milestone Date, Date for West Gate Tunnel Completion, Date for Tolling Completion or Date for Close-Out (as applicable) required as a consequence of the Modification where the Modification will cause activities on the relevant critical path contained in the then current D&C Program to be delayed;
 - (iv) any amendments required to the Relevant Infrastructure, Project Activities, State Project Documents or Project Co Material, any variations to any existing Approval or any new Approval to take into account the Modification; and
 - (v) any amendments to any relevant warranty given by Project Co under this Agreement,
- which will be determined having regard to the procedures in this clause 34 or otherwise by the State acting reasonably.
- (d) **(Project Co to implement):** If the State issues a Modification Order then:

- (i) Project Co must undertake the Modification on the terms set out in the Modification Order;
- (ii) where the amount under clause 34.1(c)(i), is payable:
 - A. by the State to Project Co, Project Co will be entitled to payment of the amount for undertaking the Modification set out in the Modification Order; and
 - B. by Project Co to the State, the State will be entitled to payment of the amount for undertaking the Modification set out in the Modification Order;
- (iii) the relevant M80 Interface Design Activity Milestone Date, Date for West Gate Tunnel Completion, Date for Tolling Completion or Date for Close-Out (as applicable) will be extended by the period set out in the Modification Order;
- (iv) the State Project Documents will be deemed to be amended in accordance with the relevant amendments set out in the Modification Order; and
- (v) Project Co must carry out its obligations under the State Project Documents as amended in accordance with clause 34.1(d)(iii),

unless and until determined otherwise as a result of Project Co exercising its rights under clause 34.1(e).

- (e) **(Dispute):** If Project Co disputes all or any part of the Modification Order, Project Co must continue to undertake the Modification described in the Modification Order (including the works or services the subject matter of any dispute) but may refer the matter for resolution under clauses 43 to 44.
- (f) **(No implementation without order):** Subject to clauses 34.7, 34.8, 34.9 and 34.10, Project Co must not begin any work or incur any cost, and will not have any entitlement to make any Claim in respect of a Modification unless a Modification Order has been issued by the State in accordance with this clause 34.

34.2 Modification Request by the State

The State may, at any time, request Project Co to submit a Modification Quote for a proposed Modification which includes details of:

- (a) **(Modification):** the proposed Modification;
- (b) **(preferred financing):** the State's preferred financing for the proposed Modification in accordance with the Change Compensation Principles (where the Modification will result in an increase in the cost of the Relevant Infrastructure or the performance of the Project Activities);
- (c) **(preferred approach to Savings):** the State's preferred approach to how any Savings (calculated in accordance with the Change Compensation Principles) are to be passed on to the State (where the Modification will result in a decrease in the cost of the Relevant Infrastructure or the performance of the Project Activities) including in the case of an Omitted Works Modification under clause 34.5; and
- (d) **(other information):** any specific information that the State requires Project Co to include in the Modification Quote or that may be relevant to the preparation of the Modification Quote,

(Modification Request).

34.3 Modification Quote

- (a) **(Prior to preparing Modification Quote):** If:
- (i) Project Co is required to prepare a Modification Quote in accordance with clauses 34.3(b), 34.7, 34.8, 34.9, 34.10 and 34.12; and
 - (ii) prior to preparing a Modification Quote, Project Co:
 - A. notifies the State that it needs to engage a third party other than any Consortium Member or Related Body Corporate of a Consortium Member (other than a Related Body Corporate of a Consortium Member engaged on an arm's length basis and on commercial terms) to provide design, engineering or quantity surveying or other services reasonably required to be outsourced to assist in the preparation of a Modification Quote; and
 - B. provides details of the third party costs that will be incurred in preparing the Modification Quote calculated in accordance with the Change Compensation Principles,
- the State will either:
- (iii) agree to pay Project Co the cost to prepare the Modification Quote calculated in accordance with the Change Compensation Principles, in which case Project Co must proceed to prepare the Modification Quote; or
 - (iv) withdraw the Modification Request.
- (b) **(Submission of Modification Quote):** If the State issues a Modification Request, Project Co must submit a Modification Quote to the State:
- (i) subject to clause 34.3(b)(ii), within 20 Business Days of agreeing to pay the costs referred to in clause 34.3(a)(iii);
 - (ii) where the Modification Request relates to a PSA Event, within:
 - A. the period specified by the State in the Modification Request (acting reasonably, taking into account the size and complexity of the proposed Modification and the information to be included in the Modification Quote); and
 - B. in any event, no longer than 5 Business Days of receiving a Modification Request; or
 - (iii) at such later time as agreed by the State (acting reasonably, taking into account the size and complexity of the proposed Modification and the information to be included in the Modification Quote).
- (c) **(Contents of Modification Quote):** The Modification Quote must be prepared in accordance with the Change Compensation Principles and must:
- (i) include details of the amount Project Co claims is payable by or to Project Co for undertaking the Modification calculated in accordance with the Change Compensation Principles (**Modification Estimate**);

- (ii) include details of the basis (if applicable) on which Project Co would be prepared to fund or to procure the funding of the whole or part of the Modification calculated and the cost difference if Project Co, rather than the State, were to fund the Modification (with such basis to be consistent with the Change Compensation Principles);
- (iii) include details of any extension requested to an M80 Interface Design Activity Milestone Date, the Date for West Gate Tunnel Completion, Date for Tolling Completion or Date for Close-Out required as a consequence of the Modification where the Modification will cause activities on the relevant critical path contained in the then current D&C Program to be delayed, or if during the O&M Phase, the timeframe (if any) within which a Modification will be completed;
- (iv) include details of any amendments to the Relevant Infrastructure, the Project Activities, State Project Documents, Project Co Material, any variations to any existing Approval or any new Approval required for the Modification;
- (v) include details of any amendments to any relevant warranty given by Project Co under this Agreement;
- (vi) be prepared so as to avoid or minimise:
 - A. any delay in achieving an M80 Interface Design Activity Milestone by an M80 Interface Design Activity Milestone Date,
 - B. any delay in achieving West Gate Tunnel Completion by the Date for West Gate Tunnel Completion;
 - C. any delay in achieving Tolling Completion by the Date for Tolling Completion;
 - D. any delay in achieving Close-Out by the Date for Close-Out;
 - E. any adverse safety impacts of the Modification on people, the Project Activities and the Relevant Infrastructure; and
 - F. during the O&M Phase, the disruption to Users of the West Gate Tunnel;
- (vii) include the effect (if any) of the Modification upon traffic flow on the Freeway during the Term; and
- (viii) include any other relevant information requested by the State,

(Modification Quote).

- (d) **(Further details):** The State must provide Project Co with further details reasonably requested by Project Co to assist Project Co in preparing its Modification Quote.

34.4 State Response to Modification Quote

- (a) **(Information and changes):** Once it has provided the State with the Modification Quote, Project Co must:
 - (i) provide the State with any additional information the State notifies that it reasonably requires to assess the Modification Quote; and

- (ii) make any changes to the Modification Quote which the State requests and with which it agrees.
- (b) **(State response to Modification Quote):** Within 20 Business Days after receiving a Modification Quote or such longer period as the State reasonably requires given:
 - (i) the size and complexity of the proposed Modification; and
 - (ii) the need for any additional information not included in the Modification Quote and the time when it is subsequently provided,the State must:
 - (iii) issue a Modification Order, in accordance with clause 34.1(c) but subject to clause 34.4(d), to Project Co directing Project Co to carry out the Modification on the terms set out in the Modification Quote or as reasonably determined by the State, and Project Co must implement the Modification in accordance with the Modification Order and clause 34.1 will apply;
 - (iv) notify Project Co that it does not agree with the Modification Quote, including supporting documentation and reasons; or
 - (v) notify Project Co that it does not wish to proceed with the proposed Modification.
- (c) **(Further information):** If the State issues a notice in accordance with clauses 34.4(a) or 34.4(b)(iv), Project Co must provide the State with an updated Modification Quote, addressing the issues raised by the State, within 10 Business Days of the receipt of the State's notice and, subject to clauses 34.7(f), 34.8(b) and 34.9(c), clause 34.4 will apply again to that Modification Quote.
- (d) **(Concurrent delay):** Project Co is not entitled to claim:
 - (i) an extension to an M80 Interface Design Activity Milestone Date, the Date for West Gate Tunnel Completion, Date for Tolling Completion or Date for Close-Out;
 - (ii) Prolongation Costs in accordance with section 3.3 of Part A of the Change Compensation Principles;
 - (iii) Financing Delay Costs in accordance with section 3.5 of part A of the Change Compensation Principles; or
 - (iv) compensation in accordance with section 3.6(b)(i) of Part A of the Change Compensation Principles,

in respect of a delay to an M80 Interface Design Activity Milestone, West Gate Tunnel Completion, Tolling Completion or Close-Out caused by a CMR Modification, Contamination Modification Event, Key Approval Event, Alternative Approval Event or the carrying out of Proximate State Works to the extent that any period of that delay is contemporaneous with a delay to an M80 Interface Design Activity Milestone, West Gate Tunnel Completion, Tolling Completion or Close-Out (respectively) caused by an event which is not an Extension Event, CMR Modification, Contamination Modification Event, Key Approval Event, Alternative Approval Event or the carrying out of Proximate State Works.

34.5 Omission by State

The State may:

- (a) **(Omitted Works)**: propose a Modification that decreases, omits, deletes or removes work from the scope of the D&C Activities (**Omitted Works**); and
- (b) **(Omitted Works Contractor)**: without limiting the State's right not to issue a Modification Order or a Proximate State Works Notice, undertake the Omitted Works itself or engage another person to undertake the Omitted Work on its behalf (**Omitted Works Contractor**) in which case Project Co must comply with the obligations in clauses 10.7 and 10.8 (to the extent applicable) in relation to Interface Parties.

34.6 Modifications proposed by Project Co

- (a) **(Project Co may propose a Modification)**: Subject to clause 25.6A(a), Project Co may, for its own convenience, request the State to direct a Modification by submitting a notice to the State which must:
 - (i) include the information set out in clause 34.1(c);
 - (ii) include the reason(s) for the proposed Modification;
 - (iii) identify the changes (if any) required to the Relevant Infrastructure, the Project Activities, the State Project Documents, the Project Co Material, any variations to any existing Approvals, or any additional Approvals to accommodate the proposed Modification;
 - (iv) contain a statement confirming the extent (if any) to which the proposed Modification will affect:
 - A. any Interface Parties; and
 - B. the Standards, warranties and other obligations with which Project Co is required to comply under this Agreement; and
 - (v) contain any other information and supporting documentation the State requests,

(Modification Proposal).
- (b) **(State may approve or reject)**: Subject to clauses 25.6A(c) and 40.3(d), upon receipt of a Modification Proposal:
 - (i) clause 34.4 will apply as if the Modification Proposal was a Modification Quote; and
 - (ii) the State will be under no obligation to issue a Modification Order for the convenience of, or to assist, Project Co except as set out in clause 34.1(b).
- (c) **(Implementation)**: If the State issues a Modification Order as a result of a Modification Proposal, Project Co must undertake the Modification on the basis of the Modification Order and clause 34.1 will apply.

34.7 Modifications required as a result of Change in Mandatory Requirements

- (a) **(Change in Mandatory Requirements)**: Where:

- (i) a Project Specific Change in Mandatory Requirements; or
- (ii) subject to clause 34.7(c), a Change in Policy,

occurs prior to the Date of Tolling Completion that will or is likely to:

- (iii) have an effect on the cost of carrying out the Project Activities;
- (iv) delay an M80 Interface Design Activity Milestone, West Gate Tunnel Completion, Tolling Completion or Close-Out; or
- (v) have an adverse impact on Projected Revenue,

(CMR Modification), Project Co must, as a condition precedent to Project Co's entitlement to a Modification:

- (vi) provide a notice to the State within 10 Business Days of becoming aware of the CMR Modification; and
- (vii) provide a Modification Quote to the State in accordance with clause 34.3(c) within 60 Business Days of becoming aware of the CMR Modification (or such longer period as Project Co reasonably requires having regard to the size and nature of the required Modification).

(b) **(Change in Policy)**: If the CMR Modification is a consequence of a Change in Policy occurring after the date of the Agreement, the State must, within 15 Business Days of Project Co's Modification Quote under clause 34.7(a)(vii), direct Project Co whether or not it is required to comply with such Change in Policy. Project Co acknowledges and agrees that neither it nor the State will be entitled to give a direction not to comply with an AS5100 (2017) Requirement.

(c) **(Project Co to proceed)**: If Project Co is:

- (i) directed to comply with the Change in Policy under clause 34.7(b); or
- (ii) otherwise, legally obliged to comply with the Change in Policy,

it must proceed with the Modification in accordance with this clause 34.7 and such a Change in Policy will be a CMR Modification.

(d) **(State may request)**: If the State considers that a CMR Modification has occurred and Project Co has not provided a Modification Quote in accordance with clause 34.7(a)(vii), the State may direct Project Co to submit a Modification Quote in respect of that CMR Modification.

(e) **(Project Co to comply)**: Project Co must comply with the relevant Change in Mandatory Requirements (as changed) unless:

- (i) Project Co is not otherwise legally obliged to comply with the Change in Mandatory Requirements; or
- (ii) subject to clause 34.7(c), in the case of a Change in Policy, the State directs Project Co not to comply with the relevant Change in Policy (as changed).

(f) **(CMR Modification)**: Subject to clause 34.7(c), clause 34.4 will apply to any Modification Quote submitted by Project Co under this clause 34.7, provided that the State's response must be in the form of clause 34.4(b)(iii) or clause 34.4(b)(iv).

- (g) **(Implementation):** Upon the State issuing a Modification Order under clause 34.4(b)(iii) as a result of a Modification Quote provided under this clause 34.7, Project Co must undertake the Modification on the basis of the Modification Order and clause 34.1(d) will apply.

34.8 Modifications required as a result of Contamination Modification Event

- (a) **(Contamination Modification Event):** Where a Contamination Modification Event of a kind described in:
 - (i) paragraph (a) or (b) of the definition of Contamination Modification Event occurs prior to the Date of Tolling Completion; or
 - (ii) in respect of a Contamination Modification Event of a kind described in paragraph (c) of the definition of Contamination Modification Event that occurs at any time,

Project Co must, as a condition precedent to Project Co's entitlement to a Modification:

 - (iii) provide a notice to the State within 10 Business Days of becoming aware of the Contamination Modification Event which contains:
 - A. a copy of the Contamination Notice (if applicable) or details of the event which otherwise constitutes the Contamination Modification Event; and
 - B. the details required in clause 7.2(c); and
 - (iv) provide a Modification Quote in relation to the Contamination Modification Event to the State in accordance with clause 34.3(c) within 20 Business Days of the date on which Project Co became aware of the Contamination Modification Event (or such longer period as Project Co reasonably requires having regard to the size and nature of the required Modification).
- (b) **(Contamination Modification Event Modification):** Clause 34.4 will apply to each Modification Quote provided under clause 34.8(a)(iv), provided that the State's response must be in the form of clause 34.4(b)(iii) or clause 34.4(b)(iv).
- (c) **(Implementation):** Without limiting Project Co's obligations under clause 7.2(d), upon the State issuing a Modification Order under clause 34.4(b)(iii) as a result of a Modification Quote provided under clause 34.8(a)(iv), Project Co must undertake the Modification on the basis of the Modification Order and clause 34.1(d) will apply.

34.9 Modifications required as a result of Key Approval Event

- (a) **(Key Approval Event):** Where a Key Approval Event occurs prior to the Date of Tolling Completion, Project Co must, as a condition precedent to Project Co's entitlement to a Modification:
 - (i) provide a notice to the State within 10 Business Days of becoming aware of the Key Approval Event; and
 - (ii) provide a Modification Quote to the State in accordance with clause 34.3(c) within 15 Business Days of becoming aware of the Key Approval Event (or such longer period as Project Co reasonably requires having regard to the size and nature of the required Modification).

- (b) **(State may request):** If the State considers that a Key Approval Event has occurred and Project Co has not provided a Modification Quote in accordance with clause 34.9(a)(ii), the State may direct Project Co to submit a Modification Quote in respect of that Key Approval Event.
- (c) **(Modification Order):** Clause 34.4 will apply to any Modification Quote submitted by Project Co under this clause 34.9, provided that the State's response must be in the form of clause 34.4(b)(iii) or clause 34.4(b)(iv).
- (d) **(Implementation):** Upon the State issuing a Modification Order under clause 34.4(b)(iii) as a result of a Modification Quote provided under this clause 34.9, Project Co must undertake the Modification on the basis of the Modification Order and clause 34.1(d) will apply.

34.10 Modifications required as a result of Proximate State Works Notice

- (a) **(Proximate State Works Notice):** Where the State issues a Proximate State Works Notice to Project Co prior to the Date of Tolling Completion, Project Co must, as a condition precedent to Project Co's entitlement to a Modification, provide a Modification Quote to the State in accordance with clause 34.3(c) within 15 Business Days of receipt of the Proximate State Works Notice (or such longer period as Project Co reasonably requires having regard to the size and nature of the required Modification).
- (b) **(Modification Order):** Clause 34.4 will apply to any Modification Quote submitted by Project Co under this clause 34.10.
- (c) **(Implementation):** Upon the State issuing a Modification Order under clause 34.4(b)(iii) as a result of a Modification Quote provided under this clause 34.10, Project Co must undertake the Modification on the basis of the Modification Order and clause 34.1(d) will apply.

34.11 Alternative Approval Event

- (a) **(Alternative Approval Event):** The occurrence of an Alternative Approval Event prior to the Date of Tolling Completion will be deemed to be a Modification.
- (b) **(Conditions Precedent):** As a condition precedent to Project Co's entitlement to a Modification Order as a consequence of an Alternative Approval Event, Project Co must:
 - (i) provide a notice to the State within 10 Business Days of becoming aware of the Alternative Approval Event; and
 - (ii) provide a Modification Quote to the State in accordance with clause 34.3(c) within 15 Business Days of becoming aware of the Alternative Approval Event (or such longer period as Project Co reasonably requires having regard to the size and nature of the required Modification).
- (c) **(State may request):** If the State considers that an Alternative Approval Event has occurred and Project Co has not provided a Modification Quote in accordance with clause 34.11(b)(ii), the State may direct Project Co to submit a Modification Quote in respect of that Alternative Approval Event.
- (d) **(Modification Order):** Clause 34.4 will apply to any Modification Quote submitted by Project Co under this clause 34.11, provided that the State's response must be in the form of clause 34.4(b)(iii) or clause 34.4(b)(iv).

- (e) **(Implementation):** Upon the State issuing a Modification Order under clause 34.4(b)(iii) as a result of a Modification Quote provided under this clause 34.11, Project Co must undertake the Modification on the basis of the Modification Order and clause 34.1(d) will apply.

34.12 Modification as a result of Latent Condition Event

- (a) **(Latent Condition Event):** Subject to clause 34.12(b), where a Latent Condition Event occurs on or after the Date of Tolling Completion, Project Co must, as a condition precedent to Project Co's entitlement to a Modification:
 - (i) provide a notice to the State as soon as reasonably practicable after becoming aware of the Latent Condition Event; and
 - (ii) provide a Modification Quote to the State in accordance with clause 34.3(c) within 15 Business Days after providing a notice to the State under clause 34.12(a)(i) (or such longer period as Project Co reasonably requires having regard to the size and nature of the required Modification).
- (b) **(Defect rectification under the D&C Subcontract):** To the extent that a Latent Condition Event involves a defect or condition which the D&C Subcontractor is obliged to rectify under the D&C Subcontract, the parties acknowledge and agree that Project Co will not be entitled to claim a Modification under this clause 34.12.
- (c) **(Modification Order):** Clause 34.4 will apply to any Modification Quote submitted by Project Co under this clause 34.12, provided that the State's response must be in the form of clause 34.4(b)(iii) or 34.4(b)(iv) where a failure to rectify the defect or condition would prevent Project Co from being able to comply with Law or a Policy with which it is required to comply under this Agreement.
- (d) **(Implementation):** Upon the State issuing a Modification Order under clause 34.4(b)(iii) as a result of a Modification Quote provided under this clause 34.12, Project Co must undertake the O&M Activities in accordance with the Modification on the basis of the Modification Order, and clause 34.1(d) will apply.
- (e) **(Relief from obligations):** Subject to clause 34.12(f), if the State issues a notice pursuant to clause 34.4(b)(v) in relation to a Latent Condition Event, then to the extent that Project Co is absolutely prevented from complying with any of its obligations under this Agreement as a direct consequence of the defect or condition the subject of the Latent Condition Event, Project Co will be relieved of those obligations.
- (f) **(Absolute prevention):** In determining whether Project Co is absolutely prevented from complying with its obligations under this Agreement in accordance with clause 34.12(e), the parties must not have regard to the cost implications of Project Co complying with its obligations under this Agreement.

34.13 Directions giving rise to Modification

- (a) **(State direction):** Without limiting clause 39.11(a)(iii)D, if a direction by the State, other than a Modification Order, constitutes or involves a Modification, Project Co must, as a condition precedent to making a Claim against the State in connection with the direction:
 - (i) if the direction is given prior to the Date of West Gate Tunnel Completion, within 10 Business Days of receiving the direction; or

- (ii) if the direction is given on or after the Date of West Gate Tunnel Completion, within 20 Business Days of receiving the direction,

give notice to the State that it considers the direction constitutes or involves a Modification and:
 - (iii) within 10 Business Days after giving the notice under clause 34.13(a)(i);
or
 - (iv) within 20 Business Days after giving the notice under clause 34.13(a)(ii),submit a Modification Quote to the State in respect of the direction.
- (b) **(Confirmation):** Within 5 Business Days of the State receiving a Modification Quote from Project Co under clause 34.13(a)(iii) or clause 34.13(a)(iv) (as applicable) the State may elect to:
 - (i) confirm that the direction is in fact a Modification and either:
 - A. notify Project Co that clauses 34.3(c) and 34.3(d) will apply to the Modification Quote; or
 - B. vary the direction and confirm that the varied direction is a Modification by issuing a Modification Order in which case clause 34.1 will apply;
 - (ii) withdraw the direction, in which case Project Co must not comply with the direction; or
 - (iii) inform Project Co that, in the State's view, the direction is not a Modification in which case Project Co must, subject to clause 5.1(b), comply with the direction but may refer the matter to dispute resolution in accordance with clauses 43 to 44.
- (c) **(Implementation):** If the State issues a Modification Order under clause 34.4(b)(iii) as a result of clause 34.13(b)(i), Project Co must undertake the Modification on the basis of the Modification Order and clause 34.1(d) will apply.
- (d) **(Dispute):** If Project Co disputes the State's view notified under clause 34.13(b), Project Co must continue to carry out the Project Activities (including the works or services the subject matter of any direction) but may refer the matter for resolution under clauses 43 to 44.
- (e) **(No commencement):** Project Co must not commence any work the subject of a direction which it believes constitutes a Modification until the State has acted under clause 34.13(b).
- (f) **(Conditions for Project Co Claim):** Project Co will not be entitled to make any Claim against the State in respect of a direction that gives rise to a Modification unless it has given a notice under clause 34.13(a) and otherwise complies with this clause 34.13.

34.14 Streamlined Modifications during O&M Phase

- (a) **(Streamlined Modification Proposal):** Without limiting the State's rights under clause 34.1 or 34.2, during the O&M Phase if the State (acting reasonably) considers that a Modification which the State intends to propose is minor, having regard to its scope, cost and timing implications, then it may issue to Project Co a notice titled "Streamlined Modification Proposal" setting out:

- (i) an outline of the proposed Modification;
- (ii) an explanation of why the proposed Modification is minor, having regard to the factors referred to above; and
- (iii) the streamlined process proposed by the State for agreeing the terms governing, and then implementing, the proposed Modification,

(Streamlined Modification Proposal).

- (b) **(Project Co's notice):** Within 7 Business Days after receipt of a Streamlined Modification Proposal, Project Co must (acting reasonably) provide the State with a notice which:
 - (i) accepts the Streamlined Modification Proposal; or
 - (ii) sets out the reasonable amendments to the Streamlined Modification Proposal required by Project Co.
- (c) **(Implementation):** The State and Project Co will agree the terms governing, and then implement, Modifications on the following basis:
 - (i) the terms of the Streamlined Modification Proposal where a Streamlined Modification Proposal is accepted under clause 34.14(b)(i); or
 - (ii) the terms agreed between the State and Project Co, as recorded in an amended Streamlined Modification Proposal where Project Co seeks to amend a Streamlined Modification Proposal under clause 34.14(b)(ii).
- (d) **(Failure to agree):** If the State and Project Co fail to agree in accordance with clause 34.14(c)(ii), the State may:
 - (i) issue a Modification Order under clause 34.1; or
 - (ii) issue a Modification Request under clause 34.2,in order to implement the Modification.

34.15 Downstream Modifications

- (a) For the purposes of this clause 34.15, a 'Modification Order (Downstream)' means a modification order issued by Project Co to the D&C Subcontractor under clause 34 of the D&C Subcontract.
- (b) Project Co will not issue a Modification Order (Downstream) other than:
 - (i) where a corresponding Modification Order has been issued by the State under this clause 34; or
 - (ii) where the Modification Order (Downstream) relates to a modification which is valued at less than \$[not disclosed] (Indexed),unless Project Co has given the State prior written notice of its intention to issue that Modification Order (Downstream), with such notice being given:
 - (iii) in the case of a Modification Order (Downstream) under clause 34.13 of the D&C Subcontract, 8 Business Days before it is issued; or

- (iv) in the case of any other Modification Order (Downstream), 30 Business Days before it is issued.
- (c) Following receipt of a notice under clause 34.15(b) the State may provide its reasonable comments on the Modification Order (Downstream) to Project Co and Project Co will consider and take into account those comments prior to issuing the Modification Order (Downstream) provided that:
 - (i) Project Co is not required to change or modify the Modification Order (Downstream) as a result of its consideration of the State's comments; and
 - (ii) if the State has not provided its comments to Project Co within 20 Business Days following receipt of the notice under clause 34.15(b), it will be deemed to have provided comments under this clause 34.15(c).

34.16 Pre-Agreed Modifications

- (a) **(Pre-Agreed Modification Election):** The State may (but is not obliged to), at any time on or before the relevant Election Date, direct a Pre-Agreed Modification by issuing to Project Co a notice titled "Pre-Agreed Modification Election Notice".
- (b) **(Deemed amendment):** If a Pre-Agreed Modification Election Notice is issued on or before the relevant Election Date then, from the date of the Pre-Agreed Modification Election Notice, the State Project Documents will be deemed to be amended in accordance with the Pre-Agreed Modification Schedule for the relevant Pre-Agreed Modification.
- (c) **(Project Co to implement any Positive Pre-Agreed Modification):** If the State directs any Positive Pre-Agreed Modification under clause 34.16(a) by issuing a Pre-Agreed Modification Election Notice on or before the relevant Election Date, then Project Co, in respect of that Positive Pre-Agreed Modification must:
 - (i) carry out its obligations under the State Project Documents as amended in accordance with clause 34.16(b); and
 - (ii) implement the Pre-Agreed Modification in accordance with the Pre-Agreed Modification Schedule.
- (d) **(Negative Pre-Agreed Modification):** The State acknowledges that, where the State issues a Pre-Agreed Election Notice on or before the Election Date in relation to a Negative Pre-Agreed Modification, Project Co's obligations to carry out the Project Activities under the State Project Documents will be amended in accordance with this clause 34.16.
- (e) **(Acknowledgements for Positive Pre-Agreed Modifications):** In respect of any Positive Pre-Agreed Modification in relation to which the State issues a Pre-Agreed Election Notice on or before the relevant Election Date, Project Co acknowledges that:
 - (i) payment of the Pre-Agreed Modification Amount by the State to Project Co and changes to the Date for West Gate Completion, Date for Tolling Completion and Date for Close-Out (if any) in accordance with the Pre-Agreed Modification Schedule will be full compensation for any Liability or delay that Project Co (or its Associates) suffers or incurs arising out of or in connection with the issue of the Pre-Agreed Modification Election Notice or the implementation of that Positive Pre-Agreed Modification; and

- (ii) except as set out in clause 34.16(e)(i), Project Co will not be entitled to make any Claim against the State, including for:
 - A. any acceleration to the carrying out of the Project Activities which Project Co (or its Associates) may carry out at any time in order not to delay an M80 Interface Design Activity Milestone, West Gate Tunnel Completion, Tolling Completion or Close-Out or to achieve an M80 Interface Design Activity Milestone, West Gate Tunnel Completion, Tolling Completion or Close-Out by the relevant M80 Interface Design Activity Milestone Date, Date for West Gate Completion, Date for Tolling Completion and Date for Close-Out (respectively) in accordance with this Agreement; or
 - B. any delay to the carrying out of the Project Activities, in connection with the issue of the Pre-Agreed Modification Election Notice, the amendment of the State Project Documents pursuant to clause 34.16(b) or the implementation of the Positive Pre-Agreed Modification.
- (f) **(Acknowledgements for Negative Pre-Agreed Modifications):** In respect of any Negative Pre-Agreed Modification in relation to which the State issues a Pre-Agreed Election Notice prior to the relevant Election Date, the State acknowledges that:
 - (i) payment of the Pre-Agreed Modification Amount by Project Co to the State will be full compensation for any Liability that the State or its Associates suffers or incurs arising out of or in connection with the issue of the Pre-Agreed Modification Election Notice or the implementation of that Negative Pre-Agreed Modification; and
 - (ii) except as set out in clause 34.16(f)(i), the State will not be entitled to make any Claim against Project Co in connection with the issue of the Pre-Agreed Modification Election Notice, the amendment of the State Project Documents pursuant to clause 34.16(b) or the implementation of the Negative Pre-Agreed Modification.
- (g) **(After Election Date):** Nothing in this clause 34.16 prevents the State from:
 - (i) issuing a Modification Request under clause 34.2; or
 - (ii) directing a Modification by issuing a Modification Order, that involves the same (or similar) changes to the Relevant Infrastructure or the Project Activities as a Pre-Agreed Modification after the relevant Election Date, and the parties acknowledge and agree that the amount payable by or to Project Co for undertaking the Modification will be calculated and determined in accordance with the Change Compensation Principles.
- (h) **(No deemed acceptance):** No reference to a Pre-Agreed Modification in the PSR or inclusion of requirements relevant to a Pre-Agreed Modification in the PSR will:
 - (i) require the State to direct a Pre-Agreed Modification under clause 34.16(a); or
 - (ii) be read to imply that the State has issued a direction under clause 34.16(a), unless such direction has in fact been given by the State under clause 34.16(a).

35. Technological Improvements

35.1 Maintenance of technology

As part of operating, maintaining and repairing the West Gate Tunnel during the O&M Phase, Project Co must maintain a level of technology in its systems that:

- (a) **(Best O&M Practices)**: is consistent with Best O&M Practices; and
- (b) **(efficiency with road network)**: ensures, having regard to the interdependencies between Project Co's systems and the systems of other operators of the Victorian road network, the West Gate Tunnel is able to operate effectively and efficiently with the remainder of Victoria's road network from time to time.

35.2 Research and Development of Technological Improvements

- (a) On and from the Date of Tolling Completion, Project Co must use reasonable endeavours to:
 - (i) keep abreast of relevant advances in technology; and
 - (ii) undertake or procure access to research and development, with the aim of readily identifying Technological Improvements.
- (b) Where Project Co becomes aware of a Technological Improvement, and:
 - (i) where such Technological Improvement is reasonably likely to be adopted in the future by Australian toll road operators, having regard to the interdependencies between the West Gate Tunnel and other toll roads, Project Co must; and
 - (ii) in all other cases, Project Co may, notify the State:
 - (iii) of that Technological Improvement; and
 - (iv) whether Project Co intends to implement the Technological Improvement.

36. Refinancings

36.1 Refinancings

- (a) **(State consent)**: Project Co must not (and must procure that NewCo does not):
 - (i) subject to clause 36.1(g), enter into or implement any Refinancing; or
 - (ii) prior to the Date of West Gate Tunnel Completion, make any repayment or prepayment of principal owing by Project Co under the Finance Documents, unless such repayment or prepayment is made solely out of:
 - A. the proceeds of new debt provided to Project Co under the Finance Documents or payments received under the Concession Enhancement Payment Deed; or

- B. the proceeds of loans or repayments of loans paid by the State to Project Co under the State Works Loan Agreement where Funding Co is utilising such repayment or prepayment to make a loan to NewCo under the NewCo Loan Facility Agreement at that time in an amount at least equal to the amount repaid or prepaid by Project Co,

without the prior consent of the State.

- (b) **(Provision of details):** Project Co must:
- (i) at least 60 Business Days prior to any proposed Refinancing, consult with the State to outline the proposed refinancing strategy and to alert the State to any changes that may have a material impact on the ability of Project Co, NewCo or Funding Co to meet its obligations under the Project Documents;
 - (ii) promptly (and at least 30 Business Days prior to the proposed Refinancing) provide the State with full details of any proposed Refinancing, including a copy of any draft document proposed to be entered into in connection with such Refinancing (including any proposed amendments to any Project Documents) and a copy of the proposed financial model reflecting the Refinancing; and
 - (iii) at least 10 Business Days prior to the proposed Refinancing, provide the State with final execution drafts of each document proposed to be entered into in connection with such Refinancing (including any proposed amendments to any Project Documents).
- (c) **(Changes to terms):** Project Co acknowledges and agrees that the State may require changes to the draft State Project Documents proposed to be entered into in connection with the Refinancing prior to giving its consent or executing any changes to the State Project Documents.
- (d) **(Negotiation):** Where the State requires changes to the draft State Project Documents proposed to be entered into in connection with the Refinancing, the parties agree to negotiate in good faith to resolve those changes, with regard to market practice terms which apply in respect of external finance in projects procured under the Partnerships Victoria framework (or any replacement or substitute policies relating to public private partnership arrangements for the provision of public infrastructure in the State of Victoria) at the time of the Refinancing.
- (e) **(Financiers to be included):** The State agrees that prospective financiers can be involved in the negotiations described in clause 36.1(d).
- (f) **(Execution):** The parties agree to (and Project Co agrees to procure that NewCo and the prospective financiers will) execute the draft documentation notified to the State and consented to by the State under clause 36.1(a) or otherwise agreed under clause 36.1(d) promptly following such consent or agreement.
- (g) **(No consent required):** Clause 36.1(a) does not apply to:
- (i) subordinated debt which is subordinated to Secured Moneys (as defined under the State Security) on terms acceptable to the State;
 - (ii) trade accounts and accrued expenses arising in the course of trading on arms' length terms;

- (iii) any Refinancing which is required to be incurred under the State Project Documents;
- (iv) financing arising under a hire purchase agreement or other finance lease arising in the ordinary course of business;
- (v) Share Capital Dealings, in which case clauses 49.2 to 49.7 will apply; and
- (vi) indebtedness (other than that referred to in clauses 36.1(g)(i) to 36.1(g)(v)) arising in the ordinary course of business where the total outstanding does not exceed \$[not disclosed] in aggregate (Indexed).

36.2 Finance Direct Deed

- (a) If Project Co implements any new financing arrangement with a Wholly Owned Group Member of an Equity Investor, other than Funding Co, Project Co will ensure that the relevant Wholly Owned Group Member accedes to the Finance Direct Deed in accordance with the terms of the Finance Direct Deed.
- (b) Project Co may not grant or allow to subsist any Security Interest in favour of any person unless that person has acceded to the Finance Direct Deed or entered into a direct deed with the State on terms acceptable to the State.

36.3 No gain share

The State acknowledges and agrees that it is not entitled to share in any gain realised by any party arising due to a Refinancing or the implementation of any new financing in the circumstances contemplated under clause 36.1 or 36.2.

37. Step-in by the State

37.1 Right of Step-In

- (a) **(State Step-In):** If:
 - (i) subject to clause 37.1(b) but without limiting the State's other rights under this clause 37.1(a), a Major Default occurs;
 - (ii) a State Cure Notice has been issued in accordance with the D&C Direct Deed or OSA Direct Deed (as the case may be);
 - (iii) a Default Termination Event occurs;
 - (iv) a Catastrophic Event occurs; or
 - (v) any Project Activities are suspended following the occurrence of a Force Majeure Event prior to the Date of West Gate Tunnel Completion,
- (Step-In Event),**
- (vi) the State may elect to do any or all of the following:
 - A. assume total or partial management and control of the whole or any part of the Relevant Infrastructure or the Project Activities;
 - B. access those parts of the Site to which Project Co has access or is entitled to occupy; and

- C. take such other steps as are necessary in the reasonable opinion of the State for it to carry out the Project Activities and minimise the effect of the relevant Step-In Event.
- (b) **(State not to exercise)**: The State must not exercise its rights under clause 37.1(a) for so long as Project Co is complying with its obligations under clause 41.1 in respect of that Major Default.

37.2 Notice

The State may exercise its rights under clause 37.1(a)(iv) without prior notice to Project Co but the State must, if it is reasonably practicable to do so, give prior notice and in any event must, as soon as practicable, provide notice to Project Co that it is exercising those rights.

37.3 Consequences of the State exercising its rights

- (a) **(Suspension of rights)**: During the exercise of the State's rights under clause 37.1, Project Co's rights and obligations under this Agreement are suspended to the extent necessary to permit the State to exercise those rights.
- (b) **(No limitation)**: Except to the extent that Project Co's obligations are suspended under clause 37.3(a), the exercise by the State of its rights under clause 37.1 (or the cessation of such exercise) will not affect any other right of the State under this Agreement or any other State Project Document.

37.4 Payments

- (a) **(Project Co must compensate the State)**: Where the State has exercised its rights under clause 37.1 as a consequence of any of the Step-In Events:
 - (i) contemplated by clauses 37.1(a)(i), 37.1(a)(ii) or 37.1(a)(iii); or
 - (ii) contemplated by clauses 37.1(a)(iv) or 37.1(a)(v), and the Step-In Event was caused by the failure of Project Co to carry out the Project Activities in accordance with and to the standard specified in the PSR or by any other breach by Project Co of this Agreement or any fraudulent, reckless, unlawful, negligent or malicious act or omission of Project Co or any of its Associates,then:
 - (iii) prior to the Date of Tolling Completion, any Liability suffered or incurred by the State in connection with the exercise by the State of its rights under clause 37.1 will be a debt due and payable by Project Co to the State; and
 - (iv) on and after the Date of Tolling Completion, all revenue derived by Project Co in connection with the West Gate Tunnel during any period in which the State is exercising its rights under clause 37.1, must be applied:
 - A. first, to meet the operational costs of the West Gate Tunnel;
 - B. secondly, to fund any Liability suffered or incurred by the State in connection with the exercise by the State of its rights under clause 37.1; and
 - C. thirdly, as directed by Project Co.

- (b) **(State risk):** Where the State has exercised its rights under clause 37.1 as a consequence of a Step-In Event as described in clause 37.1(a)(iv) and the Step-In Event was not the result of a failure by Project Co to carry out the Project Activities in accordance with and to the standard specified in the PSR or by any other breach by Project Co of this Agreement or any fraudulent, reckless, unlawful, negligent or malicious act or omission of Project Co or any of its Associates:
 - (i) prior to the Date of Tolling Completion, the exercise of the State's rights will be deemed to be a Compensable Extension Event; and
 - (ii) on and after the Date of Tolling Completion, the exercise of the State's rights will be deemed to be a Key Risk Event.
- (c) **(Payments during Force Majeure Event):** Where the State has exercised its rights under clause 37.1 as a consequence of a Step-In Event in clause 37.1(a)(v) which was not the result of any act or omission of Project Co or any of its Associates, clause 23.14 will apply.

37.5 Project Co to assist the State

Project Co must:

- (a) **(access to be granted):** grant such access rights as are necessary and take all action that is necessarily required by the State to assist the State in exercising its rights under clause 37.1;
- (b) **(sufficient resources):** provide sufficient resources, including personnel, to assist the State in exercising its rights under clause 37.1; and
- (c) **(not to hinder):** not do anything to hinder, disrupt or prevent the State in exercising its rights under clause 37.1.

37.6 Undertake Project consistent with this Agreement

When exercising its rights under clause 37.1, the State must use its reasonable endeavours to carry out the Project Activities in a manner which is consistent with the State Project Documents, but taking into account the State's statutory rights and the circumstances that prompted the State to exercise those rights.

37.7 Limits on State liability during step-in

Project Co acknowledges and agrees that:

- (a) **(no obligation to remedy):** the State is not obliged to remedy any breach, or to overcome or mitigate any risk or risk consequences, in connection with which the State exercises its rights under clause 37.1; and
- (b) **(no claim):** Project Co will not be entitled to make any Claim against the State, arising in connection with the exercise by the State of its rights under clause 37.1 except:
 - (i) to the extent caused by:
 - A. breach by the State of any State Project Document; or
 - B. a fraudulent, reckless, unlawful, negligent or malicious act or omission of the State or any of its Associates in the course of exercising its rights under clause 37.1; or

- (ii) as contemplated by clause 37.4(b) or clause 37.4(c).

37.8 Cessation of step-in rights

- (a) **(State may cease):** The State may, at any time, cease to exercise its rights in accordance with this clause 37 upon giving 5 Business Days' notice to Project Co.
- (b) **(State must cease):** Subject to clause 37.8(a), the State must cease to exercise its rights in accordance with this clause 37 where the State has exercised its rights as a consequence of any of the Step-In Events under:
 - (i) clause 37.1(a)(i) or 37.1(a)(iii) and the Major Default or Default Termination Event (as the case may be) has been cured;
 - (ii) clause 37.1(a)(ii) and the D&C Subcontractor or OpCo notifies the State that default under the relevant Subcontract has been cured; or
 - (iii) clause 37.1(a)(iv) or 37.1(a)(v), and the relevant event ceases and its consequences have been remedied.
- (c) **(Project Co to recommence):** If the State ceases to exercise its rights under clause 37.1 in accordance with this clause 37.8, Project Co must immediately recommence carrying out any obligations suspended due to the exercise by the State of those rights and the State must give reasonable assistance to Project Co to ensure that this process of transition is effected as smoothly as possible.

38. Compensable Enhancement

38.1 Notification and consultation

- (a) **(Notification):** The State may notify Project Co of a Compensable Enhancement provided that the notice is given within 12 months after the occurrence of the Compensable Enhancement.
- (b) **(Consultation):** If the State gives a notice under clause 38.1(a), without limiting clause 38.3(b), the State and Project Co must then consult in good faith and use their reasonable endeavours to agree on the amount of the additional revenue (net of additional expenses likely to be incurred in receiving that additional revenue) calculated without counting any other amounts payable between Project Co and the State received and likely to be received by Project Co by reason of the Compensable Enhancement in the Financial Year in which the notice was given and each subsequent Financial Year during the O&M Phase.
- (c) **(No agreement):** If no agreement is reached between the State and Project Co as to the existence of a Compensable Enhancement or an amount referred to under clause 38.1(b) within 20 Business Days of Project Co receiving the notice under clause 38.1(a), then either the State or Project Co may refer the matter for resolution in accordance with clauses 43 and 44.

38.2 Exclusions to Compensable Enhancement

The parties acknowledge and agree that a Compensable Enhancement does not include:

- (a) a Government Directed Benefit;
- (b) a circumstance or event to the extent that it reflects the State or another person on behalf of the State affording support to the Freeway under clause 26.1 other than an upgrade of a Principal Road Interface referred to in the definition of Compensable Enhancement;

- (c) actual or projected growth in road transportation network usage other than growth in traffic generated or attracted by the relevant circumstance or event;
- (d) a Modification;
- (e) an Assumed Transport Network Enhancement (irrespective of when the Assumed Transport Network Enhancement is carried out);
- (f) the introduction of any Truck Ban;
- (g) the making or passing of, the Project Legislation, or the occurrence of the Project Legislation Commencement Date; or
- (h) the execution of the CityLink and ESEP Concession Amending Deeds by the parties to them prior to the Date for West Gate Tunnel Completion.

38.3 Payment of compensation

- (a) **(Amount payable):** Subject to clause 38.3(b), for each Financial Year, [not disclosed]% of any amount agreed under clause 38.1(b) or determined in accordance with clause 38.1(c) must be paid by Project Co to the State by the CE Payment Date (**Compensable Enhancement Amount**).
- (b) **(Pro rate for early termination):** If this Agreement terminates prior to the Final Expiry Date in accordance with clause 42, a proportion only of the Compensable Enhancement Amount applicable to the Financial Year in which this Agreement terminates need be paid on the CE Payment Date relevant to that Financial Year, equivalent to the proportion of that Financial Year that has expired prior to termination.
- (c) **(Time for payment):** Any payment of a Compensable Enhancement Amount in relation to any Financial Year must be made on:
 - (i) subject to clause 38.3(d), the CE Payment Date; or
 - (ii) if the Financial Year concerned is the one in which this Agreement terminates, the date which is 20 Business Days after the date of termination.
- (d) **(Adjustment to Payment Date):** If, on the CE Payment Date, Project Co was not in a position to pay the Compensable Enhancement Amount and pay any amount contemplated in the Notional Cost Profile, Notional Tax Profile or the Notional Debt Profile in the Financial Year in which the CE Payment Date occurs, Project Co's obligation to pay the Compensable Enhancement Amount on the CE Payment Date will be deferred until the first date on which Project Co is able to pay the Compensable Enhancement Amount and the amount contemplated in the Notional Cost Profile, Notional Tax Profile and the Notional Debt Profile.
- (e) **(Failure to pay):** If a payment to be made under this clause 38.3 is not made in accordance with clause 38.3(c), including as a result of the operation of clause 38.3(d), Project Co must ensure that no distribution, principal payment, interest or other payment is made by Project Co directly or indirectly to any Equity Investor until that amount is paid in full, other than where that Equity Investor is due to be paid any amounts in accordance with the Notional Debt Profile or any other payment due to be made under a Finance Document on or around the Date of Parliamentary Support (CityLink).

38.4 Circumstance ceasing

If a circumstance or event which constitutes a Compensable Enhancement ceases to subsist, payments required to be made by Project Co to the State in accordance with clause 38.3(c):

- (a) in respect of the Financial Year in which that circumstance or those consequences cease to subsist, will be reduced by a proportion corresponding to the proportion of the Financial Year remaining after that cessation; and
- (b) subject to clause 38.4, must no longer be made.

PART G - RISK, INDEMNITY AND INSURANCE

39. Risk and Liability

39.1 Risk of loss or damage

Unless otherwise expressly provided in this Agreement, Project Co bears the risk of loss or damage to the Relevant Infrastructure during the Term.

39.2 Notification of Loss and Damage

Project Co must promptly notify the State of any material loss or damage to the Relevant Infrastructure including details of the nature and extent of such material loss or damage.

39.3 Repairing and rebuilding

- (a) **(Obligations to repair and rebuild):** Subject to clauses 39.4 and 39.6, Project Co must:
- (i) subject to allowing reasonable time for inspection by insurers, take immediate steps to clear any debris and begin initial repair work;
 - (ii) promptly consult with the State and, unless directed by the State to repair or rebuild the Relevant Infrastructure to a different specification, diligently pursue the repair or rebuilding of the Relevant Infrastructure in accordance with the PSR and the other requirements of this Agreement;
 - (iii) ensure that the repaired or rebuilt Relevant Infrastructure complies with the requirements of this Agreement;
 - (iv) ensure there is as little as practicable disruption to the Works and the public's use of the Works (to the extent that there is public use of the Works) or West Gate Tunnel while carrying out the repair or rebuilding of the Relevant Infrastructure;
 - (v) to the greatest extent reasonably possible, continue to comply with its obligations under the Project Documents while carrying out the repair or rebuilding of the Relevant Infrastructure; and
 - (vi) keep the State fully informed of the progress of the repair or rebuilding of the Relevant Infrastructure.
- (b) **(Payment):** Subject to clauses 39.3(c), 39.3(d), 39.4, 39.5 and 39.6:
- (i) Project Co must pay for the cost of repairing or rebuilding the Relevant Infrastructure; and
 - (ii) the State will make available to Project Co, for the purpose of repairing or rebuilding the Relevant Infrastructure, the proceeds of any insurance policy that has responded to the relevant loss or damage to the Relevant Infrastructure, to the extent such proceeds are received by the State.
- (c) **(Repair or rebuild to different specification):** If the State determines that the Relevant Infrastructure is to be repaired or rebuilt on the basis of different specifications to the PSR or other requirements of the Agreement, Project Co will be entitled to the reasonable incremental costs and losses arising from that determination as calculated in accordance with the Change Compensation Principles. Such costs and losses are only those incremental costs and losses

incurred or suffered by Project Co that would not have been incurred or suffered had Project Co repaired or rebuilt the Relevant Infrastructure in accordance with the PSR or other requirements of this Agreement.

- (d) **(State caused):** Where the loss or damage to the Relevant Infrastructure was caused by:
- (i) a breach by the State or the Project Proponent of any State Project Document;
 - (ii) a fraudulent, negligent, reckless, unlawful or malicious act or omission of the State or any of its Associates when acting in respect of the Project; or
 - (iii) the State, any of its Associates or any person authorised by the State in carrying out any Proximate State Works,

then Project Co will be entitled to payment of the reasonable costs and losses relating to any repair or rebuilding of the Relevant Infrastructure as calculated in accordance with the Change Compensation Principles.

- (e) **(Diligent pursuit):** For the purposes of clause 39.3(a)(ii), in assessing what can be achieved by diligent pursuit and in assessing whether there has been a failure to diligently pursue the repair or rebuilding of the Relevant Infrastructure in accordance with the PSR and the other requirements of this Agreement:
- (i) regard must be had to:
 - A. the time necessary, if to do so would be consistent with the required steps and actions being diligently pursued, to conduct a tender process in accordance with the Change Compensation Principles (where required to do so by the State) or otherwise engage Subcontractors to carry out the repair or rebuilding, recognising that Project Co is not a design and construction contractor;
 - B. the context of the actual circumstances prevailing at all relevant times; and
 - C. the effect on carrying out of the Project of wilful default by the State of a State Project Document and of any Force Majeure Event;
 - (ii) any lack of financial or technical resources will be disregarded; and
 - (iii) the standard of pursuit must not be less than what might reasonably be expected of the State, having regard to the resources (including technical resources) that the State might reasonably be expected to devote (or procure be devoted) were the State to have an obligation to achieve or implement that thing, promptly.

39.4 Uninsurable Risk or Day 1 Uninsurable Risk

If the event which gave rise to the loss or damage to the Relevant Infrastructure is an Uninsurable Risk or a Day 1 Uninsurable Risk, then the parties' rights and obligations will be as set out in clause 40.15 and clause 27.

39.5 Minor damage

If any loss or damage to the Relevant Infrastructure for which the State is liable to pay Project Co is of such a minor nature (when considered item by item and in aggregate) that it can be remedied by Project Co:

- (a) **(usual resources)**: through the use of its site-based resources during normal working hours; and
- (b) **(no adverse effect)**: without adversely affecting the ability of Project Co to carry out the Project Activities in accordance with the State Project Documents,

then Project Co must bear the cost of rectifying such loss or damage.

39.6 Consequences of not repairing or rebuilding

If the Relevant Infrastructure has been wholly destroyed or substantially damaged and the loss or damage was caused by:

- (a) a Default Termination Event, the State must terminate this Agreement for default in accordance with clause 42.4;
- (b) any:
 - (i) breach by the State, the Project Proponent or any State Associate of any State Project Document;
 - (ii) fraudulent, negligent, reckless, unlawful or malicious act or omission of the State or any of its Associates; or
 - (iii) subject to clause 40.15(b), Key Risk Event or Compensable Extension Event,

then either party may terminate this Agreement by giving no less than 90 days' notice to the other party; or

- (c) a Force Majeure Termination Event, clause 42.2 will apply.

39.7 Damage to third party property

- (a) **(Avoiding interference)**: Project Co must not interfere with, obstruct, damage or destroy any property on, in or in the vicinity of the Construction Areas, Maintenance Areas or Leased Area other than in accordance with its rights and obligations under this Agreement.
- (b) **(Project Co to repair or compensate)**: If Project Co breaches clause 39.7(a), Project Co must (at the option of the relevant third party and approved by the State (acting reasonably)):
 - (i) promptly remove (as applicable) or repair any such obstruction, damage or destruction;
 - (ii) reasonably compensate the affected person for any loss suffered by that person in connection with such interference, obstruction, damage or destruction (where Project Co has a legal liability to do so); or
 - (iii) undertake a combination of clauses 39.7(b)(i) and 39.7(b)(ii).

39.8 Indemnity for Project Co breach

Subject to clauses 23.1(b), 32.8, 39.11 and 39.15, Project Co must indemnify the State and its Associates against any Claim or Liability in connection with any breach by Project Co under this Agreement or any breach by Project Co or any of its Associates under any other Project Document.

39.9 General indemnity

Subject to clauses 39.11 and 39.15, Project Co must indemnify:

- (a) **(loss or damage to Relevant Infrastructure):** the State against any Claim or Liability arising in connection with loss or damage to or of the Relevant Infrastructure; and
- (b) **(property damage and third party claims):** the State and its Associates in respect of:
 - (i) loss or damage to or of, or loss of use of (whether total or partial):
 - A. any real or personal property (including property belonging to the State that is not covered by clause 39.9(a)); and
 - B. the Returned Facilities, after Handback to the State or the applicable Facility Owner;
 - (ii) any injury to, illness or death of, persons; and
 - (iii) any third party Claims brought against the State or any of its Associates in respect of clauses 39.9(b)(i) or 39.9(b)(ii),

to the extent caused or contributed to by any act or omission of a Group Member or Consortium Member or any of their respective Associates in connection with the Project.

39.10 Release

Project Co releases, and must procure that each of its Associates releases, each of the parties indemnified by Project Co in accordance with clause 39.9 from any Claim or Liability for loss, damage, death, illness or injury to the extent caused or contributed to by any of the Project Activities or any act or omission of Project Co or any of its Associates in connection with the Project.

39.11 Limits on Project Co liability to indemnify and release

- (a) **(Reduction of liability to indemnify):** Project Co's liability to indemnify or release the State, its Associates and any Indemnified Persons in accordance with this Agreement will be reduced to the extent that any such Claim or Liability:
 - (i) arises solely from the State decision to proceed with the Project;
 - (ii) includes any costs incurred by a Rail Interface Party following completion of the relevant Rail Interface Works in accordance with this Agreement that are associated with the permanent impact of the Relevant Infrastructure, except to the extent that any such costs arise as a result of a breach by Project Co of any Project Document or any other wrongful act or omission of Project Co; or
 - (iii) is caused or contributed to by:

- A. any breach by the State, the Project Proponent or any State Associate of any State Project Document;
 - B. a fraudulent, negligent, reckless, unlawful or malicious act or omission of the State or any of its Associates;
 - C. a Compensable Extension Event, Key Risk Event or Force Majeure Event, but only to the extent that Project Co is entitled to relief in connection with the relevant event in accordance with this Agreement (which in relation to a Key Risk, will in all cases assume that the Key Risk Event has had a Relevant Effect, whether it has or otherwise);
 - D. Project Co complying strictly with a direction from the State Representative (except to the extent that the direction is a direction to comply with a Project Document, is permitted in accordance with a Project Document or was given as a result of a breach of a Project Document by Project Co or its Associates) provided that prior to complying with the direction:
 - 1) Project Co notified the State Representative that, in its opinion, compliance with the direction may directly result in a Claim or Liability that would otherwise be the subject of an indemnity by Project Co to the State; and
 - 2) notwithstanding having received the notification referred to in clause 39.11(a)(iii)D.1), the State Representative confirms that Project Co should comply or continue to comply with the direction;
 - E. in respect of any Claim or Liability under clause 39.8 or clause 39.9(a), a failure by the State to use all reasonable endeavours to mitigate the extent or consequences of the Claim or Liability; or
 - F. Project Co not being required to comply with AS5100 (2017) in carrying out the Project Activities, except as set out in clause 2.22(c).
- (b) **(Site Information Report):** For the purposes of this clause 39.11, Site Information Report providers will not be Associates of the State in respect of the Site Information Reports or the contracts pursuant to which those Site Information Reports were prepared.

39.12 Third party claim under indemnity

If a Claim is made by a third party against the State or any of its Associates or an Indemnified Person in respect of which Project Co is required to indemnify in accordance with this Agreement, to the extent that the State's insurers in connection with such a Claim agree, the State must:

- (a) **(assist in proceedings):** do all things reasonably required by Project Co in negotiating, defending or otherwise taking action or proceedings in respect of that Claim; and
- (b) **(no settlement):** not settle that Claim with the claimant without Project Co's involvement in and agreement to any such settlement.

39.13 Continuing obligation

- (a) **(Indemnity continues):** Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) **(Expense not necessary):** It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity under this Agreement.

39.14 Responsibilities as if owner

Project Co acknowledges and agrees that it has responsibilities to third parties in connection with persons, property and other aspects of the Project under the other provisions of this Agreement which may be the same as it would have if it held the freehold title to:

- (a) prior to the Date of West Gate Tunnel Completion, the Site; and
- (b) on and after the Date of West Gate Tunnel Completion, the Leased Area.

39.15 Liability for Indirect or Consequential Loss

- (a) **(No liability of State):** Subject to clause 39.15(b), neither the State nor any of its Associates has any Liability to Project Co or any of its Associates, nor is Project Co or any of its Associates entitled to make any Claim, for any Indirect or Consequential Loss incurred or sustained by Project Co or any of its Associates as a consequence of any act or omission of the State or any of its Associates (whether negligent or otherwise) or due to any breach of a State Project Document by the State.
- (b) **(Exceptions to no State Liability):** The exclusion of Liability of the State and its Associates under clause 39.15(a) does not apply to:
 - (i) Liability arising from criminal acts or fraud on the part of the State or its Associates;
 - (ii) Liability arising from wilful misconduct under any State Project Document on the part of the State or its Associates;
 - (iii) Liability arising from any third party property loss or damage, or injury to, disease or death of a person;
 - (iv) the extent that the parties cannot limit or exclude any Liability at Law;
 - (v) Liability arising from any Uninsurable Risk or Day 1 Uninsurable Risk for which the State Project Documents require the State to indemnify Project Co;
 - (vi) the extent that the State Project Documents expressly confer an entitlement on Project Co to payment of an amount;
 - (vii) any amounts due and payable to Project Co by the State in accordance with the Change Compensation Principles, the Termination Payments Schedule, or clause 27;
 - (viii) Liability for which the State or its Associates are insured under any Insurances or would have been insured under any Insurances but for any breach of this Agreement or the relevant Insurances by the State or any of its Associates;

- (ix) any amounts due and payable to Project Co by the State in accordance with clause 13.3(g); and
- (x) Liability at Law for loss of revenue as a result of a State Act of Prevention.
- (c) **(No liability of Project Co):** Subject to clause 39.15(d), neither Project Co nor any of its Associates has any Liability to the State or any of its Associates, nor is the State or any of its Associates entitled to make any Claim, for any Indirect or Consequential Loss incurred or sustained by the State or any of its Associates as a consequence of any act or omission of Project Co or any of its Associates (whether negligent or otherwise) or due to any breach of a Project Document by Project Co or any of its Associates.
- (d) **(Exceptions to no Project Co Liability):** The exclusion of Liability of Project Co and its Associates under clause 39.15(c) does not apply to:
 - (i) Liability for which Project Co or its Associates are insured under any Insurances or would have been insured under any Insurances but for any breach of this Agreement or the relevant Insurances by Project Co or any of its Associates;
 - (ii) Liability for which Project Co:
 - A. recovers from a third party (including any Subcontractor and whether pursuant to an indemnity or otherwise) under any of the Project Documents; or
 - B. would have recovered an amount from a third party under any of the Project Documents, had it diligently pursued a Claim against the third party,in respect of that Liability;
 - (iii) Liability arising from criminal acts, fraud or wilful misconduct on the part of Project Co or any of its Associates;
 - (iv) Liability arising from any third party property loss or damage, or injury to, disease or death of a person caused or contributed by Project Co or any of its Associates;
 - (v) the extent that the parties cannot limit or exclude any Liability at Law;
 - (vi) Liability for any deductible or any additional cost or expense payable under any Insurances with respect to, connected with, caused by or arising out of any breach of this Agreement or the relevant Insurances by Project Co or any of its Associates;
 - (vii) any statutory fine or civil penalty arising from any breach of Law by Project Co or any of its Associates;
 - (viii) any amounts payable or Liability incurred by the State (including to a third party) in rectifying a Defect or any damage, or otherwise in reinstating, repairing or rectifying any of the Relevant Infrastructure, for which Project Co is liable under this Agreement that is not a liability described in paragraph (a) or (c) of the definition of Indirect or Consequential Loss;
 - (ix) permanent abandonment of the whole or a substantial part of the Project Activities by Project Co or its Associates;

- (x) any amounts payable by Project Co to the State in accordance with clause 38, the Change Compensation Principles, the Termination Payments Schedule and the Lease;
- (xi) Liability under clause 10.12; and
- (xii) Liability arising under the indemnity set out in clause 9.2 and section 2(h) of Schedule 1 of the Port Land Deed.

39.16 Releases in relation to FMS Agreement

- (a) Notwithstanding any other provision of this Agreement, the State releases and agrees not to make any Claim against Project Co in relation to:
 - (i) the parties' operation of their respective FMS in accordance with the FMS Agreement constituting a Compensable Enhancement; or
 - (ii) loss or anticipated loss of use, profit, income, business interruption, loss of any contract or other business opportunity or other economic, special, indirect or consequential loss of the State arising out of, in relation to, or in connection with, Project Co operating its FMS in accordance with the FMS Agreement,

provided that, for the avoidance of doubt, the State does not release and does not agree not to make any Claim against Project Co in relation to disclosure by Project Co of Data (as defined in the FMS Agreement) of the State in breach of Part E of the FMS Agreement.
- (b) The parties acknowledge and agree that:
 - (i) without limiting clause 39.16(b)(ii), to the extent of any inconsistency ambiguity or discrepancy between the FMS Operating Agreement and the FMS Reference Documents, the FMS Operating Agreement will prevail over the FMS Reference Documents;
 - (ii) subject to clause 39.16(b)(iii), the State releases and agrees not to make any Claim against Project Co in relation to a breach of any obligation under this Agreement to comply with the FMS Reference Documents; and
 - (iii) nothing in this clause 39.16(b) limits or otherwise affects Project Co's obligations under the FMS Operating Agreement.
- (c) Notwithstanding any other provision of this Agreement, Project Co releases and agrees not to make any Claim against the State in relation to:
 - (i) the level or timing of revenues, including tolling and fee revenue;
 - (ii) any impact on the Net Operating Cashflow;
 - (iii) loss or anticipated loss of use, profit, income, business interruption, loss of any contract or other business opportunity or other economic, special, indirect or consequential loss of Project Co whatsoever and howsoever arising;
 - (iv) the level or timing of costs or losses arising as a result of any increase or decrease in traffic on the Freeway; or

- (v) the level or timing of operating expenditure or capital expenditure incurred by Project Co,

arising out of, in relation to, or in connection with, the State operating its FMS in accordance with the FMS Agreement, provided that, for the avoidance of doubt, Project Co does not release and does not agree not to make any Claim against the State in relation to disclosure by the State of Data (as defined in the FMS Agreement) of a TU Entity (as defined in the FMS Agreement) in breach of Part E of the FMS Agreement.

40. Insurance

40.1 D&C Phase Insurances

For the duration of the D&C Phase, Project Co must effect and maintain or cause to be effected and maintained:

- (a) **(D&C)**: the D&C Phase Insurances; and
- (b) **(additional insurances)**: any additional insurance which a prudent owner and operator would maintain when undertaking works or carrying out activities of a similar nature to the Works or the D&C Activities.

40.2 O&M Phase Insurances

- (a) **(Effect and maintain)**: From the Date of West Gate Tunnel Completion, Project Co must effect and maintain, or cause to be effected and maintained:
 - (i) **(O&M)**: the O&M Phase Insurances; and
 - (ii) **(additional insurances)**: any additional insurances which a prudent concessionaire in Project Co's position would maintain in relation to the O&M Activities.
- (b) **(Proposed O&M Phase Insurances)**: No later than:
 - (i) 60 Business Days prior to the Date for West Gate Tunnel Completion; and
 - (ii) 20 Business Days after the renewal of any Insurance during the O&M Phase, Project Co must provide the State with:
 - A. copies of the O&M Phase Insurances; and
 - B. the documents and information referred to in clauses 40.8(a) to 40.8(c).
- (c) **(O&M Subcontractors)**: Without limiting clause 40.2(d), Project Co must ensure that each Subcontractor which undertakes any part of the O&M Activities effects and maintains insurances which a prudent service provider would maintain when providing services of a similar nature to the O&M Activities undertaken by them.
- (d) **(Material Subcontractor (O&M) Insurance)**: Project Co must:
 - (i) ensure that each Subcontractor who enters into a Material Subcontract (O&M) effects and maintains:
 - A. public and products liability insurance in respect of third party bodily injury, any property damage with a limit of not less than

\$[not disclosed] (Indexed) any one claim but in the aggregate with respect to products liability;

- B. workers' compensation insurance in respect of its liability for injury to its employees as required by Law; and
- C. motor vehicle third party property damage insurance with a limit of not less than \$[not disclosed] (Indexed),

(Material Subcontract (O&M) Insurances);

- (ii) use its reasonable endeavours to procure that each Material Subcontract (O&M) Insurance:
 - A. includes Project Co and the State as an insured for their respective rights, interests and liabilities, except in the case of workers' compensation insurance referred to in clause 40.2(d)(i)B;
 - B. where the policy includes more than one party as an insured, includes cross liability and waiver of subrogation clauses; and
 - C. is effected and maintained on terms consistent with the obligations contained in clause 40.4; and
- (iii) ensure that each Material Subcontract (O&M) Insurance:
 - A. is effected with a Reputable Insurer; and
 - B. is maintained for the period during which the Subcontractor is undertaking O&M Activities.
- (e) **(Notification under Material Subcontract (O&M) Insurances):** Project Co must:
 - (i) other than in respect of workers' compensation insurance referred to in clause 40.2(d)(i)B, notify the State of any claim under any of the Material Subcontract (O&M) Insurances, where such claim in any way relates to or arises from the O&M Activities; and
 - (ii) notify the State if it becomes aware of any circumstance relating to or arising from the performance of the O&M Activities which could give rise to an insurer of a Material Subcontract (O&M) Insurance cancelling or materially changing the Material Subcontract (O&M) Insurance.
- (f) **(No impact):** Project Co acknowledges and agrees that the procurement and maintenance of the Material Subcontract (O&M) Insurances in accordance with clause 40.2(d) does not reduce or otherwise limit Project Co's other obligations under this clause 40.2.

40.3 O&M Insurance Review

- (a) **(Insurance Review Commencement Date):** Either the State or Project Co may, within 20 Business Days prior to the dates set out in this clause 40.3(a), request that the parties meet:
 - (i) 6 months prior to the expected Date of West Gate Tunnel Completion; and

- (ii) 6 months prior to every 5th anniversary of the Date of West Gate Tunnel Completion,

to review the minimum limits of liability, sub-limits of liability and deductibles for the O&M Phase Insurances set out in this Agreement, including consideration of the appropriateness of the limits, sub-limits and deductibles which will apply during that ensuing 5 year period and which will comprise the minimum requirements for the O&M Phase Insurances during the ensuing 5 year period.

- (b) **(Modification Proposal)**: Without limiting the State's rights under clause 34.1, Project Co may propose a Modification Proposal in accordance with clause 34.6 requesting a change to the minimum limits of liability, sub-limits of liability and deductibles for the O&M Phase Insurances.
- (c) **(State response)**: Subject to clause 40.3(d), clause 40.3(b) will apply to the Modification Proposal submitted by Project Co under this clause 40.3.
- (d) **(State consideration)**: In considering the Modification Proposal submitted by Project Co under this clause 40.3, the State must have regard to:
 - (i) the nature of the Project;
 - (ii) the insurances which Project Co has effected, or caused to be effected, at that time and the risks covered under those insurances;
 - (iii) the risks required to be insured by clause 39 and this clause 40;
 - (iv) the risks which a prudent insured in the position of Project Co would seek to insure in accordance with Best O&M Practices; and
 - (v) the terms on which insurance is available and the reasonableness of those terms, having regard to the terms generally available in the insurance market at that time.

40.4 General insurance requirements

Project Co must:

- (a) **(Reputable Insurers)**: effect all Insurances with Reputable Insurers;
- (b) **(premiums)**: punctually pay all premiums and other amounts payable in connection with the Insurance, and give the State copies of receipts for payment of premiums if and when requested by the State;
- (c) **(no alteration)**: not alter, extend, discontinue or cancel any Insurance, or allow any Insurance to lapse, where this would result in the relevant Insurance not meeting the requirements of this Agreement, without the prior approval of the State;
- (d) **(do not prejudice)**: not do or permit, or omit to do, anything which prejudices any Insurance;
- (e) **(rectify)**: promptly rectify anything which might, if not rectified, prejudice any Insurance;
- (f) **(fully disclose)**: fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Insurances;
- (g) **(comply)**: comply at all times, with the terms of each Insurance;

- (h) **(do everything to enable State recovery)**: subject to clause 40.4(d), do everything reasonably required by the State or its Associates to whom the benefit of an Insurance extends, to enable the State or its Associates (as the case may be) to claim, and to collect or recover, money due under that Insurance; and
- (i) **(indemnities secondary)**: ensure that the terms of the Insurances do not require the State or its Associates to exhaust any indemnities given by Project Co or its Associates or Group Members to the State or its Associates in this Agreement as a condition precedent to the insurer considering or responding to any Claim.

40.5 Terms of Insurances

Project Co must ensure that each of the Insurances:

- (a) **(terms)**: contains terms, to the extent applicable and permitted by Law, to the effect that the insurer:
 - (i) will not impute to any Insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other Insured;
 - (ii) in the case of Insurances under which the State or its Associates are also Insureds, agrees that the interests of the Insured include the entire assets of the Project and waives any rights of subrogation which it may have against any Insured;
 - (iii) in the case of those Insurances which are required to be effected in the name of the parties, 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
 - (iv) except in relation to workers' compensation insurance, motor vehicle insurance and professional indemnity insurance agrees that no reduction in limits or coverage affecting the Project will be made during the period of insurance, except under the circumstances and to the extent permitted by the *Insurance Contracts Act 1984* (Cth) and with not less than 20 Business Days prior notice to the State;
- (b) **(nature)**: is appropriate given the nature and objectives of the Project and the responsibilities and entitlements of the various Insureds in connection with this Agreement;
- (c) **(consistency)**: is consistent with the terms set out in the Insurance Schedule or otherwise on terms that have the prior approval of the State; and
- (d) **(Non-specific Project Insurance)**: to the extent that the relevant Insurance is not specific to the Project, Project Co is only required to use its reasonable endeavours to procure insurance on the terms referred to in clause 40.5(a).

40.6 Insurances primary

- (a) **(Enforceability of rights under indemnities)**: The State is not obliged to make a Claim or institute proceedings against any insurer under the Insurances before enforcing any of its rights or remedies under the indemnities referred to in this Agreement or generally.
- (b) **(Obligations not affected)**: Each party is not relieved from and remains fully responsible for its obligations in accordance with this Agreement regardless of

whether the Insurances respond or fail to respond to any Claim and regardless of the reason why any Insurance responds or fails to respond.

40.7 Notification and making of claims

Project Co must:

- (a) **(notification)**: promptly notify the State of any occurrence that may reasonably give rise to a Claim in connection with the Project under the Contract Works Insurance (Material Damage), Contract Works Insurance (Public and Products Liability) during the D&C Phase only and the Marine Transit insurance during the D&C Phase only;
- (b) **(subsequent developments)**: keep the State informed of subsequent developments concerning the occurrence under clause 40.7(a);
- (c) **(pursue claims)**: subject to clause 40.7(d), diligently pursue any Claim which it has under any Insurance which has arisen in connection with the Project; and
- (d) **(State consent)**: not compromise, settle, prosecute or enforce any Claim which is likely to exceed \$[not disclosed] of the type referred to under clause 40.7(a) without the prior consent of the State (which must not be unreasonably withheld or delayed).

40.8 Evidence of Insurance

Project Co must give the State evidence satisfactory to the State that the Insurances have been procured and continue to be maintained in accordance with this Agreement, whenever reasonably requested by the State including:

- (a) **(certificate)**: certificates of currency;
- (b) **(all requirements)**: confirmation that all the requirements of the Insurances specified in the Insurance Schedule are included in the Insurances; and
- (c) **(deductibles)**: deductibles, terms of coverage, erosion and reinstatement of limits as the State may reasonably require, to enable it to satisfy itself that all of the insurance requirements for the Project in accordance with this Agreement are being complied with.

40.9 State may effect Insurances

- (a) **(State may effect insurance)**: The State may procure or effect and maintain the relevant Insurances and pay the relevant premiums in connection with such Insurances:
 - (i) if Project Co fails to provide evidence satisfactory to the State within 10 Business Days of a request under clause 40.8; or
 - (ii) in the event of any default by Project Co or its Associates in obtaining or maintaining such Insurances, in accordance with this clause 40 or if any Insurance for which Project Co is responsible to effect and maintain in accordance with this Agreement is terminated.
- (b) **(Costs to be recoverable from Project Co)**: The costs reasonably incurred by the State in connection with taking such action will be a debt due and payable by Project Co to the State.

40.10 Insurance Proceeds Account

- (a) **(Establish account):** Project Co must:
 - (i) establish an insurance proceeds account (**Insurance Proceeds Account**);
 - (ii) maintain that account in the joint names of Project Co and the State with a financial institution nominated by Project Co and approved by the State (such approval not to be unreasonably withheld);
 - (iii) give details of that account to the State;
 - (iv) notify the financial institution referred to in clause 40.10(a)(ii) of the charge over the Insurance Proceeds Account in accordance with the State Security, procure acknowledgement of the notice from the financial institution and provide a copy of that to the State; and
 - (v) procure the agreement of the financial institution referred to in clause 40.10(a)(ii) not to exercise any right of set-off or counterclaim in relation to the Insurance Proceeds Account.
- (b) **(Deposit insurance proceeds):** All Insurance proceeds received from Insurers by Project Co or the State under the Contract Works Insurance (Material Damage) or the Industrial Special Risks Insurance (to the extent such proceeds are received in respect of physical loss or damage to the Works or the West Gate Tunnel), must be deposited by the recipient into the Insurance Proceeds Account.
- (c) **(Application of moneys):** Subject to clause 40.10(e), moneys in the Insurance Proceeds Account may only be applied towards the repair or rebuilding of the Relevant Infrastructure or as part of any Termination Payment.
- (d) **(Records):** Where moneys in the Insurance Proceeds Account are used for repair or rebuilding of the Relevant Infrastructure, Project Co must give the State records of expenditure from the Insurance Proceeds Account within 30 Business Days of such expenditure.
- (e) **(Surplus funds):** Any funds remaining in the Insurance Proceeds Account after application in connection with repair or rebuilding of the Relevant Infrastructure will, subject to any right of set-off the State may have, be payable to Project Co.

40.11 Proportionate Liability

(Reduce or exclude insurance cover): Project Co must ensure that all Insurances do not reduce or exclude the insurance cover in connection with liabilities governed by Part IVAA of the *Wrongs Act 1958* (Vic) or any corresponding legislation of another Australian jurisdiction, by reason of the manner in which that legislation operates or does not operate, as the case may be, in light of any of the provisions of this Agreement and the obligations undertaken by Project Co in connection with it.

40.12 Deductibles

- (a) **(Project Co to pay deductibles):** Subject to clause 40.12(b), Project Co is responsible for payment, itself or through another party not being the State for all amounts by way of deductibles or excesses which apply to a Claim made under any Insurance.
- (b) **(State to pay deductible):** Where the event that is insured under any Insurance is:

- (i) loss or damage referred to in clause 39.3(d); or
- (ii) caused by a Compensable Extension Event or a Key Risk Event,

the State must pay all amounts by way of deductibles or excesses which apply to a claim made under any Insurance.

40.13 Additional requirements

At all times during the Term, Project Co must comply with its obligations to take out and maintain registration and to pay all levies required to be paid, under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) and the *Transport Accident Act 1986* (Vic) in relation to the Project.

40.14 Uninsurable Risks

- (a) **(Risk likely to become Uninsurable Risk):** If any risk becomes or is likely to become an Uninsurable Risk, then:
 - (i) Project Co must notify the State within 5 Business Days of becoming aware that the risk has become or is likely to become an Uninsurable Risk; and
 - (ii) the State must meet with Project Co within 5 Business Days after receipt of Project Co's notice to discuss the risk, including whether the risk is in fact an Uninsurable Risk.
- (b) **(Parties to discuss management of an Uninsurable Risk):** If both parties agree (or if not, it is determined in accordance with clauses 43 to 44) that a risk is an Uninsurable Risk, the parties must meet further to discuss the means by which the risk should be managed.
- (c) **(Uninsurable Risk):** If the parties cannot agree as to how to manage the Uninsurable Risk under clause 40.14(b) then this Agreement will continue, but an amount equal to the amount deducted by the relevant Insurer or Insurers from the premium that was payable by Project Co for insurance of such a risk immediately prior to such risk becoming an Uninsurable Risk, and which was deducted as a direct consequence of such risk becoming an Uninsurable Risk, will be a debt due and payable to the State by Project Co on each occasion that a premium is paid for so long as the risk is an Uninsurable Risk.

40.15 Damage caused by Day 1 Uninsurable Risk or Uninsurable Risk

- (a) **(Occurrence):** If a Day 1 Uninsurable Risk or Uninsurable Risk gives rise to loss or damage to the Relevant Infrastructure, the State must within 20 Business Days of the occurrence of the Day 1 Uninsurable Risk or Uninsurable Risk (as the case may be) (or such longer period as is reasonable in the circumstances) either:
 - (i) subject to clause 40.15(c), require Project Co to repair or rebuild the Relevant Infrastructure, in which case the State will indemnify Project Co for the reasonable costs of the repair or rebuilding and all other Liabilities incurred by Project Co to the extent such Liabilities arose from the occurrence of the Day 1 Uninsurable Risk or Uninsurable Risk (as the case may be); or
 - (ii) where the Relevant Infrastructure is wholly destroyed or substantially damaged by the Day 1 Uninsurable Risk or Uninsurable Risk:

- A. require Project Co to repair or rebuild the Relevant Infrastructure in accordance with clause 40.15(a)(i); or
 - B. subject to clause 40.15(b), terminate this Agreement by notice to Project Co, in which case a Force Majeure Termination Event will be deemed to have occurred on the date stated in the State's notice and clause 42.2(b) will apply.
- (b) **(Key Risk Event):** If a Key Risk Event described in paragraph (k) of the definition of 'Key Risk Event' has occurred on or after the Date of Tolling Completion, and the same event gives rise to the State's entitlement under clause 40.15(a)(ii), and Project Co has given the relevant notice under clause 27, then:
- (i) clause 40.15(a)(ii)B will not apply;
 - (ii) the parties will negotiate under clause 27.3 redress which will enable Project Co to repair or rebuild the Relevant Infrastructure, provided that such redress will not include varying the financial contribution of the State; and
 - (iii) if the parties have not agreed such redress within 60 Business Days of commencing the negotiations under clause 27.3 (or such longer period as is reasonable in the circumstances), then either party may terminate this Agreement by notice to the other party, in which case a Force Majeure Termination Event will be deemed to have occurred on the date stated in the terminating party's notice and clause 42.2(b) will apply.
- (c) **(Maximum indemnity amount):** the maximum amount for which the State must indemnify Project Co, in accordance with clause 40.15(a)(i), will be:
- (i) for a Day 1 Uninsurable Risk, an amount that is equal to the Insurance proceeds that would have been payable under any of the Insurances had the event been insurable under those Insurances; and
 - (ii) for Uninsurable Risks, an amount equal to the Insurance proceeds that would have been payable had the relevant Insurance continued to be available on the previous terms of that Insurance.
- (d) **(If parties unable to agree on repair or rebuilding):** If the parties are unable to agree on how the Relevant Infrastructure will be repaired or rebuilt in accordance with clause 40.15(a)(i) (including the reasonable costs), the State must issue a Modification Order requiring Project Co to repair or rebuild the Relevant Infrastructure provided the amount payable by the State to Project Co in connection with the Modification will not exceed the amount set out in clause 40.15(c).

40.16 Review of insurance markets

- (a) **(Review and test):** Project Co must review and test the insurance market vigilantly and no less than once every 12 Months, to ascertain whether a Day 1 Uninsurable Risk or Uninsurable Risk has become insurable and, determine whether, and if so what, insurance terms as to premium, deductible and coverage are available in connection with that risk, from Reputable Insurers.
- (b) **(Procure insurances):** If upon such review it is found that a Day 1 Uninsurable Risk or Uninsurable Risk is no longer uninsurable, then Project Co will promptly procure the insurance in connection with that risk in accordance with the other provisions of this clause 40.

PART H - DEFAULT, TERMINATION AND DISPUTES

41. Events of Default

41.1 Notice of Project Co Major Default and Default Termination Event

- (a) **(Project Co's obligations):** Project Co must:
- (i) promptly notify the State upon the occurrence of a Major Default or Default Termination Event; and
 - (ii) immediately take steps to mitigate, minimise or avoid the effects, consequences or duration of the Major Default or Default Termination Event.
- (b) **(Major Default Notice):** If Project Co notifies the State of any Major Default under clause 41.1(a) or the State considers a Major Default has occurred, the State may give Project Co a notice (**Major Default Notice**) which contains:
- (i) details of the Major Default; and
 - (ii) if the Major Default:
 - A. is capable of remedy, a date by which Project Co must remedy the Major Default (which, subject to clause 41.1(e), must allow for a reasonable period of time to remedy the Major Default in the circumstances); or
 - B. is not capable of remedy, a date by which Project Co must comply with any reasonable requirements of the State in connection with that Major Default (which, subject to clause 41.1(e), must allow for a reasonable period of time to comply with the State's requirements in the circumstances).
- (c) **(Capable of remedy):** For the purposes of this clause 41, the Major Defaults described in paragraphs (d) and (e) of the definition of Major Default will be deemed to be capable of remedy.
- (d) **(Unreasonable requirements):** If Project Co considers, in good faith, that the time stated in a Major Default Notice (or any other requirements of the Major Default Notice) is not reasonable, it must immediately notify the State including the reasons why and the time which it believes is reasonably required to remedy the Major Default or comply with any reasonable requirements of the State.
- (e) **(State to act in good faith):** The State must in good faith consider Project Co's notice under clause 41.1(d) and make any changes to the Major Default Notice that it considers reasonable as a consequence of Project Co's notice.
- (f) **(Project Co not satisfied):** If Project Co is not satisfied with the changes made by the State under clause 41.1(e), it may refer the matter to resolution under clauses 43 to 44.

41.2 Project Co to provide remedy program and comply with Major Default Notice

- (a) **(Remedy program):** If the State gives a Major Default Notice to Project Co, then notwithstanding its rights under clauses 41.1(c) to 41.1(f) Project Co must:

- (i) where the Major Default is capable of remedy, unless the relevant Major Default is a failure to pay money, give the State a program to remedy the Major Default; and
- (ii) where the Major Default is not capable of remedy, give the State a program to comply with any reasonable requirements of the State (which may include a plan to replace the Subcontractor causing the Major Default),

in accordance with the terms of the Major Default Notice, for review by the State in accordance with the Review Procedures.

- (b) **(Content of remedy program):** Any program provided to the State under clause 41.2(a) must include:
 - (i) each task to be undertaken, the date by which each task is to be completed and the additional resources and personnel (if applicable) to be applied to remedy the Major Default; and
 - (ii) any temporary measures that will be undertaken while the Major Default is being remedied to ameliorate the impact of the Major Default.
- (c) **(Comply):** Notwithstanding the fact that it may have exercised its rights under clause 41.1(c) to 41.1(f), Project Co must comply with the Major Default Notice and any program to remedy or comply under clause 41.2(a) as reviewed by the State Representative in accordance with the Review Procedures.
- (d) **(Assignment, amendment and change in control remedy):** If a Change in Control of the D&C Subcontractor results in a breach of clause 49.2(b), termination of the D&C Subcontract is deemed to rectify that breach (without prejudice to the State's right in relation to any other Major Default or Default Termination Event that may arise as a result of terminating the D&C Subcontract).
- (e) **(Impact of relief event):** If Project Co is prevented from carrying out its obligations in accordance with a Remediation Plan or a program to remedy or comply prepared under this clause 41, as a direct result of:
 - (i) an Extension Event or Key Risk Event for which Project Co is entitled to relief under this Agreement; or
 - (ii) a State Act of Prevention,then the Remediation Plan or the program to remedy or comply (including the time to remedy the Major Default or comply with the State's requirements) must be extended:
 - (iii) to reflect the period Project Co is prevented from carrying out its obligations in accordance with the remedy program by that Extension Event, Key Risk Event or State Act of Prevention; or
 - (iv) without limiting clause 39, in respect of loss or damage caused by that Extension Event, Key Risk Event or State Act of Prevention for the period from the commencement of that loss or damage until the necessary repairs or rebuilding have been completed,

subject to Project Co demonstrating to the State's satisfaction (acting reasonably) that Project Co has diligently pursued and, to the extent reasonably possible, continues to diligently pursue the Remediation Plan or the program agreed or determined under this clause 41.

- (f) **(Extension of Major Default Notice):** If Project Co has been diligently pursuing:
- (i) where the Major Default is capable of remedy, the remedy of that Major Default; or
 - (ii) where the Major Default is not capable of remedy, compliance with any reasonable requirements of the State; and
 - (iii) where the Major Default has occurred during the O&M Phase, the Freeway is open to the public to the extent that it is safe to do so,
- then the time stated in the Major Default Notice will be extended by such period as the State determines is required (acting reasonably) to enable Project Co to either remedy the Major Default or comply with any reasonable requirements of the State.
- (g) **(Request for further information):** The State may request, and Project Co must provide, any further information reasonably required by the State in respect of Project Co's cure of the Major Default to enable the State to determine the required extension under clause 41.2(f).

41.3 Diligent pursuit

For the purposes of this clause 41, in assessing what can be achieved by diligent pursuit and in assessing whether there has been a failure to diligently pursue something, regard must be had to the time necessary to enforce the D&C Subcontract, or to engage a substitute design and construction contractor, if to do so would be consistent with the required steps and actions being diligently pursued, recognising that the Project Co is not a design and construction contractor.

41.4 Not used

41.5 Default Termination Event

If any Default Termination Event occurs, the State may, without limiting any rights (other than rights of termination) it has at Law or otherwise under this Agreement, elect to:

- (a) **(termination as Default Termination Event):** terminate this Agreement at any time after the occurrence of a Default Termination Event in accordance with clause 42.4; or
- (b) **(Step-in rights):** exercise its rights under clause 37.1(a)(iii) to cure or attempt to cure the Default Termination Event.

41.6 Effect of curing

If a Major Default or Default Termination Event occurs and is cured by any person, any rights in respect of that Major Default or Default Termination Event (as the case may be) not exercised prior to it being cured may not thereafter be exercised.

42. Termination

42.1 Sole basis

- (a) **(Sole basis):** Termination under this clause 42 and clause 3.4 is the sole basis at Law or otherwise upon which either party is entitled to terminate, rescind or accept a repudiation of this Agreement.

- (b) **(No limitation):** Termination of this Agreement and the payment of any relevant Termination Payment will not in any way prejudice or limit the State's Claims against Project Co in respect of the events giving rise to the termination.

42.2 Termination for Force Majeure

- (a) **(Force Majeure Termination Event notice):** Subject to clause 42.2(d) and clause 42.2(e), if a Force Majeure Termination Event occurs, then either party may terminate this Agreement by giving notice to the other party.
- (b) **(Date of termination):** Termination of this Agreement for a Force Majeure Termination Event will take effect upon the date specified in the notice given in accordance with clause 42.2(a).
- (c) **(Project Co election):** If:
 - (i) a Force Majeure Event prevents the State from carrying out all or a material part of its obligations under the State Project Documents for a continuous period of 12 months (**State Force Majeure Event**); and
 - (ii) it is agreed or determined that Project Co is entitled to redress under clause 27 in respect of that State Force Majeure Event; and
 - (iii) the State Force Majeure Event is continuing to prevent the State from carrying out all or a material part of its obligations under the State Project Documents beyond the 12 month period referred to in clause 42.2(c)(i),

(being a 'State Force Majeure Termination Event'), Project Co may, before the earlier of:
 - (iv) 15 Business Days after the redress has been agreed or determined in accordance with clause 27 in respect of the State Force Majeure Event; and
 - (v) 12 months after the occurrence of the State Force Majeure Event (**FM Relief Date**),

notify the State that it elects to relieve the State from any obligation to provide redress under clause 27 in respect of the ongoing impact of the State Force Majeure Event (**FM Relief Notice**), and the State will thereafter have no liability in respect of any redress relating to the period after the FM Relief Date. Nothing in this clause 42.2(c) will relieve the State from its obligation to provide the redress that has been agreed or determined in accordance with clause 27 in respect of the State Force Majeure Event for the period between the occurrence of the State Force Majeure Event and the FM Relief Date.
- (d) **(Restrictions on termination):** A party must not terminate this Agreement under clause 42.2(a):
 - (i) during the period Project Co is able to recover (or, but for any breach of a State Project Document or the relevant Insurance by that party, would have been able to recover) under the Contract Works Insurance (Delay in Start-up) (applicable to the Works) or the consequential loss cover section of the Industrial Special Risks Insurance (in respect of the O&M Phase) for the relevant Force Majeure Termination Event; and
 - (ii) in respect of a State Force Majeure Termination Event, where Project Co has given an FM Relief Notice to the State under clause 42.2(c) in relation to the State Force Majeure Termination Event.

- (e) **(Termination on CityLink event):** In the event:
- (i) that an Appendix Event as described in Item 8 or 9 of the Appendix of the CityLink Concession Deed occurs prior to the Date of Tolling Completion, which it is agreed or determined will have, or has had, a Material Adverse Effect (as defined under the CityLink Concession Deed) and the CityLink Parties and the State cannot agree on the reduced Committed Extension Equity (as defined under the CityLink Concession Deed) or alternative funding sources and mechanisms under clause 1.31(c) of the CityLink Concession Deed within a further 20 Business Days of commencing negotiations; or
 - (ii) of a State election to acquire the CityLink Project under sub-paragraph 12.8(e)(iv) of the CityLink Concession Deed prior to the Date of Tolling Completion,

Project Co may terminate this Agreement by notice to the State, in which case a Force Majeure Termination Event will be deemed to have occurred on the date stated in Project Co's notice and clause 42.2(b) will apply.

42.3 Not used

42.4 Termination for Default Termination Event

- (a) **(Termination for Default Termination Event):** Subject to clause 42.4(c) and clause 42.4(d), if a Default Termination Event occurs, the State may terminate this Agreement by giving notice to Project Co.
- (b) **(Date of termination):** Termination of this Agreement for a Default Termination Event will take effect upon the date specified in the notice given in accordance with clause 42.4(a).
- (c) **(State breach):** If:
- (i) the State would, but for this clause 42.4(c), be entitled to terminate this Agreement because of a Default Termination Event; and
 - (ii) that Default Termination Event arose as a direct and sole result of:
 - A. a breach by the State or its Associates of a State Project Document; or
 - B. a fraudulent, reckless, unlawful, negligent or malicious act or omission of the State or its Associates,
- the State must not exercise that entitlement to terminate this Agreement.
- (d) **(Relief Event):** If an Extension Event or a Key Risk Event occurs and results in a circumstance or event which entitles the State to terminate this Agreement under this clause 42.4 and Project Co has given a notice under clause 23.4 or a Key Risk Event Notice (as applicable), then notwithstanding this clause 42.4:
- (i) if the redress afforded under the Change Compensation Principles in respect of the Extension Event or under clause 27 in respect of the Key Risk Event has remedied the relevant circumstance or event (or overcome its effects), or has enabled Project Co to be in a position to remedy the relevant circumstance or event (or overcome its effects) and Project Co is diligently pursuing the remedy of the relevant circumstance

or event (or is diligently pursuing an action to overcome its effects) in accordance with its obligations under this Agreement; or

- (ii) while:
 - A. the redress remains not agreed or determined;
 - B. the redress likely to be agreed or determined is likely to promptly remedy the relevant circumstance or event (or overcome its effects), or enable Project Co to be in a position to remedy the relevant circumstance or event (or overcome its effects); and
 - C. Project Co is diligently pursuing finalisation of the agreement or determination of that redress,

the State must not exercise that entitlement to terminate this Agreement because of the circumstance or event.

42.5 Act of prevention termination

- (a) If:
 - (i) a court makes a Final Court Ruling:
 - A. relating solely to Laws which it is in the legislative power of the State to change; and
 - B. which has not been made as a result (in whole or in part) of a breach by Project Co or its Associates of the Project Documents or some other wrongful act or omission by Project Co or its Associates;
 - (ii) there is a Project Specific Change in Mandatory Requirements;
 - (iii) an event described in paragraph (a) or (b) of the definition of Compensable Extension Event occurs;
 - (iv) there is a State Act of Prevention; or
 - (v) there is a Key Approval Event,
which prohibits or prevents Project Co from undertaking all, or substantially all, of the Project Activities in the manner contemplated by this Agreement in all material respects (**Prevention by Law Event**) and the effect of the Prevention by Law Event subsists for a continuous period exceeding 24 months then either party may terminate this Agreement by giving notice to the other party.
- (b) (**Date of termination**): Termination of this Agreement for a Prevention by Law Event will take effect upon the date specified in the notice given in accordance with clause 42.5(a).

42.6 PSA Termination Event

- (a) (**PSA Termination Event**): Subject to clause 42.6(c), the State may terminate this Agreement by giving notice to Project Co any time after the date which is 9 months after the first occurrence of a PSA Event (**PSA Termination Event**).

- (b) **(Date of termination):** Termination of this Agreement for a PSA Termination Event will take effect upon the date specified in the notice given in accordance with clause 42.6(a).
- (c) **(Restrictions on termination):** The State must not terminate this Agreement under clause 42.6(a) at any time where:
 - (i) a planning scheme amendment for the West Gate Tunnel is no longer capable of revocation by either House of Parliament under section 38 of the *Planning and Environment Act 1987* (Vic); or
 - (ii) the State has otherwise addressed the impact of the PSA Event as contemplated in clauses 13.7(c)(ii), 13.7(c)(iii) or 13.7(c)(iv).

42.7 State Works Price

The parties acknowledge that upon termination under this clause 42, in accordance with the D&C Subcontract, the State's future obligation to pay any State Works Price under in the D&C Subcontract will cease.

42.8 Assistance

Project Co will use its best endeavours to assist the State in the exercise of the State's rights in accordance with this clause 42.

42.9 Payment on termination

- (a) **(Payment for default):**
 - (i) Where the Termination for a Default Termination Event occurs before the Date of Tolling Completion and the Default Termination Payment is:
 - A. a negative amount, the Default Termination Payment will be deemed to be zero; and
 - B. a positive amount, Project Co must pay, the Default Termination Payment in accordance with the Termination Payments Schedule and no later than the Termination Payment Date.
 - (ii) For the avoidance of doubt, no Termination Payment will be payable by the State in respect of Termination for a Default Termination Event that occurs on or after the Date of Tolling Completion.
- (b) **(Payment for other termination events):** Subject to clause 42.9(c), no later than the Termination Payment Date:
 - (i) where the Termination Payment is a positive amount, the State must pay; and
 - (ii) where the Termination Payment is a negative amount, Project Co must pay the absolute value of:

the relevant Termination Payment, being:
 - (iii) for Termination for a Force Majeure Termination Event, the Force Majeure Termination Payment;
 - (iv) [not used];

- (v) [not used]; or
- (vi) for Termination for an Early Termination Event, the Early Termination Payment,

in accordance with the Termination Payments Schedule.

- (c) **(Project Co obligations):** The State's obligation to pay a Termination Payment under clause 42.9 is subject to Project Co having delivered up the vacated Construction Areas, Maintenance Areas or Leased Area and the Relevant Infrastructure to the State in accordance with clause 28, and otherwise having satisfied its obligations under this Agreement having regard to the time and circumstances of the termination.
- (d) **(State's rights):** If the State is not satisfied that Project Co has satisfied its obligations in clause 42.9(c), Project Co will be liable to the State for the amount that is reasonably necessary to cover the expected costs of performing Project Co's obligations under clause 28 (including reasonable contingencies) in addition to any Termination Payment payable by Project Co.

42.10 Waiver

If a termination occurs in accordance with this Agreement, then:

- (a) subject to clause 42.10(b), Project Co waives any right it might otherwise have to make any Claim against the State by reason or as a result of the termination; and
- (b) without limiting any entitlement Project Co may have under the Additional State Contribution Schedule or the State Equity Subscription Deed, Project Co's only entitlement by reason or as a result of the termination will be in connection with its rights to a Termination Payment.

42.11 Additional rights and obligations on Termination

The additional rights and obligations of the parties on a termination of this Agreement are set out in clause 28.

43. Dispute Resolution

43.1 Procedure for resolving disputes

- (a) **(Resolution procedure):** Unless a State Project Document provides otherwise, any dispute between the State and Project Co arising in connection with the State Project Documents or the Project Activities (including questions concerning this Agreement's existence, meaning or validity) or a decision of the Independent Reviewer and Environmental Auditor which is capable of being disputed under clause 43 (**Dispute**) must be resolved in accordance with this clause 43 and clause 44.
- (b) **(Exclusion):** The functions of the Independent Reviewer and Environmental Auditor under section 2.4(e) of the Design Review Section are:
 - (i) advisory only and not binding on any party; and
 - (ii) not a decision or determination of the Independent Reviewer and Environmental Auditor capable of forming the subject matter of a Dispute which can be resolved under this clause 43 and clause 44.

- (c) **(Procedure):** The procedure that is to be followed to resolve a Dispute is as follows:
- (i) firstly, the Dispute must be the subject of negotiation as required by clause 43.2;
 - (ii) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 43.2(c)(i) the parties may agree that the Dispute will be referred to an expert for determination under clauses 43.4 to 43.8 or to arbitration under clause 44; and
 - (iii) thirdly, if:
 - A. the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 43.2(c)(i) and irrespective of whether the parties failed to meet as required by that clause or whether having so met the parties fail to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 43.2(c)(i);
 - B. the Dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment, or such later date as agreed between the parties; or
 - C. the Dispute is referred to expert determination and a notice of dissatisfaction is given under clause 43.6(a),then the Dispute must be referred to arbitration under clause 44.

43.2 Negotiation

- (a) **(Notification):** If a Dispute arises then a party may give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the State and Project Co **(Representatives)**.
- (b) **(Contents of Notice):** A notice under clause 43.2(a) must:
- (i) state that it is a notice under this clause 43; and
 - (ii) include or be accompanied by particulars of the matters which are the subject of the Dispute.
- (c) **(Attempt to resolve Dispute):** If a Dispute is referred for resolution by negotiation under clause 43.2(a), then:
- (i) the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 43.2(a) is received (or such later date as the parties may agree); and
 - (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.

43.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives):** a Dispute which has been referred to the Representatives for negotiation in accordance with clause 43.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 43.2(c)(i); and
- (b) **(referral to expert):** either:
 - (i) if the Dispute does not arise in respect of clauses 22, 23 or 34, the parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 43.2(c)(i), that the Dispute be referred to an expert for determination; or
 - (ii) if the Dispute arises in respect of clauses 22, 23 or 34,

then those parts of the Dispute which remain unresolved will be referred to an expert for determination under clauses 43.4 to 43.8. For the avoidance of doubt, a Dispute (other than Disputes in respect of a party's rights and obligations under clauses 22, 23 or 34) may only be referred to an expert for determination by agreement of the parties.

43.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts):** Within 7 Business Days after:
 - (i) the date on which the Dispute is referred to an expert for determination under clause 43.3; or
 - (ii) the notice issued under clauses 22.1(e)(iii) or 23.15,the State and Project Co must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 43.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person that appears on both lists under clause 43.4(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 22.1(e)(iii), 23.15 or 43.2(a), will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on both lists, the party which gave the notice under clauses 22.1(e)(iii), 23.15 or 43.2(a) must procure:
 - (i) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 43.4(a); or
 - (ii) if there is no governing body for the technical or professional discipline the subject of the relevant Dispute or such governing body advises that it will not nominate an expert, 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 43.4(a).

- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** Neither party will be entitled to challenge the appointment of an expert under this clause 43.4 on the basis that the expert does not satisfy the requirements of clause 43.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Agreement will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement):** Once an expert is appointed, the State and Project Co must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

43.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

43.6 Expert finding

- (a) **(Notification):** Subject to clause 43.6(b), the determination of the expert must be in writing and will be final and binding on the State and Project Co unless:
 - (i) if the determination of the expert is made prior to the Date of Tolling Completion, within 10 Business Days of receipt of the determination; or
 - (ii) if the determination of the expert is made on or after the Date of Tolling Completion, within 90 days of the receipt of the determination,a party gives notice to the other party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 44.
- (b) **(Final and binding):** The determination of the expert will be final and binding on the State and Project Co where the Dispute includes a Claim for payment of compensation which is less than \$[not disclosed] (Indexed).
- (c) **(Amendment to determination):** Upon submission by any party, the expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.

43.7 Liability of expert

- (a) **(Liability of expert):** The parties agree:
 - (i) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and

(ii) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the Dispute.

(b) **(Engagement):** The State and Project Co will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

43.8 Costs

The State and Project Co must:

(a) bear their own costs in connection with the expert determination proceedings; and

(b) pay an equal portion of the costs of the expert.

44. Arbitration

44.1 Reference to Arbitration

(a) **(Dispute):** If:

(i) a Dispute:

A. which has been referred to the parties' Representatives for negotiation in accordance with clause 43.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 43.2(c)(i); and

B. the parties do not agree to refer the Dispute to an expert for determination under clause 43.3(b)(i); or

(ii) in the case of a Dispute referred to expert determination under clause 43.3:

A. a determination is not made within 30 days of the expert's acceptance of the appointment, or such later date as agreed between the parties; or

B. a notice of dissatisfaction is given in accordance with clause 43.6,

then the State or Project Co may notify the other that it requires the Dispute to be referred to arbitration.

(b) **(Referral):** Upon receipt by the other party of a notice under clause 44.1(a), the Dispute will be referred to arbitration.

44.2 Arbitration

(a) **(ACICA Rules):** Arbitration in accordance with this clause 44 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 44.

(b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.

(c) **(Language):** The language of the arbitration will be English.

44.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the Dispute being referred to arbitration in accordance with clause 44.1(b), the arbitrator or arbitrators will be appointed by the Australian Centre for International Commercial Arbitration.

44.4 General principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The parties agree that:
- (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) any arbitration conducted in accordance with this clause 44 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 44.4(a)(i) and 44.4(a)(ii).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
- (i) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 44.4(a) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for oral hearing each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination;
 - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 44.4(d)(ii);

- (vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (viii) each party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or, where 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 witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered, each party may only rely upon one expert witness in connection with any recognised area of specialisation.

44.5 Proportionate liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might, in the absence of this clause 44.5, have applied to any dispute referred to arbitration in accordance with this clause 44.

44.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (i) a Dispute between the parties to this Agreement is referred to arbitration in accordance with this clause 44; and
 - (ii) there is some other Dispute also between the parties to and in accordance with this Agreement (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or both of the parties at any time before a final award is made in relation to the first-mentioned Dispute, make an order directing that the arbitration be extended so as to include the other Dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 44.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

44.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 44.7(b), any award will be final and binding on the parties.
- (b) **(Appeal):** Each party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 44.

44.8 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to carry out its obligations in accordance with the State Project Documents.

44.9 Governing Law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

44.10 Interlocutory relief

This clause 44 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.

PART I - OTHER

45. Representations and warranties

45.1 State's representations and warranties

The State represents and warrants for the benefit of Project Co that:

- (a) **(power to execute)**: it has the power to execute, deliver, carry out its obligations and grant the rights under the State Project Documents and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(validity)**: each State Project Document constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (c) **(legality)**: the execution, delivery and performance of each State Project Document does not violate any Law to which the State is subject.

45.2 Project Co's representations and warranties

Project Co represents and warrants for the benefit of the State that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under the Project Documents and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(legality)**: the execution, delivery and performance of each Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(validity)**: each Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) **(registration)**: it is duly registered, properly constituted and remains in existence;
- (e) **(no trust relationship)**: except as stated in this Agreement, it is not the trustee or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
- (f) **(no subsidiaries)**: it has no subsidiaries, other than NewCo;
- (g) **(no trading)**: it has not traded since its incorporation, other than for the purposes of:
 - (i) entering into the Project Documents;
 - (ii) acquiring shares in NewCo,

and it has no liabilities other than those that have arisen in connection with the activities referred to in sub-paragraphs (g)(i) and (g)(ii);

- (h) **(no material change)**: there has been no material change in the financial condition of Project Co (since its incorporation) or any other Group Member, the Equity Investors or the Key Subcontractors (since the date of their last audited accounts) which would prejudice the ability of Project Co to perform its obligations under the Project Documents;

- (i) **(information true and correct)**: all information that has been provided to the State is true and correct and Project Co is not aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Agreement with Project Co; and
- (j) **(no other security interests)**: none of the assets are subject to any Encumbrance other than a Permitted Encumbrance (as each of those terms is defined in the State Security).

45.3 Repetition of representation and warranties

Each representation and warranty given by Project Co under this Agreement:

- (a) **(date of Agreement)**: is made on the date of this Agreement; and
- (b) **(repetition)**: will be deemed to be repeated each day during the period from the date of this Agreement to the Expiry Date,

with reference to the facts and circumstances then subsisting.

46. Benefits held on trust

- (a) **(Benefit of indemnities)**: The State holds on trust for its Associates and Public Transport Victoria the benefit of:
 - (i) each indemnity and release given by Project Co under the State Project Documents in favour of the State's Associates and Public Transport Victoria; and
 - (ii) each right in the State Project Documents to the extent that such right is expressly stated to be for the benefit of the State's Associates.
- (b) **(Project Co acknowledgement)**: Project Co acknowledges the existence of such trusts and consents to:
 - (i) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates and Public Transport Victoria; and
 - (ii) the State's Associates and Public Transport Victoria exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to the State Project Document.
- (c) **(Benefit of indemnities)**: Project Co holds on trust for the CityLink Parties, Clepco and NewCo the benefit of each right in the State Project Documents to the extent that such right is expressly stated to be for the benefit of the CityLink Parties, Clepco or NewCo (as the case may be).
- (d) **(State acknowledgement)**: The State acknowledges the existence of such trusts and consents to:
 - (i) Project Co exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of the CityLink Parties, Clepco or NewCo (as the case may be); and
 - (ii) the CityLink Parties, Clepco or NewCo (as the case may be) exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to the State Project Document.

47. Project Co to inform itself

47.1 No representations from the State

Subject to, and without limitation to, clause 45, Project Co acknowledges and agrees that the State and any of its Associates have not made and make no representation, and give no warranty or guarantee and owe no duty of care in respect of:

- (a) **(Project Information)**: the accuracy, adequacy or completeness of the Project Information;
- (b) **(Site)**: the Site Conditions, title to the Site or adequacy of or access to the Site and its surroundings for the Project;
- (c) **(Utility Infrastructure)**: the existence, location, condition or availability of any Utility Infrastructure; or
- (d) **(Easements)**: any Easements and rights of way.

47.2 Acknowledgments by Project Co

Without limiting clause 47.1, but subject to, and without limitation to, clause 45, Project Co acknowledges and agrees that:

- (a) **(entry into Agreement)**: it enters into this Agreement based on its own investigations, interpretations, deductions, information and determination;
- (b) **(opportunity to investigate)**: it was given the opportunity to itself undertake, and to request others to undertake tests, enquiries and investigations:
 - (i) relating to the subject matter of any Project Information; and
 - (ii) of the Site;
- (c) **(Project Information)**: the Project Information was provided by the State and any of its Associates for the information only of Project Co;
- (d) **(no invitation, offer or recommendation)**: the Project Information does not form part of this Agreement or constitute an invitation, offer or recommendation by or on behalf of the State;
- (e) **(no reliance)**: it did not rely upon any Project Information or any other information, data, representation, statement or document or the accuracy, adequacy, suitability or completeness of the Project Information or other such information, data, representation, statement or document for the purposes of entering into this Agreement or delivering the Project;
- (f) **(State entry into Agreement)**: the State has entered into this Agreement relying upon the warranties, acknowledgements, representations and agreements set out in this Agreement; and
- (g) **(Intellectual Property Rights)**: all Intellectual Property Rights in the Project Information remain the property of the State or any of its Associates or any Site Information Report providers (as the case may be).

47.3 Release and indemnity

Subject to, and without limitation to, clause 45.1, Project Co:

- (a) **(indemnity)**: indemnifies the State and its Associates against any Claim or Liability suffered or incurred by the State or its Associates; and
- (b) **(release)**: releases and will procure that its Associates release the State and its Associates from any Claim,

arising in connection with:

- (c) **(reliance)**: the provision of, or the purported reliance upon, or use of, the Project Information by Project Co, an Associate of Project Co or any other person to whom the Project Information is disclosed by Project Co, an Associate of Project Co or any person on Project Co's or the Associate's behalf; or
- (d) **(representations)**: the matters set out in clauses 47.1(a) to 47.1(d).

48. Restrictions on Project Co

- (a) **(Restrictions)**: Project Co must not, and must procure that NewCo does not:
 - (i) conduct any business other than the Project and the carrying out of its obligations and the exercise of its rights under the Project Documents;
 - (ii) acquire or hold any property or incur any liability other than for the purposes of the Project;
 - (iii) enter into contracts with other Consortium Members, the Equity Investors or any of their respective Associates (other than Project Documents);
 - (iv) assume or permit to subsist any liability in favour of other Consortium Members, the Equity Investors or any of their respective Associates (other than pursuant to a Project Document); or
 - (v) make or permit any Distributions prior to the Date of Tolling Completion, without the State's prior consent, other than:
 - (vi) a financing arrangement entered into by Project Co or NewCo as borrower with Funding Co, an Equity Investor, a Wholly Owned Group Member of an Equity Investor or NewCo (in the case of Project Co), or Project Co (in the case of NewCo); and
 - (vii) the acquisition or issue of shares in NewCo,in which case the State's consent is not required.
- (b) **(Consent)**: The State must not unreasonably withhold its consent under clause 48(a)(iii) or clause 48(a)(iv) if the relevant transaction is on arm's length commercial terms.
- (c) **(Deemed consent)**: The parties acknowledge and agree that by entering into this Agreement, the State is deemed to have consented to the following agreements and the transactions contemplated by them as at the date of this Agreement, to the extent such agreements and the transactions contemplated by them require the State's consent under clause 48(a):
 - (i) the FMS Agreement;
 - (ii) the Network Tolling Agreement;

- (iii) the Roaming Agreement;
 - (iv) the WGT Call Option Deed;
 - (v) the WGT Co Equity Subscription Deed;
 - (vi) the Concession Enhancement Payment Deed;
 - (vii) the NewCo Equity Note Deed Poll;
 - (viii) the NewCo Works Loan Agreement;
 - (ix) the CLUT Works Loan Agreement;
 - (x) the West Gate Tunnel – CityLink Umbrella Deed;
 - (xi) the DCOM Interface Deed;
 - (xii) the Availability Fee Letter (in the form of that letter as at the date of this Agreement) given by Project Co for the benefit of Funding Co, provided that prior to making a payment under the letter, Project Co must obtain the State's prior consent to the source of funds for that payment (with such consent not to be withheld if the source of funds will not adversely affect the right or Liability of, or risks accepted by, the State);
 - (xiii) the Development Costs Fee Letter between Project Co and Transurban Limited dated on or about the date of this Agreement; and
 - (xiv) the Project Co Equity Note Deed Poll insofar as it relates to monies received under the Additional State Contributions Schedule.
- (d) **(Tax consolidation):** Project Co undertakes to ensure that for so long as it is a member of any tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997 (Cth)* or GST grouping arrangement contemplated by the GST Law, it will be party to (as applicable):
- (i) a valid tax sharing agreement in accordance with section 721-725 of the *Income Tax Assessment Act 1997 (Cth)* and tax funding agreement in respect of such consolidation arrangement; and
 - (ii) a valid indirect tax sharing agreement in accordance with s 444-90 of Schedule 1 of the *Taxation Administration Act 1953 (Cth)* in respect of such GST grouping arrangement,
- in each case in form and substance satisfactory to the State.
- (e) **(GST grouping for NewCo):** Project Co undertakes to ensure that, for so long as Project Co is a member of any GST grouping arrangement contemplated by the GST Law, NewCo will be:
- (i) a member of the same GST grouping arrangement as Project Co; and
 - (ii) a party to a valid indirect tax sharing agreement in accordance with section 444-90 of Schedule 1 of the *Taxation Administration Act 1953 (Cth)* in respect of such GST grouping arrangement in form and substance satisfactory to the State.
- (f) **(Maintenance of tax sharing agreements):** Project Co will take all actions necessary or appropriate to ensure that any tax sharing agreement or indirect tax

sharing agreement referred to in clause 48(d) or clause 48(e)(ii) is, at all times, valid, and in form and substance satisfactory to the State, including:

- (i) making any amendments, additions or deletions, which are in form and substance satisfactory to the State, to such an agreement as and when necessary or appropriate to ensure that the agreement is valid in respect of all relevant tax liabilities from time to time; and
 - (ii) providing, or procuring that the head company or representative member of relevant group provides, a copy of the relevant agreement to the Commissioner of Taxation as and when required to ensure that the agreement is valid in respect of any and all relevant tax liabilities from time to time.
- (g) **(Agreement not valid):** For the purposes of this clause 48 but without limitation, a tax sharing agreement or indirect tax sharing agreement will not be considered valid in respect of a tax liability if Project Co or NewCo is or becomes liable to pay the Commissioner of Taxation an amount in respect of that tax liability which is greater than the contribution amount of Project Co or NewCo (as applicable) in respect of that tax liability as determined in accordance with the relevant agreement.

49. Assignment, amendments and change in ownership

49.1 Assignment, amendment to Project Documents and other dealings

- (a) **(Restrictions):** Except as expressly permitted by this Agreement, the Finance Direct Deed, the Other Financing Documents or the State Security, Project Co must not, and must procure that NewCo does not, without State consent:
- (i) assign, sell, novate, transfer, (subject to clause 36.2(b)) mortgage or charge, create or allow to exist any Security Interest over, or otherwise deal with all or any part of its interest in, or obligations under;
 - (ii) lease, license, transfer, sell, dispose of, part with possession of, or otherwise deal with;
 - (iii) make or permit any amendment to, replacement of or waiver of a provision of;
 - (iv) terminate, surrender, rescind or accept repudiation of; or
 - (v) enter into any agreement or arrangement which affects the operation or interpretation of,
- any of the Project Documents (each an **Amendment** for the purpose of this clause 49), or the whole or any part of the Construction Areas, Maintenance Areas, Leased Area or the Relevant Infrastructure.
- (b) **(Exceptions):** Clauses 49.1(a)(iii) to 49.1(a)(v) (and clause 49.1(a)(i) in respect of clause 49.1(b)(i) only) do not apply in respect of:
- (i) an Amendment in respect of a Finance Document or an Other Financing Document, other than an Amendment which gives rise to a Refinancing, in which case it is to be dealt with in accordance with clause 36;
 - (ii) a Share Capital Dealing, which is to be dealt with in accordance with clauses 49.2 to 49.7;

- (iii) any Amendment for which consent has been sought by Project Co under clause 10.4(a); or
 - (iv) any Amendment which is expressly permitted or contemplated by the Project Documents.
- (c) **(Notice of intended Amendment):** If Project Co requires an Amendment, it must submit to the State a written request seeking its consent. Such a request must set out:
 - (i) the Amendment and the reasons for it;
 - (ii) the response or anticipated response of any other party to the Project Documents regarding the Amendment;
 - (iii) the response or anticipated response of any assignee or incoming party of the Project Documents to the Amendment; and
 - (iv) copies of any documents relevant to Project Co's request.
- (d) **(State to advise):** The State must advise Project Co, within:
 - (i) 15 Business Days of receiving its request under clause 49.1(c), that:
 - A. it consents to the Amendment; or
 - B. the Amendment is unacceptable to it and the reasons why the Amendment is unacceptable; and
 - (ii) 10 Business Days of receiving its request under clause 49.1(c) if it requires further information from Project Co regarding the Amendment, in which case Project Co must provide the additional information sought by the State within a further period of 10 Business Days, and clause 49.1(c) will apply again to that Amendment.
- (e) **(Failure to respond):** If the State fails to respond for any reason within the period specified under clause 49.1(d)(i) in relation to an Amendment in respect of a Project Document, which is not a State Project Document:
 - (i) Project Co may send a reminder notice; and
 - (ii) if that notice is not responded to within 7 Business Days, the State will be deemed to have given its consent to such Amendment.

49.2 Restrictions on Share Capital Dealings

Subject to clause 49.4 and except as contemplated in the State Equity Subscription Deed, the WGT Co Equity Subscription Deed or the WGT Call Option Deed, Project Co must not and must ensure that each Group Member does not:

- (a) **(restrictions):** allow Project Co or NewCo, at any time, to:
 - (i) redeem, repurchase, defease, retire or repay any share capital or units in Project Co or NewCo, or resolve to do so;
 - (ii) issue or agree to issue any share capital or units in Project Co or NewCo;

- (iii) issue or agree to issue any warrants or options over any unissued share capital or units in Project Co or NewCo;
 - (iv) permit or suffer any change to (or transfer of), the issued share capital or units in Project Co which results in Project Co ceasing to be directly and beneficially wholly owned and controlled by Transurban Holdings Limited;
 - (v) permit or suffer any change to (or transfer of), the issued share capital or units in NewCo which results in NewCo ceasing to be directly and beneficially controlled by Project Co; or
 - (vi) permit the transfer of unitholder or shareholder loans (or other loans in the nature of equity funding) from an Equity Investor to a party other than one wholly owned and controlled by that Equity Investor;
- (b) **(no Change in Control)**: at any time, permit or suffer any Change in Control of a Consortium Member; or
- (c) **(no Change in trustee)**: permit or suffer a change in the manager, trustee or Responsible Entity of any Group Member that is a trust,

(each a **Share Capital Dealing**), without the State's prior consent which must be requested by notice from Project Co to the State, provided that nothing in this clause 49.2 limits the repayment of amounts under a Finance Document.

49.3 State's right to withhold consent

Subject to clauses 49.4(b), 49.5 and 49.7, the State may only withhold its consent to a proposed Share Capital Dealing if the State is of the opinion (acting reasonably) that:

- (a) the proposed new Equity Investor or Equity Investors (or any direct or indirect holding entity of the new Equity Investor or Equity Investors):
 - (i) is or are not Solvent and reputable; or
 - (ii) has or have an interest or duty which conflicts or may conflict in a material way with the interests of the State; or
- (b) the proposed Share Capital Dealing:
 - (i) is against the public interest;
 - (ii) would adversely affect the ability or capability of Project Co or NewCo (as applicable) to carry out their obligations in accordance with any Project Document;
 - (iii) is reasonably likely to lead to a Probity Event;
 - (iv) would, in respect of a Change in Control of a Consortium Member (who is not an Equity Investor) result in the Consortium Member being Controlled by an entity that:
 - A. has an interest or duty which conflicts or may conflict in a material way with the interests of the State; or
 - B. does not have a sufficient level of financial, managerial and technical capacity to deliver the relevant aspects of the Project for which the Consortium Member is responsible;

- (v) would have a material adverse effect on the Project; or
- (vi) would increase the Liability of, or risks accepted by, the State under the State Project Documents or in any other way in connection with the Project.

49.4 Permitted Share Capital Dealings and on-market acquisitions

- (a) **(Permitted Share Capital Dealings):** Project Co may effect, permit, suffer or allow a Permitted Share Capital Dealing at any time without the State's prior consent, provided that Project Co provides notice to the State of the proposed Permitted Share Capital Dealing as soon as reasonably practicable and, in any event, not less than 5 Business Days prior to the Permitted Share Capital Dealing.
- (b) **(On-market acquisitions):** If:
 - (i) a Share Capital Dealing by way of a Change in Control occurs due to the transfers of shares or other interests which are listed on a stock exchange; and
 - (ii) the consent of the State is required under this Agreement but could not have been obtained prior to the Share Capital Dealing, that consent must be sought immediately after the Share Capital Dealing, and Project Co must procure that the Controlling Entity ceases to have the Control which resulted in the Change in Control within 60 Business Days after receiving any notice under clause 49.5 that the State does not consent to the Change in Control (and a failure to do so will be a deemed Major Default and not a breach of clause 49.2(b)).

49.5 Consent to a Share Capital Dealing

The State must advise Project Co, within 10 Business Days (or such longer period as the State reasonably requests given the nature of the proposed Share Capital Dealing) of receiving Project Co's request for consent in accordance with clause 49.2 or 49.4, whether:

- (a) **(consent):** it consents to the Share Capital Dealing;
- (b) **(unacceptable):** subject to clause 49.3, the Share Capital Dealing is unacceptable to it and the reasons why the Share Capital Dealing is unacceptable; or
- (c) **(further information):** it requires further information from Project Co regarding the Share Capital Dealing, in which case Project Co must provide the additional information sought by the State within a further period of 10 Business Days, after which the State must respond in terms of clause 49.5(a) or 49.5(b) within 10 Business Days.

49.6 Costs relating to a Share Capital Dealing

Project Co must pay the State its costs (including legal and financial advisers' fees) reasonably incurred in relation to considering or consenting to a proposed Share Capital Dealing.

49.7 Designated Investor

Subject to clause 49.4, Project Co must ensure that the Designated Investor continues to hold at least the percentage set out in the Ownership Schedule of the total issued securities in Project Co until the second anniversary of the Date of West Gate Tunnel Completion.

49.8 Initial status of ownership

Project Co represents and warrants that, as at Financial Close, it will be owned and Controlled as set out in the Ownership Schedule.

50. Financial Model

50.1 Provision of the Base Case Financial Model

Project Co must provide to the State Representative on the date of this Agreement Project Co's audited financial model for the Project as at that date in the form and substance approved by the State (**Base Case Financial Model**).

50.2 Updates to the Financial Model

- (a) (**Annual updates**): No later than 30 September each year throughout the Term, Project Co must provide the State with:
- (i) an updated Financial Model which reflects:
 - A. Actual Revenue and Actual Costs; and
 - B. any material changes to projections of Net Operating Cashflows,since the previous update to the Financial Model under this clause 50.2 or (if later) a variation to the Base Case Financial Model was agreed;
 - (ii) if the updated Financial Model includes material changes to the projections of the Net Operating Cashflows, details of the changes reflected in the revised projection of the Net Operating Cashflows; and
 - (iii) a statement reconciling the updated Financial Model with the audited financial statements of Project Co.
- (b) (**Warranty**): Project Co warrants and must ensure that the Financial Model incorporates relevant and accurate data at the time that it is provided to the State under this Agreement.

50.3 Varying the Base Case Financial Model

The Base Case Financial Model, including the Notional Cost Profile and the Base Case Projected Revenue, must be varied in accordance with this clause 50 upon the occurrence of any of the following events (each a **Model Variation Event**):

- (a) a:
- (i) Relief Event (other than an event described in paragraph (d) of the definition of Relief Event);
 - (ii) Compensable Enhancement; and
 - (iii) to the extent agreed or determined under the Adjustment Event Schedule, Adjustment Event,

which results in a permanent adjustment to the Project Equity, the projected debt as set out in the Notional Debt Profile, the Projected Revenue or the projected costs as set out in the Notional Cost Profile (including where the State elects that Project Co

obtain funding for a Change Compensation Event in accordance with sections 4.2(b) and 4.2(c) of the Change Compensation Principles);

- (b) the expiration of the "PAM Election Period" set out in the Pre-Agreed Modification Schedule in respect of the M80 Interface Works without the State having issued a Pre-Agreed Modification Election Notice in respect of the M80 Interface Works; and
- (c) any other event which Project Co and the State agree to be a Model Variation Event.

50.4 Principles for variations to the Base Case Financial Model

When a Model Variation Event occurs, the parties acknowledge and agree that the Base Case Financial Model will be varied by:

- (a) taking into account only the amounts determined in accordance with this Agreement including the Change Compensation Principles, as agreed between the State and Project Co, or as determined in accordance with clauses 43 to 44; and
- (b) having regard to, but not incorporating, actual and historical data.

50.5 Procedures for variations to the Base Case Financial Model

- (a) **(Project Co proposal):** Project Co must propose the variation by notice to the State Representative within 15 Business Days of the Model Variation Event occurring, giving full details of the assumptions and calculations used.
- (b) **(Negotiate):** As soon as practicable, but no later than 20 Business Day after Project Co issues a notice to the State in accordance with clause 50.5(a), the State and Project Co must negotiate in good faith to determine the variations to the Base Case Financial Model.
- (c) **(Determination of matter):** If the parties do not reach agreement within 60 Business Days after commencing the negotiations contemplated by clause 50.5(b), then either the State or Project Co may refer the matter for resolution in accordance with clauses 43 and 44.
- (d) **(Amendment):** If the variation to the Base Case Financial Model is agreed or determined, Project Co must promptly amend the Base Case Financial Model accordingly.

50.6 Access to information

At the same time as it provides a proposed variation to the Base Case Financial Model under clause 50.5(a), Project Co must provide the State Representative and any other authorised representatives of the State with:

- (a) full access to electronic copies of the varied Base Case Financial Model;
- (b) a log of all changes that have been made to the Base Case Financial Model;
- (c) all supporting calculations; and
- (d) any other information reasonably requested by the State,

for a Model Variation Event, including the ability to access that information, and relevant passwords or other access information.

51. Records and auditing obligations

51.1 Accounts and records

- (a) **(Proper books of account):** Project Co must keep proper books of account and all other records (**Accounts and Records**) it has relating to the Project, and must ensure that each other Group Member, the D&C Subcontractor (during the D&C Phase) and OpCo (during the O&M Phase) does likewise.
- (b) **(Annual audit):** Project Co must have its accounts audited annually on both an unconsolidated basis and on a consolidated basis (to the extent that Project Co is part of a consolidated entity, within the meaning of the Corporations Act) and must ensure that:
 - (i) each other Group Member and OpCo (during the O&M Phase) does likewise; and
 - (i) during the D&C Phase, the D&C Subcontractor:
 - A. has its accounts audited annually on a consolidated basis (to the extent that the D&C Subcontractor is part of a consolidated entity, within the meaning of the Corporations Act); and
 - B. where available, provides to the State and Project Co annually its accounts on an unconsolidated basis.
- (c) **(Accounting principles):** Project Co must ensure that its Accounts and Records are prepared in accordance with the Corporations Act and generally accepted Australian accounting principles and practices consistently applied, and fairly represent its operations and financial condition or consolidated financial position (as the case may be) and must ensure that each other Group Member does likewise.
- (d) **(Availability of accounting records):** Project Co must ensure that its Accounts and Records are available to the State and any person authorised by the State at any time during Business Hours (subject to receiving 2 Business Days' notice from the State) during the Term for examination, audit, inspection, transcription and copying, and must ensure that each other Group Member does likewise.
- (e) **(Availability of accounting records if Agreement is terminated):** Without limiting its obligations in accordance with clause 28, if this Agreement is terminated, Project Co must give to the State and its Associates access to all of its Accounts and Records which are necessary for the carrying out of the Project Activities, and must ensure that each other Group Member does likewise.

51.2 Financial statements

- (a) **(Audited financial statements):** As soon as practicable (and in any event not later than 120 days) after:
 - (i) in respect of Project Co, each Group Member and OpCo, the close of each Financial Year; and
 - (ii) in respect of the D&C Subcontractor, the close of each Financial Year (D&C),

Project Co must give to the State certified copies of the consolidated (if applicable) and unconsolidated audited financial statements for:

- (iii) the previous Financial Year for Project Co and each Group Member and, if requested by the State, OpCo (during the O&M Phase); and
 - (iv) if requested by the State, the previous Financial Year (D&C) for the D&C Subcontractor (during the D&C Phase).
- (b) **(Cashflow and profit and loss statements)**: Not later than 30 days after the end of each Quarter, Project Co must give to the State certified copies of cashflow and profit and loss statements, and must ensure that each other Group Member does likewise.

51.3 Other information

Project Co must give to the State the following information:

- (a) **(copies)**: copies of all documents or information given or received by any Group Member to or from the Australian Securities & Investments Commission or Australian Stock Exchange Limited, promptly after the information is first given or received;
- (b) **(counterparty changes)**: details of any changes to the Counterparty Details within 20 Business Days after the change; and
- (c) **(other information)**: such other information relating to the Project as the State may reasonably require from time to time including any reports prepared by, or on behalf of, Project Co in relation to the Project Activities.

52. Intellectual Property Rights

52.1 Warranties

Project Co warrants to the State that:

- (a) **(No infringement or rights)**: no Intellectual Property Rights, Moral Rights or other rights of any person will be infringed or breached:
 - (i) by the performance of the Project; or
 - (ii) by:
 - A. use or enjoyment of any Project Co Material or any Relevant Infrastructure; or
 - B. use or exercise of any Project Intellectual Property Rights,by the State, any of its Associates or any person nominated or authorised by the State in connection with this Agreement (including Project Co and its Associates); and
- (b) **(ownership of rights)**: it owns, or has the authority to grant the rights granted or effect the assignment made (as applicable) under this clause 52 in respect of, the Project Intellectual Property Rights and neither:
 - (i) the exercise of those rights by the State, any of its Associates or any person nominated or authorised by the State in connection with this Agreement; nor
 - (ii) the possession or use of any materials in which those rights subsist in connection with this Agreement,

will give rise to any Liability on the part of the State, any of its Associates or any person nominated or authorised by the State on account of an infringement of any rights of a third party, including to pay any compensation (including any royalty) to any person, or give rise to a right entitling any person to make a Claim against the State, any of its Associates or any person nominated or authorised by the State for any attribution or acknowledgment or rectification in relation to the Project Intellectual Property Rights or any materials in which they subsist.

52.2 Grant of licence

Project Co:

- (a) **(grant)**: grants to the State;
- (b) **(procure of grant)**: without limiting Project Co's obligations under clause 52.5, must procure that each of its Associates who own or are licensed to use the relevant Project Intellectual Property Rights grants to the State (with effect from the date the relevant Project Intellectual Property Rights come into existence); and
- (c) **(all things necessary)**: must do all things necessary to give effect to the grant to the State of,

a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) to use, reproduce, modify, adapt, develop, communicate to the public or otherwise exploit the Project Co Material, and to exercise all or any of the Project Intellectual Property Rights, for the purposes of:

- (d) **(Project)**: the Project (including, where this Agreement is terminated for any reason) , to complete any Project Activities which have not been:
 - (i) carried out; or
 - (ii) carried out in accordance with the applicable State Project Documents, as at the date of termination;
- (e) **(State Project Documents)**: the exercise of the rights of the State or its Associates in accordance with the State Project Documents (including its step-in rights in accordance with clause 37);
- (f) **(Project Co Material and Relevant Infrastructure)**: the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of the Project Co Material or the Relevant Infrastructure on and from the Expiry Date;
- (g) **(other infrastructure)**: the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration, during and after the Term, of any other project involving the transport network or the implementation of any infrastructure undertaken by or on behalf of the State within Victoria; and
- (h) **(interfaces)**: the procurement, funding, financing, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of any thing (including infrastructure, equipment, computer hardware, computer software and computer or telecommunications systems) which interfaces or interoperates with, or which is located (in whole or in part) under, on or above any Project Co Materials or any Relevant Infrastructure during and after the Term.

52.3 Project Co Material and Relevant Infrastructure

- (a) Without limiting Project Co's other obligations under this Agreement with respect to the delivery of any Project Co Material or any Relevant Infrastructure, Project Co will provide, and procure that its Associates provide, all documentation, information and assistance and materials as the State may reasonably require for the State's:
- (i) use or enjoyment of the Works, Project Co Material or Relevant Infrastructure; or
 - (ii) use and exercise of the Project Intellectual Property Rights;

in connection with this Agreement (where such use, enjoyment or exercise does not involve the exercise of any Project Intellectual Property Rights in a manner not permitted under this Agreement), including by making any Project Co Material not forming part of the Works available to the State in such form as the State may reasonably require for that purpose.

52.4 Indemnities

- (a) **(Intellectual Property Rights, Moral Rights or other rights):** Project Co must indemnify the Indemnified Persons against any Claim or Liability brought against, suffered or incurred by the Indemnified Persons arising in connection with any infringement, violation, alleged infringement or alleged violation by Project Co or any of its Associates or any Indemnified Person of any Intellectual Property Rights, Moral Rights or other rights of any person or any Liability which any one or more of the Indemnified Persons may have to pay compensation (including any royalty) to a third party or make any attribution or acknowledgement or rectification in relation to any Project Intellectual Property Rights, any Project Co Material or any Relevant Infrastructure, in connection with:
- (i) the Project; and
 - (ii) in the case of the Indemnified Persons:
 - A. using or enjoying the Project Co Material or the Relevant Infrastructure as delivered by or on behalf of Project Co to the State or as modified from time to time (but not to the extent that any Claim or Liability arises from any modification made by the State or third parties engaged by the State which is not as directed or approved by Project Co) in connection with this Agreement; or
 - B. using or exercising the Project Intellectual Property Rights (except to the extent such use or exercise is in a manner contrary to the terms of this clause 52).
- (b) **(Breach of warranties):** Project Co must indemnify the Indemnified Persons against any Claim or Liability brought against, suffered or incurred by the Indemnified Persons arising from any breach of the warranties set out in clause 52.1.
- (c) **(Indemnities under clause 52.4(a)):** In relation to any Claim or Liability for which an Indemnified Person seeks to be indemnified under clause 52.4(a) or 52.4(b):
- (i) Project Co may (subject to Project Co confirming to the State that the Claim or Liability is the subject of the indemnity in clause 52.4(a) or 52.4(b)) conduct any defence or settlement in connection with any such Claim or in relation to any such Liability, provided that Project Co:

- A. keeps the State informed of all material steps in relation to the conduct of any defence or settlement;
 - B. consults with, and complies with all reasonable requirements of, the State in relation to such defence or settlement including complying with the Model Litigant Guidelines; and
 - C. ensures that no settlement is made on terms which involve any admission of liability on the part of any Indemnified Person without the prior consent of that Indemnified Person;
- (ii) the State must use reasonable endeavours to ensure Indemnified Persons provide all cooperation reasonably required by Project Co in relation to such defence; and
- (iii) to the extent that the Claim or Liability under clause 52.4(a) or 52.4(b) comes to the attention of the State before it comes to the attention of Project Co, the State will notify Project Co of the Claim or Liability.
- (d) **(Interference with use or enjoyment of Project Co Material or the Relevant Infrastructure):** If a Claim or Liability referred to in clause 52.4(a) substantially interferes with the Indemnified Persons' use or enjoyment of any Project Co Material, any Relevant Infrastructure or the use or exercise of any Project Intellectual Property Rights, or the State reasonably believes, in consultation with Project Co, that such Claim or Liability may substantially interfere with such use or enjoyment, Project Co will (at the State's option, and without limiting any of the State's other rights under any Project Document):
- (i) replace the Project Co Material or the Relevant Infrastructure or the subject matter of the relevant Project Intellectual Property Right, without additional charge with a non-infringing product or service of at least equivalent functionality and performance, and which otherwise meets all relevant requirements for that Project Co Material or the Relevant Infrastructure in accordance with the Project Documents;
 - (ii) modify the Project Co Material or the Relevant Infrastructure or the subject matter of the relevant Project Intellectual Property Right to overcome the infringement without additional charge and without materially impeding functionality or performance or rendering it non-compliant with any relevant requirements for that Project Co Material or the Relevant Infrastructure in accordance with the Project Documents; or
 - (iii) obtain a licence for the Indemnified Persons to continue use and enjoyment of the Project Co Material or the Relevant Infrastructure or the subject matter of the relevant Project Intellectual Property Right in accordance with the licence granted under clause 52.2 and pay any additional fee required for such licence.
- (e) **(Intellectual Property Rights):** Neither the State's rights nor Project Co's liabilities or obligations, whether under this Agreement or otherwise according to Law, in connection with Intellectual Property Rights, will be limited by the terms of this clause 52.4.
- (f) **(Indemnified Persons):** For the purposes of this clause 52.4, the Indemnified Persons are each of:
- (i) the State;
 - (ii) the State's Associates; and

- (iii) any person nominated or authorised by the State (including the respective sub-licensees of the State and its Associates) to use any Intellectual Property Rights.

52.5 Moral rights

If Project Co, in the course of carrying out the Project Activities, makes use of any work or other subject matter in which copyright subsists (**Material**), Project Co will procure from every person (including any officer, employee, agent, consultant or Subcontractor of Project Co or any of its Associates) who is an author of that Material a consent which is valid and effective under the *Copyright Act 1968* (Cth) and signed by that person by which (to the maximum extent permitted by Law) that person irrevocably and unconditionally consents to the State, any of its Associates and any person nominated or authorised by the State (including sub-licensees), Project Co and its Associates and any person authorised to do acts comprised in the copyright (**Beneficiaries**):

- (a) (**exercise of rights**): using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material anywhere in the world in whatever form any of the Beneficiaries thinks fit (including the making of any distortions, additions or alterations to the Material or any adaptation thereof, or to any part of the Material or of any adaptation of the Material in a manner which, but for the consent, infringes or may infringe that person's Moral Rights in the Material); and
- (b) (**no identification**): using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material or any adaptation thereof (or any part of the Material or of any such adaptation) anywhere in the world without making any identification of that person in relation to the Material.

52.6 Third Party Materials

- (a) (**Application of Third Party Intellectual Property Rights**): Clauses 52.2 and 52.5 will not apply to any Intellectual Property Rights that are Third Party Intellectual Property Rights if, and only to the extent that:
 - (i) the material the subject of the relevant Intellectual Property Rights (the **Third Party Material**) does not form part of or is not necessary or desirable in order for the State or its nominee to use, operate and maintain the Critical Systems and is generally commercially available on reasonable commercial terms to members of the public who are willing to pay the appropriate licensing fee;
 - (ii) Project Co and its Associates have been unable (despite their reasonable endeavours) to procure from the relevant third party the right to grant the licences in clause 52.2 and form of consents required by clause 52.5 in respect of that Third Party Material;
 - (iii) Project Co has notified the State that it has been unable to procure the necessary licence rights and form of consent for that Third Party Material;
 - (iv) Project Co has used its best endeavours to procure a licence and consent for the State in respect of that Third Party Material (whether from Project Co or the relevant third party) on terms as close as possible to the terms of clauses 52.2 and 52.5, and has notified the State of those terms; and
 - (v) the State has given its approval to the Third Party Material being excluded from the subject matter of the licenses and consents granted in

clauses 52.2 and 52.5. This approval may be given at the State's sole discretion, and is subject to such conditions as the State sees fit.

- (b) **(No State approval):** The State not giving its approval in accordance with clause 52.6(a)(v) will not relieve Project Co from any of its obligations under this Agreement or any of the Project Documents.
- (c) **(State withdraws approval):** If the State has reasonable grounds to withdraw, and notifies Project Co that it has withdrawn, its approval under this clause 52.6 in respect of any Third Party Material, Project Co must use its reasonable endeavours to immediately procure for the State from the relevant third party (or parties), at Project Co's sole cost and expense, all licences necessary under the terms of this Agreement in respect of that Third Party Material.
- (d) **(Procurement of licences to Third Party Material):** If the State approves certain Third Party Material being excluded from the subject matter of the licenses and consents granted in clauses 52.2 and 52.5 and instead being licensed to the State on certain terms notified under clause 52.6(a)(iv), Project Co must immediately grant to the State or procure from the relevant third party a licence for the State (as the case may be) on those terms.

52.7 Subcontractor Materials

- (a) In respect of Subcontractor Materials, this clause 52 is subject to the exceptions and qualifications set out in Subcontractor IP Exceptions Schedule.
- (b) If:
 - (i) the terms on which computer software forming part of the Subcontractor Materials is licensed to Project Co or its Associate (as applicable) are varied or replaced after the Date of Tolling Completion; or
 - (ii) that computer software is replaced during the Term with alternative software that is licensed to Project Co or its Associate (as applicable) on terms that differ from those applicable to the replaced computer software,

that modified computer software or replacement computer software will cease to be considered part of the Subcontractor Materials for the purposes of clause 52.2 on and from the date that the terms are varied or replaced, or the differing terms come into effect (as applicable) (provided that Project Co must use reasonable endeavours to avoid any new or varied terms which materially diminish the rights of the licensee) and any new or varied terms must comply with the terms on which Project Co is required to license the relevant software to the State (or its nominee) under clause 52.2 of Schedule 33 (including any exceptions agreed through following the process in clause 52.6(b) of Schedule 33).

52.8 Relevant Systems and Existing Tolling Software

In respect of any Relevant Systems or Existing Tolling Software, clause 52 will apply to those Relevant Systems or that Existing Tolling Software as set out in Schedule 33.

53. Confidential Information

53.1 General duty of confidence

Each party (**Recipient**) must treat as secret and confidential all Confidential Information of the other party (**Discloser**), and must not disclose and ensure that its Associates do not disclose any Confidential Information of the Discloser to a third party, except to the extent that:

- (a) the Discloser consents to such disclosure in writing;
- (b) the information disclosed is information which the Recipient acquires from a source other than the Discloser or an Associate of the Discloser, and is made in accordance with rights granted to the Recipient by that source (to the extent the Recipient ought not reasonably to have been aware at the time of making its disclosure that the information was provided to the Recipient by the relevant source in breach of an obligation of confidence), provided that the information acquired by the Recipient from the other source was not:
 - (i) itself derived from Confidential Information of the Discloser provided to the other source by or on behalf of the Discloser; or
 - (ii) provided by or on behalf of the Discloser to the other source, in that source's capacity as an Associate of the Discloser, for the purposes of the Project; or
- (c) disclosure of the information is permitted under clause 53.2 or clause 53.3.

53.2 Confidential Information and disclosure by the State

- (a) **(Public Disclosure Obligations):** The State or any Authority may disclose any information in connection with the Project (including, (subject to clauses 53.2(d) and 53.2(e)) any Confidential Information of Project Co) only:
 - (i) in accordance with or to the extent required to comply with Laws;
 - (ii) to satisfy the disclosure requirements of the Victorian Auditor-General;
 - (iii) to satisfy the requirements of Parliamentary accountability;
 - (iv) where the disclosure is in the course of the official duties of the Treasurer of Victoria, the Victorian Minister for Roads and Roads Safety, the Department of Economic Development Jobs, Transport and Resources or VicRoads;
 - (v) to any Associate of the State or any person authorised or nominated by the State to the extent necessary for the purpose of the Project provided they agree to maintaining the confidentiality of any such Confidential Information;
 - (vi) [not used];
 - (vii) in the case of any Minister of the Crown, to fulfil his or her duties of office;
 - (viii) to satisfy public accountability or transparency obligations of the State or an Authority or the requirements of Government policy;
 - (ix) to satisfy any conditions of a funding agreement with the Commonwealth Government or any other disclosure requirements of the Commonwealth Government;
 - (x) in accordance with the Market-led Proposal Guidelines;
 - (xi) in annual reports of the State;
 - (xii) in accordance with the policies of the Victorian government; or

(xiii) to satisfy any other recognised public requirement,

(Public Disclosure Obligations) and Project Co must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations.

- (b) **(Other purposes):** Subject to clause 53.2(e), the State or any Authority may disclose any information in connection with the Project (including any Confidential Information of Project Co) in connection with the requirements of the State Project Documents (including any tender process required to be conducted under the Change Compensation Principles).
- (c) **(State's rights):** Subject to clause 53.2(d), in meeting its Public Disclosure Obligations, the State may publish, disclose or make generally available each Project Document on a Victorian Government website.
- (d) **(Confidential information):** Subject to clauses 53.2(e) and 53.2(f), the State will not publish, disclose or otherwise make generally available Confidential Information of Project Co, except to comply with the Public Disclosure Obligations or as permitted under clause 53.2(b). For the avoidance of doubt, the provision of Confidential Information to an Authority (other than a local government authority, local council or a person referred to in paragraph (b) of that definition) does not constitute publication, disclosure or generally making information available by the State for the purposes of this clause 53.2(d).
- (e) **(Disclosing Confidential Information):** Where:
- (i) subject to clause 53.2(e)(ii), the State intends to disclose information which is specified in the Confidential Information Schedule in accordance with the Public Disclosure Obligations or as permitted by clause 53.2(b), the State must:
- A. where reasonably practicable, provide notice to Project Co in advance of such disclosure and consult with Project Co on the content and form of the information; and
- B. where it is not reasonably practicable to provide notice in advance, advise Project Co of the disclosure as soon as practicable after the State becomes aware that the disclosure is required to be made;
- (ii) the State intends to disclose Project Co Commercially Sensitive Information in accordance with the Public Disclosure Obligations (other than in accordance with the Public Disclosure Obligations under clauses 53.2(a)(i), 53.2(a)(ii) and 53.2(a)(iii)) the State must, in advance of such disclosure, notify, and consult with, Project Co regarding the proposed disclosure of the Project Co Commercially Sensitive Information, and where Project Co disagrees (acting reasonably and taking into account the nature and circumstances of the proposed disclosure) with the State's proposed disclosure of the Project Co Commercially Sensitive Information:
- A. Project Co may request the matter be escalated to discussion between the Chief Executive Officers (or equivalent) of the State and Project Co who must meet as soon as practicable and, in any event within 3 Business Days of the notice provided by the State in accordance with this clause 53.2(e)(ii); and

- B. if following such discussion, the State reasonably believes that disclosure is still necessary for the purposes of the Public Disclosure Obligations or clause 53.2(b), the State:
- 1) subject to clause 53.2(e)(ii)B.2), may disclose the Project Co Commercially Sensitive Information solely to the extent necessary for the purposes of the Public Disclosure Obligations or clause 53.2(b); and
 - 2) must consult with Project Co, and take into account all reasonable comments of Project Co, in relation to the form of the Project Co Commercially Sensitive Information to be disclosed in accordance with clause 53.2(e)(ii)B.1).
- (f) **(Disclosure to advisors):** The State may disclose Confidential Information of Project Co to the extent required to obtain legal or other professional advice from its advisors who must:
- (i) be subject to a duty to keep the Confidential Information confidential; and
 - (ii) only use the Confidential Information for the purposes specified by the State (acting reasonably),
- provided that the State may only disclose Project Co Commercially Sensitive Information in accordance with this clause 53.2(f) for the purposes of obtaining legal or other professional advice in relation to the Project.
- (g) **(Exercise of Licence):** Nothing in this Agreement prevents the State and any sublicensees using or disclosing any information (including Confidential Information) to the extent necessary for, or in connection with, the exercise of any licence granted under clause 52.

53.3 Confidential Information and disclosure by Project Co

- (a) **(Disclosure of Confidential Information):** Subject to clause 53.3(b) and clause 53.3(c), Project Co may not disclose Confidential Information of the State other than to:
- (i) its Associates, Related Bodies Corporate, the Independent Reviewer and Environmental Auditor, the Sub-Independent Reviewer and Environmental Auditor, any Handover Reviewer and the State's Associates, to the extent necessary for the purpose of undertaking the Project or carrying out their duties as contemplated by the Project Documents;
 - (ii) the CityLink Parties:
 - A. where such persons have a need to know such information for the purposes of the carrying out of the CityLink Parties' business; or
 - B. in connection with the Network Tolling Agreement and the Roaming Agreement;
 - (iii) any prospective financier or equity investor of the Project, Project Co, NewCo, OpCo or any Related Body Corporate of Project Co, New Co or OpCo, subject to the State having been provided necessary information

in respect of the proposed parties and having carried out any Probity Investigation that the State considers necessary;

- (iv) any rating agency (including Standard and Poor's (Australia) Pty Limited and Moody's Investors Service, Inc) and any insurer to the extent necessary for the purpose of undertaking the Project; or
 - (v) obtain legal or other professional advice in relation to the Project from its, or any Related Body Corporate's, advisers who are subject to a duty to keep the information confidential.
- (b) **(Confidentiality deed):** Before disclosing any Confidential Information of the State in reliance on clause 53.3(a), Project Co must ensure that the person to whom the information is disclosed enters into a confidentiality deed with Project Co on terms consistent with Project Co's obligations under this clause 53.
- (c) **(Disclosure required by Law):** Project Co will not be required to obtain the State's consent to the extent that any disclosure, announcement or statement is:
- (i) required by Law, provided that it:
 - A. notifies the State of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on the basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to be made to a court in the course of proceedings to which Project Co is a party; or
 - (iii) required by a relevant stock exchange, subject to:
 - A. such disclosure, announcement or statement not referring to the State's or any of its Associates' involvement in the Project; and
 - B. Project Co having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

53.4 Public announcements by Project Co

Without limiting clause 53.3, Project Co must unless otherwise permitted in accordance with this Agreement:

- (a) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project without the State's prior consent;
- (b) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
- (c) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with

this clause 53.4 or for which the State's consent or approval was not required in accordance with clause 53.3(c).

54. Privacy

54.1 D&C Phase

This clause 54.1 shall apply to the collection, use, disclosure, storage and handling of Relevant Personal Information by Project Co during the period between the date of this Agreement and the Date of West Gate Tunnel Completion.

- (a) **(Information Privacy Principles):** Project Co agrees to be bound by the Information Privacy Principles and any applicable Privacy Code with respect to any act done, or practice engaged in, by it in connection with this Agreement or any Project Activities, in the same way as the State would be bound by the Information Privacy Principles and any applicable Privacy Code, in connection with that act or practice had it been directly done or engaged in by the State.
- (b) **(Compliance with directions):** Without limiting any other provision of this Agreement, Project Co must comply with (and do such things in relation to the handing of Relevant Personal Information in connection with this Agreement as are required to ensure that the State complies with):
 - (i) any directions made or guidelines issued by a Privacy Regulator and which are binding on the State or Project Co; and
 - (ii) any other reasonable direction which is given by the State for the purpose of ensuring the State's compliance with the *Privacy and Data Protection Act 2014* (Vic), the Information Privacy Principles or any applicable Privacy Code, or any directions, or guidelines referred to in sub-paragraph (i) above.
- (c) **(Specific Requirements):** Without limiting any other provision of this Agreement, Project Co must:
 - (i) take all steps in accordance with Best Industry Practice to ensure that the Relevant Personal Information is protected against misuse, interference and loss and against unauthorised access, use, modification or disclosure;
 - (ii) comply with the Protective Data Security Standards and refrain from doing or engaging in any act or practice that contravenes a Protective Data Security Standard in respect of any Relevant Personal Information;
 - (iii) not use or disclose any Relevant Personal Information other than for the purposes of the Project Activities, except as required or authorised by Law;
 - (iv) fully co-operate with the State, to enable the State to:
 - A. respond to applications for access to or correction of Relevant Personal Information;
 - B. respond to and manage any data breach; and
 - C. respond to, investigate and resolve privacy complaints in relation to Relevant Personal Information;

- (v) as soon as reasonably possible (and in any event within 3 Business Days) after receiving written notice from the State to do so, provide the State or its nominee with access to any Relevant Personal Information; and
 - (vi) immediately notify the State upon becoming aware of any material breach of this clause 54.1.
- (d) **(Compliance by others):** Project Co must:
- (i) ensure that its employees are aware of Project Co's obligations under this clause 54.1;
 - (ii) ensure any Subcontract contains terms which are consistent with the terms of this clause 54.1; and
 - (iii) require its Subcontractors to observe the requirements of this clause 54.1, to the same extent as Project Co is required to so comply (as if the Subcontractor were named in this clause 54.1 in place of Project Co), to the extent the Subcontractor performs any obligations of Project Co under this Agreement or any Project Activities.
- (e) **(Project Co not agent):** The parties acknowledge and agree that any acts done or practices engaged in by Project Co with respect to any Relevant Personal Information in connection with this Agreement are engaged in by Project Co as an independent contractor and not as an agent of the State.
- (f) **(Release and indemnity):** Project Co must release, indemnify and must keep indemnified on demand the State and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which the State or any of its Associates suffer or incur resulting from any breach by Project Co of this clause 54.1 or any act done or practice engaged in by Project Co or any Subcontractor in connection with this Agreement or the Subcontract (as the case may be), which would, had that act or practice been done or engaged in by the State, have contravened one or more of the Information Privacy Principles or any applicable Privacy Code.

54.2 O&M Phase

This clause 54.2 shall apply to the collection, use, disclosure, storage and handling of Relevant Personal Information by Project Co during the O&M Phase, including the use, disclosure, storage and handling during the O&M Phase of Relevant Personal Information collected by Project Co prior to the Date of West Gate Tunnel Completion.

- (a) **(Australian Privacy Principles):** Project Co acknowledges and agrees that it is an organisation for the purposes of the *Privacy Act 1988* (Cth) and that it must comply with the Australian Privacy Principles and any applicable Privacy Code with respect to any act done, or practice engaged in, by it in connection with this Agreement or any Project Activities.
- (b) **(Compliance with directions):** Without limiting any other provision of this Agreement, Project Co must comply with:
 - (i) any directions made or guidelines issued by a Privacy Regulator and which are binding on Project Co; and
 - (ii) any reasonable direction which is given by the State for the purpose of ensuring the State's compliance with the *Privacy and Data Protection Act 2014* (Vic), the Information Privacy Principles or any applicable Privacy

Code, or any directions issued by a Privacy Regulator that are binding on the State.

- (c) **(Specific Requirements):** Without limiting any other provision of this Agreement, Project Co must:
- (i) take all steps in accordance with Best Industry Practice to ensure that the Relevant Personal Information is protected against misuse, interference and loss and against unauthorised access, use, modification or disclosure;
 - (ii) comply with any Information Protection Agreement that applies to any Relevant Personal Information;
 - (iii) not use or disclose any Relevant Personal Information other than for the purposes of the Project Activities, except as required or authorised by Law; and
 - (iv) immediately notify the State upon becoming aware of any material breach of this clause 54.2.
- (d) **(Compliance by others):** Project Co must:
- (i) ensure that its employees are aware of Project Co's obligations under this clause 54.2;
 - (ii) ensure any Subcontract contains terms which are consistent with the terms of this clause 54.2; and
 - (iii) require its Subcontractors to observe the requirements of this clause 54.2, to the same extent as Project Co is required to so comply (as if the Subcontractor were named in this clause 54.2 in place of Project Co), to the extent the Subcontractor performs any obligations of Project Co under this Agreement or any Project Activities.
- (e) **(Project Co not agent):** The parties acknowledge and agree that any acts done or practices engaged in by Project Co with respect to any Relevant Personal Information in connection with this Agreement are engaged in by Project Co as an independent contractor and not as an agent of the State.
- (f) **(Release and indemnity):** Project Co must release, indemnify and must keep indemnified on demand the State and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which the State or any of its Associates suffer or incur resulting from any breach by Project Co of this clause 54.2 or any act done or practice engaged in by Project Co or any Subcontractor in connection with this Agreement or the Subcontract (as the case may be), which would have contravened one or more of the Australian Privacy Principles or any applicable Privacy Code.

55. Taxes

55.1 GST

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated to include GST, any amounts payable for a taxable supply that are referred to in any other provision of this Agreement are exclusive of any GST (**Agreed Amount**).
- (b) **(GST payable by Supplier):** If GST becomes payable on any taxable supply made by a party (Supplier) under or in connection with this Agreement:

- (i) unless the Agreed Amount is expressly stated to include GST, an additional amount will be payable by the party which is the recipient of the taxable supply (**Recipient**), equal to the amount of GST payable by the Supplier on that taxable supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (ii) the Supplier will provide a tax invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Agreement or no later than the time at which the Agreed Amount for that taxable supply is to be provided in accordance with this Agreement. The Recipient is not obliged to pay any amount in accordance with this clause 55.1(b) unless and until a tax invoice is received by the Recipient in connection with the taxable supply except where the Recipient is required to issue the tax invoice.
- (c) (**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 Agreement (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 55.1(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:
 - (i) the Supplier will issue an adjustment note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (ii) no additional amount will be payable by the Recipient unless and until an adjustment note is received by the Recipient.
- (d) (**Revenue net of GST**): Any reference in this Agreement to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (e) (**Cost net of GST**): Any reference in this Agreement to cost, expense, liability or other similar amount (**Cost**) of a party, including in the context of an entitlement to recovery, reimbursement or compensation for any Costs of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (f) (**GST Groups**): For the purposes of this Agreement, a reference to GST payable on a taxable supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.
- (g) (**Definitions**): In this clause 55.1 unless otherwise defined in this Agreement, terms used have the meanings given to them in the GST Law.
- (h) (**Non-monetary consideration**): Where two parties in accordance with this Agreement exchange non-monetary consideration:
 - (i) notwithstanding clause 55.1(b), the additional amount payable by the Recipient to the Supplier on any taxable supply shall be limited to an amount calculated as the monetary consideration and any non-taxable non-monetary consideration provided by the Recipient for the taxable

supply being made by the Supplier multiplied by the applicable GST rate;
and

- (ii) the parties agree to value the non-monetary consideration on an equal and GST-inclusive basis and swap tax invoices accordingly.
- (i) **(Valuation of non-monetary consideration):** The parties acknowledge and agree that:
 - (i) the State will issue a tax invoice to Project Co at Financial Close in respect of the supplies made by the State under or in connection with this Agreement setting out the monetary consideration (if any) and a nominal value of \$[not disclosed] for the non-monetary consideration to be provided by Project Co in respect of such supplies;
 - (ii) Project Co will issue a tax invoice to the State at Financial Close in respect of the supplies made by Project Co under or in connection with this Agreement setting out the monetary consideration to be provided by the State (if any) and a nominal value of \$[not disclosed] for the non-monetary consideration to be provided by the State in respect of such supplies;
 - (iii) the nominal value for the non-monetary consideration to be shown on the tax invoices issued pursuant to this clause 55.1(i) is not a valuation supported by a qualified professional valuer and is not conclusive evidence of the GST-inclusive market value of the non-monetary consideration; and
 - (iv) it is their intention that the tax invoices issued pursuant to this clause 55.1(i) reflect the principle that the GST-inclusive market value of the non-monetary consideration and any monetary consideration (plus GST) provided by the State is equal to the sum of the GST-inclusive market value of the non-monetary consideration and the monetary consideration (plus GST) provided by Project Co.
- (j) **(Commissioner of Taxation review of the non-monetary consideration value):** If the Commissioner of Taxation makes inquiries, in any form, of the State or Project Co with respect to the valuation of non-monetary consideration shown on the tax invoices issued pursuant to clause 55.1(i), the parties acknowledge and agree that:
 - (i) each party must provide all reasonable co-operation and assistance reasonably requested by the other party to respond to any such queries;
 - (ii) promptly keep each other fully informed in relation to those inquiries and provide copies any correspondence or other documents sent to or received from the Commissioner of Taxation in relation to the matter;
 - (iii) if either party is notified that the Commissioner of Taxation has determined the value of non-monetary consideration to be different to that shown on the tax invoices, it must notify the other party of that determination and the value determined; and
 - (iv) as soon as practicable after giving or receiving a notice in accordance with clause 55.1(j)(iii), each party must issue an amended tax invoice to the other party reflecting the valuation of non-monetary consideration as determined by the Commissioner of Taxation.
- (k) **(Consultation before engagement of advisors):** If the State reasonably considers that it requires legal or other professional advice in respect of any of the matters contemplated in clause 55.1(j), the State may consult with Project Co in relation to

the appropriate nature and scope of the engagement of such legal or other professional service.

- (l) **(Commissioner of Taxation dispute of the non-monetary consideration value):** If Project Co or the State disagree with the valuation of non-monetary consideration as determined by the Commissioner of Taxation and, after consultation with and the approval of the State, Project Co decides to challenge the valuation, then Project Co must:
- (i) at Project Co's cost, instruct a suitably qualified professional valuer to determine, for the benefit of both Project Co and the State, the GST-inclusive market value of the non-monetary consideration to be provided by each party in respect of the supplies made by the other party under or in connection with this Agreement;
 - (ii) allow the State reasonable opportunity to provide comments on to the instructions to be provided to the qualified professional valuer, and must make any changes to those instructions reasonably requested by the State;
 - (iii) promptly, after receipt of the valuation, notify the State of the amounts determined by the qualified professional valuer and provide to the State a copy of the valuation report;
 - (iv) meet with the State to discuss and agree any further actions to dispute the valuation of non-monetary consideration as determined by the Commissioner of Taxation; and
 - (v) allow the State reasonable opportunity to review, provide comments on, request changes to and participate in discussions with the Commissioner of Taxation in respect of any actions taken by Project Co, at Project Co's cost, to dispute the valuation of non-monetary consideration as determined by the Commissioner of Taxation, regardless of whether the State is a party to such action.
- (m) **(GST indemnity):** Subject to clause 55.1(n), Project Co must indemnify the State against any Claim for Liability arising in connection with:
- (i) the issuance of tax invoices pursuant to, or in accordance with the principles in, clause 55.1(i);
 - (ii) the payment of GST, the payment of a net amount, or a claim for input tax credits consistent with those tax invoices; or
 - (iii) inquiries, in any form, by the Commissioner of Taxation in relation to the matters set out in clause 55.1(j) and clause 55.1(l).
- (n) **(GST indemnity limited):** The parties acknowledge and agree that Project Co's Liability to indemnify the State under clause 55.1(m) is limited to:
- (i) any interest or penalty amount imposed by the Commissioner of Taxation as contemplated in clause 55.1(j) and clause 55.1(l);
 - (ii) any reasonable costs (including costs in respect of engaging legal and other professional advisors) incurred by the State in:
 - A. responding to the Commissioner of Taxation;
 - B. complying with or disputing any requirements, requests or actions of the Commissioner of Taxation; or

- C. taking any other action requested by Project Co, including considering and dealing with any decision, proposal, meeting or discussion,

as contemplated in clause 55.1(l); and

- (iii) any reasonable costs incurred by the State up to \$[not disclosed] in respect of engaging legal and other professional advisors under clause 55.1(k), provided that the State has consulted with Project Co as contemplated under clause 55.1(k).

55.2 General liability for Taxes

- (a) **(Payment):** Subject to the Relevant Legislation and clause 55.2(c), as between the State and Project Co, Project Co bears the risk of, and must pay, all Rates and Taxes incurred or imposed in connection with:

- (i) the Project;
- (ii) payments, income or net income received or receivable by any Group Member;
- (iii) the execution, stamping and registration of any Project Document;
- (iv) the performance of any Project Document and each transaction effected by or made under or in connection with any Project Document, including the Project Activities;
- (v) any amendment to, or any consent, approval, waiver, release, surrender or discharge of or under any Project Document;
- (vi) any transaction, assignment, transfer or other dealing by or in relation to a Group Member (including dealings in the shares or other interest in a Group Member), whether or not related to the Project or the Project Documents, including in connection with a change in Control and any Refinancing; and
- (vii) any part of the Site which is Project Land, Extra Construction Land or Extra Maintenance Land,

except as provided in:

- (viii) clause 55.1; and
- (ix) clause 5.2(a) of the WGT Call Option Deed.

- (b) **(Indemnity):** Project Co must indemnify the State against any Claim or Liability arising in connection with the Rates and Taxes which Project Co is required to pay in accordance with clause 55.2(a).

- (c) **(Reimbursement of duty):** The State must:

- (i) if requested by Project Co within 12 months of Project Co or NewCo paying any duty under the *Duties Act 2000* (Vic) in respect of a Project Document, pay Project Co for such duty; and
- (ii) pay all amounts required to be paid under this clause 55.2(c) within 20 Business Days of Project Co requesting such a payment and providing the State with evidence reasonably satisfactory to the State as to

payment of such duty and that such duty was necessarily incurred in accordance with Law.

- (d) **(Benefits received):** If the State has made a payment to Project Co under clause 55.2(c) and Project Co or NewCo (as the case may be) receives any payment or benefit (whether by way of refund, credit, offset, recoupment, compensation, penalty, damages, restitution, relief or otherwise) in respect of the matters giving rise to the payment, then Project Co must promptly (and no later than 10 Business Days after receipt of the payment or benefit) pay to the State an amount equal to the value of the payment or benefit so received.

56. Victorian Industry Participation Policy

56.1 Local Industry Development Plan

- (a) **(Compliance):** Subject to clause 56.2(d), Project Co must, in performing its obligations under this Agreement in relation to the D&C Activities (other than the Tolling Works and the OpCo D&C Phase IRS Activities), comply with the LIDP.
- (b) **(Application of LIDP):** Project Co acknowledges and agrees that the obligations as set out in the LIDP apply from the commencement of the D&C Phase and until all of its reporting obligations as set out in clause 56.3 are fulfilled.

56.2 Revised LIDP

- (a) **(Revised LIDP):** If at any time prior to the Date of West Gate Tunnel Completion a variation to this Agreement or Modification is proposed which involves or effects a change in the nature of any Contestable Items, Project Co must prepare a revised LIDP in relation to the D&C Activities (other than the Tolling Works and the OpCo D&C Phase IRS Activities) in collaboration with and certified by ICN (**Revised LIDP**).
- (b) **(Provision or Revised LIDP):** When requested by the State prior to Date of West Gate Tunnel Completion, Project Co must provide the Revised LIDP within the time stated in the State's request.
- (c) **(Variation):** The Revised LIDP must be agreed by the parties before any variation to this Agreement can take effect unless the parties agree that a Revised LIDP is unnecessary.
- (d) **(Replacement):** Once the Revised LIDP is agreed by the parties, Project Co must, in performing its obligations under this Agreement in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities), comply with the Revised LIDP (and in doing so will be deemed to have complied with clause 56.1(a)).

56.3 Reporting

- (a) **(Records):** Project Co must prepare and maintain records demonstrating its compliance with the LIDP.
- (b) **(LIDP Monitoring Table):** For the period prior to Date of West Gate Tunnel Completion, Project Co must provide an annual report demonstrating the progress towards implementing the VIPP commitments. Project Co may comply with its annual reporting obligation by submitting a report in the form of the LIDP Monitoring Table.
- (c) **(Provision of LIDP Monitoring Table):** Within 20 Business Days after the Date of West Gate Tunnel Completion, Project Co must provide to the State:

- (i) the LIDP Monitoring Table in the form set out in the VIPP Schedule detailing Project Co's aggregate compliance with the LIDP. The LIDP Monitoring Table must identify and explain any departures from the VIPP commitments and the aggregated outcomes as reported in the LIDP Monitoring Table; and
 - (ii) a statutory declaration in the form and executed in accordance with the form set out in the VIPP Schedule to confirm that the information contained in the LIDP Monitoring Table is true and accurate. The statutory declaration must be made by a director of the D&C Subcontractor, the D&C Subcontractor's Chief Executive Officer or Chief Financial Officer in respect of the D&C Subcontractor's compliance with clause 56.3(c) of the D&C Subcontract.
- (d) **(Further information):** At the request of the State, Project Co must provide further information or explanation of any departures from the LIDP as reported in the LIDP Monitoring Table.
- (e) **(Additional obligations):** The reporting obligations set out in this clause 56.3 are in addition to and do not derogate from any other reporting obligations as set out in this Agreement.

56.4 Verification of Project Co's compliance with LIDP

- (a) **(Review of performance):** Project Co must:
- (i) without limiting clause 51, permit the State, an accountant or auditor on behalf of the State, or any other person authorised by the State, from time to time during Business Hours and upon notice, to inspect and verify all records maintained by Project Co for the purposes of this Agreement in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities);
 - (ii) permit the State from time to time to undertake a review of Project Co's performance in accordance with the LIDP in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities); and
 - (iii) ensure that its Associates give all reasonable assistance to any person authorised by the State to undertake such audit or inspection.
- (b) **(Authorisations):** Project Co acknowledges and agrees that the State, the State Representative and ICN are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding Project Co's compliance with the LIDP in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities).
- (c) **(Additional obligations):** The obligations set out in this clause 56.4 are in addition to and do not derogate from any other obligation under this Agreement.

56.5 Use of VIPP information

Project Co acknowledges and agrees that:

- (a) **(assessment):** ICN will assess Project Co's performance against the LIDP in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities); and

- (b) **(disclosure)**: the statistical information contained in the LIDP and the measures of its compliance with the LIDP as reported in the LIDP Monitoring Table will be:
- (i) included in the State's report of operations under Part 7 of the *Financial Management Act 1994* (Vic) in respect of the State's compliance with the VIPP in the financial year to which the report of operations relates;
 - (ii) provided to the Responsible Minister for VIPP for inclusion in the Responsible Minister for VIPP's report to the Parliament for each financial year on the implementation of the VIPP during that year; and
 - (iii) disclosed in the circumstances set out in clauses 56.4 and 53.2 or as otherwise required by Law.

57. Major Project Skills Guarantee

57.1 Skills Guarantee Compliance Plan

- (a) **(Compliance)**: Project Co must, in performing the D&C Activities (other than the Tolling Works and the OpCo D&C Phase IRS Activities), comply with the Skills Guarantee Compliance Plan.
- (b) **(Term)**: Project Co acknowledges and agrees that the obligations as set out in the Skills Guarantee Compliance Plan apply during the D&C Phase in respect of the D&C Activities (other than the Tolling Works and the OpCo D&C Phase IRS Activities) and until all of its reporting obligations as set out in clause 57.2 are fulfilled.
- (c) **(Minimum labour hours)**: Subject to clause 57.1(b), Project Co agrees that the minimum labour hours requirements set out in the Skills Guarantee Compliance Plan will:
- (i) be applied to this Agreement as a whole (or to all of the works specified in this Agreement);
 - (ii) not be applied on the basis of individual contract packages or components; and
 - (iii) apply to all work conducted off site provided that the work has been specified as part of this Agreement.
- (d) **(Apprentices, Trainees or Engineering Cadets)**: Subject to clauses 57.1(e), 57.1(f) and 57.1(g), the parties agree that labour hours performed by:
- (i) Apprentices, Trainees or Engineering Cadets, either separately or in any combination; or
 - (ii) pre-existing or new Apprentices, Trainees or Engineering Cadets, either separately or in any combination,
- may be included in determining whether the requirements of the Skills Guarantee Compliance Plan have been achieved.
- (e) **(Apprentices)**: Work hours performed by Apprentices may include Apprentices directly employed by Project Co, the D&C Subcontractor or Apprentices engaged through Group Training Organisations. Contributions from Apprentices must be from Apprentices registered with the VRQA.

- (f) **(Trainees):** Work hours performed by Trainees must be from Trainees registered with the VRQA.
- (g) **(Attending courses):** Time spent by Apprentices, Trainees or Engineering Cadets attending course related education in accordance with a Training Contract at a Registered Education and Training Organisation, or other educational institution may be included in determining whether the requirements of the Skills Guarantee Compliance Plan have been achieved.
- (h) **(Material breach):** Project Co's failure to comply with clauses 57.1 to 57.3 will constitute a material breach of this Agreement.
- (i) **(Subcontracts):** Project Co must ensure that any Subcontracts in relation to the D&C Activities (other than the Tolling Works and the OpCo D&C Phase IRS Activities) contain clauses requiring Subcontractors to:
 - (i) comply with the Skills Guarantee and the Skills Guarantee Compliance Plan to the extent that it applies to work performed under the Subcontract;
 - (ii) provide necessary information that allows Project Co to comply with its reporting obligations under clause 57.2; and
 - (iii) permit the State to exercise its inspection and verification rights under clause 57.3.

57.2 Reports

- (a) **(Skills Guarantee Performance Reports):** For the period prior to Date of West Gate Tunnel Completion, Project Co must submit written reports **(Skills Guarantee Performance Reports)** to the State outlining its performance against the Skills Guarantee Compliance Plan.
- (b) **(Form of report):** The Skills Guarantee Performance Reports must be in the form set out in Schedule 22, and must include details specifying Project Co's performance in complying with the Skills Guarantee Compliance Plan in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities). Any deviations from the Skills Guarantee Compliance Plan must be included in the Skills Guarantee Performance Reports.
- (c) **(Timing of report):** Skills Guarantee Performance Reports must be submitted by Project Co to the State within 5 Business Days of the dates specified in Schedule 22, or otherwise at a frequency of not less than one Skills Guarantee Performance Report at each 12 month anniversary of the date of Financial Close until the Date of West Gate Tunnel Completion.
- (d) **(Additional reports):** In addition to the Skills Guarantee Performance Reports, Project Co must also provide to the State:
 - (i) an interim Skills Guarantee Performance Report **(Interim Skills Guarantee Performance Report)** on the date specified in Schedule 22, and in the form set out in Schedule 22;
 - (ii) a final skills guarantee report on the Date of West Gate Tunnel Completion in the form set out in Schedule 22 **(Final Skills Guarantee Performance Report)**; and
 - (iii) a statutory declaration made by the D&C Subcontractor declaring that the contents of the Final Skills Guarantee Performance Report are true

and correct, in the form set out in Schedule 22, which must be submitted together with the Final Skills Guarantee Performance Report.

57.3 Verification of Project Co's compliance with Skills Guarantee Compliance Plan

- (a) **(State inspection):** Project Co agrees that the State will have the right to inspect Project Co's records in order to verify compliance with the Skills Guarantee Compliance Plan in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities).
- (b) **(Project Co to facilitate):** Project Co must:
 - (i) permit the State or its duly authorised representative, from time to time during Business Hours and upon reasonable written notice, to inspect, verify and make copies at the State's expense of all records maintained by Project Co for the purposes of this Agreement in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities) at Project Co's premises in relation to the Skills Guarantee Compliance Plan only, or provide copies of those records to the State at its request;
 - (ii) permit the State, or its duly authorised representative from time to time to undertake a review of Project Co's performance in accordance with the Skills Guarantee Compliance Plan in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities); and
 - (iii) ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the State to undertake such audit or inspection.
- (c) **(State right to obtain information):** Project Co acknowledges and agrees that the State, and the State's duly authorised representative are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding Project Co's compliance with the Skills Guarantee Compliance Plan in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities).
- (d) **(Additional obligations):** The obligations set out in this clause 57.3 are in addition to and do not derogate from any other obligation under this Agreement.

57.4 Use of Information

Without limiting clause 51, Project Co acknowledges and agrees that the statistical information contained in the Skills Guarantee Compliance Plan and the measures of Project Co's compliance with the Skills Guarantee Compliance Plan as reported to the State will be:

- (a) reported by the State to the Department of Economic Development, Jobs, Transport and Resources; and
- (b) considered in the assessment or review of the D&C Subcontractor's eligibility to tender for future Victorian Government contracts.

58. WDP and Social Procurement Strategy

58.1 Compliance

- (a) **(Compliance):** Project Co must, in performing the D&C Activities (other than the Tolling Works and the OpCo D&C Phase IRS Activities), comply with the WDP and Social Procurement Strategy during the carrying out of the D&C Activities (other than the Tolling Works and the OpCo D&C Phase IRS Activities).
- (b) **(Amendment):** Subject to clause 58.1(c), Project Co may amend the WDP or the Social Procurement Strategy from time to time with the approval of the State, which approval will not be unreasonably withheld.
- (c) **(Minimum requirements):** Unless otherwise agreed by the State, any amendment to the WDP or the Social Procurement Strategy must be consistent with and not limit or reduce the requirements or obligations of Project Co of the form of the WDP or the Social Procurement Strategy (as applicable) attached to this Agreement.

58.2 Reporting

- (a) **(Records):** For the period prior to the Date of West Gate Tunnel Completion, Project Co must prepare and maintain records demonstrating its compliance with the WDP and Social Procurement Strategy.
- (b) **(Performance Reports):** Project Co must submit written reports to the State outlining its performance in relation to the WDP and Social Procurement Strategy in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities).
- (c) **(Form of report):** Without limiting the obligations of Project Co under Part F1 of the PSR, the reports provided in accordance with clause 58.2(b) must be in the form agreed with the State no later than 6 months after Financial Close, and must:
 - (i) include details specifying Project Co's performance in complying with the WDP and Social Procurement Strategy in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities);
 - (ii) identify any departures from the WDP and Social Procurement Strategy, reasons for such departures and proposed steps to rectify such departures; and
 - (iii) attach a statutory declaration which confirms that the information contained in the relevant report is true and accurate. The statutory declaration must be made by a director of one of the entities forming the D&C Subcontractor, or the Chief Executive Officer or Chief Financial Officer of an entity forming the D&C Subcontractor in respect to its compliance with clause 58 of the D&C Subcontract.
- (d) **(Timing of report):** The reports provided in accordance with clause 58.2(b) must be submitted by Project Co to the State within 5 Business Days after the 12 month anniversary of the date of Financial Close until the Date of West Gate Tunnel Completion.
- (e) **(Further information):** At the request of the State, Project Co must provide further information or explanation, including in relation to any departures from the WDP and Social Procurement Strategy, in relation to any report provided in accordance with clause 58.2(b).

- (f) **(Additional obligations):** The reporting obligations set out in this clause 58.2 are in addition to and do not derogate from any other reporting obligations as set out in this Agreement.

58.3 Verification

- (a) **(Project Co to facilitate):** Project Co must:
- (i) without limiting clause 51, permit the State, an accountant or auditor on behalf of the State, or any other person authorised by the State, from time to time during Business Hours and upon notice, to inspect and verify all records maintained by Project Co in relation to Project Co's compliance with the WDP and Social Procurement Strategy in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities);
 - (ii) permit the State, or its duly authorised representative from time to time to undertake a review of Project Co's performance in accordance with the WDP and Social Procurement Strategy in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities); and
 - (iii) ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the State to undertake such review.
- (b) **(State right to obtain information):** Project Co acknowledges and agrees that the State, and the State's duly authorised representative are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding Project Co's compliance with the WDP and Social Procurement Strategy in relation to the D&C Activities (excluding the Tolling Works and the OpCo D&C Phase IRS Activities).
- (c) **(Additional obligations):** The obligations set out in this clause 58.3 are in addition to and do not derogate from any other obligation under this Agreement.

58.4 Use of Information

Without limiting clause 51, Project Co acknowledges and agrees that the commitments contained in the WDP and the Social Procurement Strategy and the measures of Project Co's compliance with the WDP and the Social Procurement Strategy as reported to the State:

- (a) will be reported by the State to the Department of Economic Development, Jobs, Transport and Resources;
- (b) may be disclosed by the State as if it were a Public Disclosure Obligation under clause 53.2(a); and
- (c) will be considered in the assessment or review of the D&C Subcontractor's eligibility to tender for future Victorian Government contracts.

59. Probity Events and Probity Investigations

59.1 Probity Event

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

- (b) **(Meeting):** Upon receipt of a notice under clause 59.1(a) or otherwise upon the occurrence of a Probity Event:
 - (i) the State and Project Co must meet within 5 Business Days to agree to a course of action that will remedy the Probity Event (including conducting a Probity Investigation); and
 - (ii) Project Co must comply with any agreement made in accordance with clause 59.1(b)(i) to remedy the Probity Event in accordance with the timeframe agreed.
- (c) **(Failure to agree):** If the State and Project Co fail to agree to a course of action in accordance with clause 59.1(b), Project Co must take any action as required by the State in connection with the Project to remedy or address the Probity Event immediately upon being required to do so and in accordance with any timeframe determined by the State.

59.2 Probity Investigation

- (a) **(Requirement for Probity Investigation):** Project Co agrees that:
 - (i) the State Representative may require at any time that Project Co; or
 - (ii) the State may,

conduct a Probity Investigation in respect of a Relevant Person, a Consortium Member or any person who is proposed to become a Relevant Person or a Consortium Member.
- (b) **(Consents required for Probity Investigation):** Project Co must procure all relevant consents from any persons in connection with which a Probity Investigation is to be conducted.
- (c) **(No appointment without consent):** In relation to any person the subject of a Probity Investigation or any other investigation the State Representative reasonably requires, Project Co must not appoint that person to the position of Relevant Person unless the State Representative has given approval.

59.3 State costs of Probity Events and Probity Investigation

- (a) **(State Costs):** Subject to clause 59.3(b), Project Co must bear all costs incurred by the State in connection with a Probity Event or Probity Investigation.
- (b) **(Project Co not liable):** Project Co will not be liable for the State's costs of any further Probity Investigation required by the State in respect of a Probity Event in relation to which an initial Probity Investigation has been undertaken.

60. Notices and bar to Claims

60.1 Notices

All communications (including approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands) in connection with this Agreement:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as specified in item 13 of the Contract Particulars (or as otherwise notified by that party to each other party from time to time);

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid express post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in item 13 of the Contract Particulars; and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in item 13 of the Contract Particulars:
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

60.2 Notices of Claims

Subject to any other provisions of this Agreement which contain specific notice requirements, the State and its Associates will not be liable upon any Claim that Project Co is entitled to make against the State or its Associates under any State Project Document or otherwise arising in connection with the Project Documents, the Relevant Infrastructure or the Project unless Project Co gives the State the notices required by clause 60.3 and, if applicable, clause 60.4.

60.3 Prescribed notices

The required notices referred to in clause 60.2 are:

- (a) **(intention to submit Claim)**: a notice from Project Co in which Project Co states that it intends to submit a Claim and identifies the event on which the Claim will be based and which must be given to the State within 20 Business Days of when Project Co first became aware of the event on which the Claim is based; and
- (b) **(Claim)**: a written Claim by Project Co to be given to the State within 60 Business Days of giving notice under clause 60.3(a), which must include:

- (i) detailed particulars concerning the event on which the Claim is based;
- (ii) the legal basis for the Claim, whether based on a term of the State Project Documents or otherwise, and if based on a term of the State Project Documents, clearly identifying the specific term;
- (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
- (iv) details of the amount claimed and how it has been calculated.

60.4 Continuing events

If the event upon which the Claim under clause 60.3(b) is based or the consequences of the event is continuing, Project Co must continue to give information required by clause 60.3(b) every 20 Business Days after the Claim under clause 60.3(b) was submitted, until after the event or consequences of the event have ceased.

60.5 Release after Completion

Without limiting clause 5.4(a)(ii), on and from the date which is 6 months after the Date of Tolling Completion, Project Co releases the State from any Claim in connection with any fact, matter or thing arising in connection with the D&C Activities, the Works or the State Project Documents which occurred prior to Date of Tolling Completion, except for any Claim:

- (a) in connection with which Project Co has, no later than 7 months after the Date of Close-Out, given the State the notices required by clause 60.3, clause 60.4 (if applicable) and otherwise required in accordance with this Agreement; or
- (b) in connection with Project Co not being required to comply with AS5100 (2017) in carrying out the Project Activities, except as set out in clause 2.22(c).

61. Miscellaneous

61.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Agreement is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clauses 43 to 44, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

61.2 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this Agreement and the other State Project Documents:

- (a) **(entire understanding):** embody the entire understanding of the parties and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements):** supersede any prior agreement of the parties.

61.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Agreement.

61.4 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Agreement will survive the rescission, termination or expiration of this Agreement, including any provision in connection with:
- (i) the State's rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to the State;
 - (v) any indemnity or financial security given in accordance with this Agreement; or
 - (vi) any right or obligation arising on termination of this Agreement.
- (b) **(Interpretation):** No provision of this Agreement which is expressed to survive the termination of this Agreement will prevent any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction in accordance with this Agreement. All rights and obligations in accordance with this Agreement survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Agreement.

61.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Agreement.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

61.6 Consents, approvals and directions

- (a) **(State):** A consent or approval required in accordance with this Agreement from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Agreement expressly provides otherwise.

- (b) **(Project Co):** A consent or approval required in accordance with this Agreement from Project Co may not be unreasonably withheld or delayed, unless this Agreement expressly provides otherwise.

61.7 Amendments

- (a) **(Agreement):** Except as otherwise expressly provided in this Agreement, this Agreement may only be varied by a deed executed by or on behalf of each party.
- (b) **(Other State Project Documents):** Except as otherwise expressly provided in the State Project Documents, no amendment to any other State Project Document is valid or binding on a party unless made in writing and executed by the State and all other parties to the relevant State Project Document.

61.8 Expenses

Except as otherwise expressly provided in this Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

61.9 Severance

If, at any time, a provision of this Agreement or any other State Project Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Agreement or any other relevant State Project Document;
or
- (b) that provision under the Law of any other jurisdiction.

61.10 Counterparts

This Agreement may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Agreement.

61.11 Moratorium legislation

Without limiting clause 5.4, to the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of Project Co any obligation under this Agreement, or to prejudicially affect the exercise by the State of any right, power or remedy under this Agreement or otherwise, are expressly waived.

61.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 61.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Agreement and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

61.13 Attorneys

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

Executed as a deed.

Signed, sealed and delivered by **Tim Pallas MP**, in his capacity as the **Treasurer of Victoria** for and on behalf of the **Crown in right of the State of Victoria** in the presence of:

Signature of witness

Full name of witness

Signature of Treasurer

Executed by **Transurban WGT Co Pty Ltd ACN 617 420 023** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Schedule 1 - Contract Particulars

| Item | Subject | Particulars |
|--|---|--|
| Clause 1 - Definitions and interpretation | | |
| 1. | Not used | |
| 2. | D&C Subcontractor (clause 1) | Name: CPB Contractors Pty Ltd (ACN 000 893 667) and John Holland Pty Ltd (ABN: 11 004 282 268) Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Mobile: [not disclosed] Email: [not disclosed] |
| 3. | Date for Close-Out (clause 1) | 7 months from Date for West Gate Tunnel Completion |
| 4. | Date for Tolling Completion (clause 1) | [not disclosed] |
| 5. | Date for West Gate Tunnel Completion (clause 1) | [not disclosed] |
| 6. | Key People (clause 1) | <u>D&C Activities</u> D&C Subcontractor roles Role: Project Director / D&C Subcontractor Representative Name: [not disclosed] Role: Technical Director Name: [not disclosed] Role: Construction Director – Civil & Surface Name: [not disclosed] Role: Construction Director – Technical Name: [not disclosed] Role: Construction Director – Tunnels Name: [not disclosed] Role: Interface Director Name: [not disclosed] Role: Commercial Director Name: [not disclosed] Role: Health, Safety, Environment and Sustainability Director Name: [not disclosed] Role: West Zone General Manager Name: [not disclosed] Role: Lead Planner |

West Gate Tunnel
 Project Agreement
 Schedule 1 - Contract Particulars

| Item | Subject | Particulars |
|------|---------|---|
| | | <p>Name: [not disclosed]</p> <p>Role: Stakeholder & Community Relations Director Name: [not disclosed]</p> <p>Role: Design JV Design Director Name: [not disclosed]</p> <p>Role: Geotechnical Lead Name: [not disclosed]</p> <p>Role: Air Quality Lead Name: [not disclosed]</p> <p>Role: Hydrogeology & Contamination Lead Name: [not disclosed]</p> <p>Role: Noise & Vibration Lead Name: [not disclosed]</p> <p>Role: Surface Water & Drainage Lead Name: [not disclosed]</p> <p>Role: Fire Engineer Name: [not disclosed]</p> <p>Role: Quality and Surveillance Manager Name: [not disclosed]</p> <p>Role: Urban Design Champion Name: [not disclosed]</p> <p>Role: East Zone General Manager Name: [not disclosed]</p> <p>Role: ITS and OMCS Representative Name: [not disclosed]</p> <p>Role: Senior Sustainability Advisor Name: [not disclosed]</p> <p>Role: General Manager Manufacturing Name: [not disclosed]</p> <p>Role: Operational and Maintenance Interface Representative Name: [not disclosed]</p> <p>Role: Jobs and Social Procurement Manager Name: [not disclosed]</p> |

| Item | Subject | Particulars |
|------|--|--|
| | | <p>Role: Communications and Community Engagement Representative Name: [not disclosed]</p> <p>Role: Construction Quality Representative Name: To be advised by Project Co no later than [not disclosed] or as agreed by the Parties</p> <p>Role: Traffic Representative Name: To be advised by Project Co no later than [not disclosed] or as agreed by the Parties</p> <p>Role: Environmental Representative Name: [not disclosed]</p> <p>Project Co roles</p> <p>Role: Communications and Community Engagement Representative Name: [not disclosed]</p> <p>Role: Traffic Representative Name: [not disclosed]</p> <p>Role: Environmental Representative Name: [not disclosed]</p> <p><u>O&M Activities</u></p> <p>Role: WGT Operations Manager Name: as notified to the State in accordance with clause 10.1(b)(ii)</p> |
| 7. | Key Subcontracts (other than D&C Subcontract and Operating Services Agreement) (clause 1) | <p>Subcontracts with each of the Key Subcontractors and Subcontracts in respect of the following D&C Activities:</p> <ul style="list-style-type: none"> (i) Design services; (ii) OMCS; (iii) Steel; (iv) Piling; (v) Reinforcement; (vi) Asphaltting; (vii) Traffic management; (viii) Spoil transport and disposal; (ix) Bulk materials; and (x) Utilities relocation and installation; and (xi) ITS – Cabling and equipment design (VicRoads). |
| 8. | [Not used] | |
| 9. | OpCo (clause 1) | <p>Name: Transurban Vic Op Co Pty Limited (ACN 621 893 945) Attention: [not disclosed] Address: [not disclosed]</p> |

| Item | Subject | Particulars |
|----------------------------|--|---|
| | | Phone: [not disclosed] Email: [not disclosed] |
| 10. | Parent Guarantor(s) (clause 1) | <p>D&C Subcontractor Parent Guarantors Parent Guarantor in respect of CPB Contractors Pty Ltd Name: CIMIC Group Limited (ABN 57 004 482 982) Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed]</p> <p>Parent Guarantor in respect of John Holland Pty Ltd Name: China Communications Construction Company Limited Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed]</p> |
| 11. | Project Co Representative/s (clause 1) | <p>During the D&C Phase: Name: Transurban WGT Co Pty Ltd (ACN 617 420 023) Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed]</p> <p>During the O&M Phase: Name: as notified to the State in accordance with clause 10.1(b)(ii)</p> |
| 12. | State Representative (clause 1) | Name: Western Distributor Authority Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| Clause 60 – Notices | | |
| 13. | Notices (clause 60.1) | <p>The State Name: Western Distributor Authority Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed]</p> <p>Project Co Name: Transurban WGT Co Pty Ltd (ACN 617 420 023) Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed]</p> |

Schedule 2 - Conditions Precedent

| Condition Precedent | Benefiting Party | Condition Precedent Deadline |
|--|-----------------------------|------------------------------|
| <p>1. State Project Documents</p> <p>Project Co delivering to the State original counterparts of each of the following State Project Documents:</p> <ul style="list-style-type: none"> (a) this Agreement; (b) the Construction Licence; (c) the State Security; (d) the D&C Direct Deed; (e) the OSA Direct Deed; (f) the Equity Subscription Deed; (g) the Finance Direct Deed; (h) the NewCo Loan Facility Agreement; (i) the Account Bank Deed; (j) the State Works Loan Agreement; (k) the Port Land Deed; (l) the Independent Payment Certifier Deed of Appointment; (m) the WGT Rail Licence; (n) the WGT Call Option Deed; and (o) the State Equity Subscription Deed, <p>in each case duly executed by each of the parties to the documents other than the State and the Project Proponent, and each in form and substance satisfactory to the State and having satisfied all conditions precedent to such documents (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to this Agreement).</p> | <p>State and Project Co</p> | <p>[not disclosed]</p> |
| <p>2. Project Documents</p> <p>Project Co delivering to the State original copies of each of the following Project Documents:</p> <ul style="list-style-type: none"> (a) the D&C Subcontract; (b) the Operating Services Agreement; (c) the Parent Guarantees; (d) the Project Co Equity Note Deed Poll; (e) the WGT Co Loan Facility | <p>State and Project Co</p> | <p>[not disclosed]</p> |

| | | | |
|-----------|---|--------------|------------------------|
| | <p>Agreement;</p> <p>(f) the Funding Co Security;</p> <p>(g) the account bank deed dated on or about the date of this Agreement between NewCo and the Commonwealth Bank of Australia;</p> <p>(h) the Sub Port Land Deed;</p> <p>(i) the Proof Engineer Deed of Appointment;</p> <p>(j) the WGT Rail Sublicence;</p> <p>(k) the Construction Access Agreement;</p> <p>(l) the NewCo Works Loan Agreement;</p> <p>(m) the Transurban / Project Co Deed of Undertaking;</p> <p>(n) the NewCo Equity Note Deed Poll;</p> <p>(o) the general security deed dated on or about the date of this Agreement between Project Co and the Company;</p> <p>(p) the general security deed dated on or about the date of this Agreement between Project Co and Clepco; and</p> <p>(q) the general security deed dated on or about the date of this Agreement between Funding Co and NewCo,</p> <p>in each case duly executed by each of the parties to the documents other than the State in respect of the D&C Subcontract, and each in form and substance satisfactory to the State and having satisfied all conditions precedent to such documents (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to this Agreement).</p> | | |
| <p>3.</p> | <p>Counterparty Details</p> <p>The State receiving the Counterparty Details in respect of those State Project Documents listed in item 1 of this table.</p> | <p>State</p> | <p>[not disclosed]</p> |
| <p>4.</p> | <p>Legal Opinions</p> <p>The State receiving legal opinions given for the benefit of the State in form and substance satisfactory to it from solicitors acting for each Consortium Member as to customary matters for an opinion of this nature including:</p> <p>(a) the legal capacity and corporate power of that Consortium Member to</p> | <p>State</p> | <p>[not disclosed]</p> |

| | | | |
|----|--|----------------------|-----------------|
| | <p>enter into and perform its obligations under the Project Documents to which it is a party;</p> <p>(b) the enforceability against the relevant Consortium Member of the Project Documents to which it is a party; and</p> <p>(c) due execution by the Consortium Member of the Project Documents to which it is a party.</p> | | |
| 5. | <p>D&C Phase Insurances</p> <p>Project Co delivering to the State:</p> <p>(a) copies of the Insurance policies required to be effected under clause 40.1 in form and substance satisfactory to the State; and</p> <p>(b) certificates of currency in respect of each such Insurance.</p> | State | [not disclosed] |
| 6. | <p>Base Case Financial Model</p> <p>The State receiving an electronic copy of the Base Case Financial Model.</p> | State | [not disclosed] |
| 7. | <p>Project Financial Model</p> <p>The State receiving an electronic copy of the Project Financial Model (as defined in the Adjustment Events Schedule).</p> | State | [not disclosed] |
| 8. | <p>WGT Bill</p> <p>Each party initialling the same form of the bill for the Project Legislation.</p> | State and Project Co | [not disclosed] |

Schedule 3 - KPI Schedule

Part A - Definitions

Annual KPI Points has the meaning given in section 1(b) of Part B.

Annual KPI Points Threshold means the threshold number of KPI Points as set out in Table 2.1 of Part B which must be exceeded before any KPI Liability calculated in accordance with the formula in section 2(a) of Part B will be payable.

KPI Points Value means the monetary value attributable to a KPI Point as set out in Table 2.1 of Part B, for the purposes of calculating the KPI Liability.

Toll Offset Amount means:

(a) in the event that the Annual KPI Points for a Financial Year exceeds the Annual KPI Points Threshold for that Financial Year, and KPI Points were accrued under KPI 5 and/or KPI 6 for that Financial Year, the lower of:

(i) the aggregate of:

- A. the amount of the loss of toll revenue incurred by Project Co (which must be treated in this calculation as a negative value if any) as a result of the relevant Tunnel Closures giving rise to the accrual of KPI Points under KPI 5 or Lane Closures giving rise to the accrual of KPI Points under KPI 6 (as applicable); and
- B. provided that the CityLink Parties are wholly owned by a member or members of the Transurban Group, the amount of the gain in toll revenue (which must be treated in this calculation as a positive value if any) derived by the CityLink Parties from diverted traffic from West Gate Tunnel onto CityLink as a result of the Tunnel Closures giving rise to the accrual of KPI Points under KPI 5 or Lane Closures giving rise to the accrual of KPI Points under KPI 6 (as applicable),

where the amounts in paragraphs A. and B. above are to be calculated on the basis of historical traffic data or such other relevant data provided by Project Co on an open book basis upon request by the State; and

(ii) the amount calculated by multiplying the KPI Points which accrued under KPI 5 and/or KPI 6 for that Financial Year by the KPI Points Value applicable for that Financial Year; or

(b) in any other event, zero.

Lane Closure means each separate instance in which a Lane (excluding any shoulder used as an emergency stopping lane) is not Available (as defined in KPI 6).

Tunnel Closure means each separate instance in which the Tunnel is not Available (as defined in KPI 5).

Part B - KPI Liability

1. Overview

- (a) KPIs will be measured over the relevant Assessment Period set out in Part C in respect of each KPI.
- (b) At the end of each Financial Year, the KPI Points for that Financial Year will be aggregated (**Annual KPI Points**).
- (c) Annual KPI Points will be reset to zero at the commencement of each Financial Year and will not carry over to a subsequent Financial Year.

2. Calculation of KPI Liability

- (a) Subject to section 2(b) and section 3, if the Annual KPI Points for a Financial Year exceed the Annual KPI Points Threshold for that Financial Year, Project Co must pay the amount calculated in accordance with the following formula (**KPI Liability**):

$$AKL = (AKP \times KV) + TOA$$

where:

AKL = KPI Liability for a Financial Year

AKP = Annual KPI Points in excess of Annual KPI Points Threshold

KV = KPI Points Value

TOA = Toll Offset Amount

- (b) A KPI Liability will only be payable from the first full Financial Year after the Date of West Gate Tunnel Completion. In the event that the period between the Date of West Gate Tunnel Completion and the commencement of the next Financial Year is less than a full Financial Year, the parties will meet and negotiate (both parties acting reasonably) to determine whether any KPI Liability should be payable during such period, and if KPI Liability is to be payable during such period, the KPI Points Value, Annual KPI Points Threshold and KPI Points Caps that are to apply in calculating the KPI Liability (if any). The parties must, during such negotiations, have regard to the principle that any such KPI Points Value, Annual KPI Points Threshold and KPI Points Caps should generally be calculated on a pro-rata basis whilst allowing for a reasonable ramp-up period in potential KPI Liability.
- (c) The Annual KPI Points Threshold for each Financial Year is set out in Table 2.1 below.
- (d) The KPI Points Value will be escalated in accordance with the formula for escalation of the Theoretical Toll as set out in section 2.2 of the Toll Calculation Schedule commencing from the end of the third full Financial Year after the Date of West Gate Tunnel Completion.

Table 2.1: KPI Liability

| KPI Liability - WGTP | | |
|--|-----------------------------|-------------------|
| Full Financial Years from the Date of West Gate Tunnel Completion | Annual KPI Points Threshold | KPI Point Value |
| 1 st full Financial Year | 1,500 | \$(not disclosed) |
| 2 nd full Financial Year | 1000 | \$(not disclosed) |
| 3 rd full Financial Year and every full Financial Year thereafter | 750 | \$(not disclosed) |

3. KPI Points Cap

- (a) The accrual of KPI Points over each Financial Year is subject to the following caps:
- (i) a maximum annual cap of 7,500 KPI Points will apply in respect of each Financial Year;
 - (ii) a maximum 6 monthly cap of 5,250 KPI Points will apply for the first 6 months of each Financial Year; and
 - (iii) a maximum cap of 1,500 KPI Points will apply to KPI 1 and KPI 2 in each Financial Year,
- (together the **KPI Points Cap(s)**).
- (b) For the avoidance of doubt, any accrual of KPI Points which exceed the KPI Points Caps will not be included in the calculation of the Annual KPI Points.
- (c) In the event that any KPI Points Cap is reached, the State may require a meeting at the senior executive level.

4. Project Co KPI Regime reporting

- (a) Project Co must provide to the State:
- (i) a report on a Quarterly basis in respect of the information contemplated under clause 32.3(a)(iii) of this Agreement for that Quarter, within 15 Business Days following the Quarters ending on 30 September, 31 December and 31 March each Financial Year (to be included as part of the relevant Monthly reports as contemplated under section 13.1 of Part F7 of the PSR) (**Quarterly KPI Report**).
 - (ii) an annual report in respect of the information contemplated under clause 32.3(a)(iii) of this Agreement for that Financial Year and the KPI Liability payable by Project Co (if any) for that Financial Year, within 20 Business Days following the end of the Financial Year (**Annual KPI Report**).

- (b) The Annual KPI Report must contain a certificate signed by a director of Project Co certifying that the Annual KPI Report, as applicable, is accurate, complete and correct.

5. Payment mechanism for KPI Liability

- (a) Within 30 Business Days after the date Project Co provides the Annual KPI Report for a Financial Year, the State must provide to Project Co an invoice stating the amount of KPI Liability payable by Project Co (if any) for that Financial Year (**KPI Invoice**) and a statement with the reasons for any difference in the amount of KPI Liability set out in the KPI Invoice as compared to the Annual KPI Report.
- (b) Project Co must pay the undisputed portion of the amount set out in the KPI Invoice within 20 Business Days of receipt of the KPI Invoice, and if it disputes any amounts within the KPI Invoice, refer those amounts for resolution in accordance with clauses 43 and 44 of this Agreement.
- (c) Project Co must pay the amount contemplated under section 5(b) into a community fund which is to be managed by the State.

6. Published KPI performance report

- (a) The State may publish a summary report of Project Co's performance against the KPIs for a Financial Year which must be consistent with the Annual KPI Report, provided that the State must:
 - (i) to the extent reasonably practicable, provide Project Co with a copy of the summary report it proposes to publish no later than 5 Business Days prior to publishing the report;
 - (ii) have regard to any comments that Project Co may have in relation to the summary report; and
 - (iii) amend the report to reflect the comments provided by Project Co where reasonable to do so.

7. Waiver

Project Co may request a waiver from the State in respect of any accrual of KPI Points or liability to pay any KPI Liability, including:

- (a) to the extent that the accrual of KPI Points or KPI Liability has been caused or contributed to by an event or circumstance giving rise to a KPI Event (**Relevant Event**) which is extraordinary, unusual or beyond the reasonable control of Project Co; or
- (b) where Project Co has provided reasonable redress to Users of the Freeway affected by the Relevant Event,

and the State must not unreasonably withhold or delay the granting of such waiver.

Part C - Key Performance Indicators

General notes

- (a) Where the KPI Benchmarks in respect of a KPI are expressed as a percentage, in determining whether Project Co has met or failed to meet the KPI Benchmark for that KPI and for the purposes of reporting on Project Co's performance in any Quarterly KPI Report or Annual KPI Report:
 - (i) all rounding of KPI percentage calculations are to be based on the principle of 5/4 rounding; and
 - (ii) all KPI percentage calculations are to be performed (including rounding) to a level of accuracy of one decimal point greater than the relevant KPI Benchmark or KPI Benchmark range.
- (b) Where the occurrence of an incident, event or circumstance gives rise to multiple KPI Events, KPI Points will only accrue in respect of the KPI Event which results in the greatest accrual of KPI Points attributable to that incident, event or circumstance.
- (c) The examples provided for each of the KPIs are for illustrative purposes and in the event of any inconsistency, ambiguity or discrepancy between the examples and any other part of the KPIs, those parts of the KPIs will take precedence over the examples.

KPI 1 – Planned Maintenance in scheduled intervals of six months or less

| KPI description | KPI Benchmark | | KPI Points | Assessment Period |
|---|--|------------------|--------------------------------------|-------------------|
| | Percentage of activities completed within required timeframe | | | |
| | From | To | | |
| Perform planned maintenance and inspection activities for which the scheduled interval required by the Code of Maintenance Standards is six months or less as follows: <ul style="list-style-type: none"> for activities scheduled to be carried out on a daily cycle, the required timeframe is each day; and for activities scheduled to be carried out on a cycle longer than one day, the required timeframe is the last day within that cycle plus [not disclosed]% of the cycle time. | [not disclosed]% | [not disclosed]% | 0 points per Occurrence. | Quarterly |
| | [not disclosed]% | [not disclosed]% | 10 points per additional Occurrence. | |
| | [not disclosed]% | | 20 points per additional Occurrence. | |

Interpretation

For this KPI 1:

Occurrence means each planned maintenance or inspection activity to be performed pursuant to the Code of Maintenance Standards for which the scheduled interval is six months or less that is not carried out within the required timeframe set out in this KPI 1.

Where the number of maintenance or inspection activities to be carried out within the required timeframe to achieve a percentage benchmark is not a whole number, the required number will be rounded up to the nearest whole number.

Example

The Code of Maintenance Standards provided for 217 relevant planned maintenance or inspection activities to be performed during a Quarter, of which 191 were carried out within the required timeframe during the Quarter.

Project Co's performance for the Quarter against this KPI is: [not disclosed]%.

[not disclosed]% achievement for the Quarter would have required [not disclosed] planned maintenance and inspection activities to have been carried out within the required timeframe. This is calculated as follows: [not disclosed]%.

[not disclosed]% achievement for the Quarter would have required [not disclosed] planned maintenance and inspection activities to have been carried out within the required timeframe. This is calculated as follows: [not disclosed]%.

Accordingly, there were 11 additional Occurrences between the range of [not disclosed]% and less than [not disclosed]% and five additional Occurrences below [not disclosed]% achievement for the Quarter.

The KPI Points accrued under this KPI for the Quarter would be calculated as follows:

$$((207-196) \times 10) + ((196 - 191) \times 20) = 110 + 100 = 210 \text{ KPI Points.}$$

KPI 2 – Planned Maintenance in scheduled intervals greater than 6 months

| KPI description | KPI Benchmark | | KPI Points | Assessment Period |
|---|--|------------------|--------------------------------------|-------------------|
| | Percentage of activities completed within required timeframe | | | |
| | From | To | | |
| Perform planned maintenance and inspection activities for which the scheduled interval required by the Code of Maintenance Standards is greater than six months as follows: <ul style="list-style-type: none"> The required timeframe for these inspection and maintenance activities to be carried out is within 30 days after the end of the scheduled interval. | [not disclosed]% | [not disclosed]% | 0 points per Occurrence. | Quarterly |
| | [not disclosed]% | [not disclosed]% | 10 points per additional Occurrence. | |
| | [not disclosed]% | | 20 points per additional Occurrence. | |

Interpretation

For this KPI 2:

Occurrence means each planned maintenance or inspection activity to be performed pursuant to the Code of Maintenance Standards for which the scheduled interval is greater than six months that is not carried out within the required timeframe set out in this KPI 2.

Where the number of maintenance or inspection activities to be carried out within the required timeframe to achieve a percentage benchmark is not a whole number, the required number will be rounded up to the nearest whole number.

Example

The Code of Maintenance Standards provided for 630 relevant planned inspection or maintenance activities to be performed during the Quarter (that is within 30 days after the end of the scheduled interval), of which 560 were carried out within 30 days after the end of the scheduled interval.

Project Co’s performance for the Quarter against this KPI is [not disclosed]%.

[not disclosed]% achievement for the Quarter would have required [not disclosed] planned maintenance and inspection activities to have been carried out within the required timeframe. This is calculated as follows: [not disclosed]%.

[not disclosed]% achievement for the Quarter would have required [not disclosed] planned maintenance and inspection activities to have been carried out within the required timeframe. This is calculated as follows: [not disclosed]%.

Accordingly, there were 32 additional Occurrences between the range of [not disclosed]% and less than [not disclosed]% and 7 additional Occurrences below [not disclosed]% achievement for the Quarter.

The KPI Points accrued under this KPI for the Quarter would be calculated as follows:

$$[(599 - 567) \times 10] + [(567 - 560) \times 20] = 320 + 140 = 460 \text{ KPI Points.}$$

KPI 3 – Traffic Incident Response Performance

| KPI description | KPI Benchmark | | KPI Points | Assessment Period |
|---|------------------|------------------|------------|-------------------|
| | Range | | | |
| | From | To | | |
| Respond to Traffic Incidents within 15 minutes* after identification or receiving notification of the Traffic Incident. * Table Note 6 of Table H19.1 of the PSR applies to this KPI 3. | [not disclosed]% | [not disclosed]% | 0 points | Monthly |
| | [not disclosed]% | [not disclosed]% | 10 points | |
| | [not disclosed]% | [not disclosed]% | 50 points | |
| | [not disclosed]% | | 100 points | |

Interpretation

For this KPI 3:

WGT Service Area has the meaning given in the IRS Agreement.

In the event that the IRS Agreement has not been entered into or has expired or terminated in respect of the WGT Service Area:

Respond or Responded to has the meaning given in Part H19 of the PSR; and

Traffic Incident has the meaning given in the PSR.

In the event that the IRS Agreement has been entered into and has not expired or terminated in respect of the WGT Service Area:

Respond or Responded to has the meaning given in Part H19 of the PSR;

Traffic Incident means any unplanned event which:

- (a) prevents or is likely to prevent the Freeway or the WGT Service Area or any relevant part of the Freeway or the WGT Service Area from being open to the public for the safe, continuous and efficient passage of vehicles; or
- (b) otherwise requires an urgent response to provide Emergency Services with access to the Freeway or the WGT Service Area; and

In addition to the events and circumstances set out in Table Note 6 of Table H19.1 of the PSR, the timeframe within which a Traffic Incident must be Responded to will not apply:

- (a) to the extent that a Relief Event (as defined in the IRS Agreement) applicable to that Traffic Incident has prevented, hindered or disrupted the performance of OpCo's Activities (as defined in the IRS Agreement); or
- (b) where the relevant Traffic Incident results in OpCo or VicRoads providing a notice for VicRoads to take over management of the Traffic Incident in accordance with the IRS Agreement.

Example

During a Month, 106 Traffic Incidents occurred and 80 were Responded to within 15 minutes.

Project Co's performance for the Month against this KPI is [not disclosed]% rounded up to [not disclosed]%. This is in the range of [not disclosed]% and less than [not disclosed]% in the KPI table.

10 KPI Points would accrue under this KPI for the Month.

KPI 4 – Traffic Incident Clearance Performance in 30 Minutes

| KPI description | KPI Benchmark | | KPI Points | Assessment Period |
|---|------------------|------------------|------------|-------------------|
| | Range | | | |
| | From | To | | |
| Traffic Incidents to be Cleared within 30 minutes* after identification or receiving notification of the Traffic Incident. * Table Note 7 of Table H19.1 of the PSR applies to this KPI 4. | [not disclosed]% | [not disclosed]% | 0 points | Monthly |
| | [not disclosed]% | | 100 points | |

Interpretation

For this KPI 4:

WGT Service Area has the meaning given in the IRS Agreement.

In the event that the IRS Agreement has not been entered into or has expired or terminated in respect of the WGT Service Area:

Cleared has the meaning given in Part H19 of the PSR; and

Traffic Incident has the meaning given in the PSR.

In the event that the IRS Agreement has been entered into and has not expired or terminated in respect of the WGT Service Area:

Cleared means that all Lanes (excluding any shoulders) or traffic lanes in the WGT Service Area (as defined in the IRS Agreement, excluding any shoulders) affected by the relevant Traffic Incident is clear for the safe, continuous and efficient passage of vehicles;

Traffic Incident means any unplanned event which:

- (a) prevents or is likely to prevent the Freeway or the WGT Service Area or any relevant part of the Freeway or the WGT Service Area from being open to the public for the safe, continuous and efficient passage of vehicles; or
- (b) otherwise requires an urgent response to provide Emergency Services with access to the Freeway or the WGT Service Area; and

In addition to the events and circumstances set out in Table Note 7 of Table H19.1 of the PSR, the timeframe within which a Traffic Incident must be Cleared will not apply:

- (a) to the extent that a Relief Event (as defined in the IRS Agreement) applicable to that Traffic Incident has prevented, hindered or disrupted the performance of OpCo’s Activities (as defined in the IRS Agreement); or

- (b) where the relevant Traffic Incident results in OpCo or VicRoads providing a notice for VicRoads to take over management of the Traffic Incident in accordance with the IRS Agreement.

Example

During a Month, 106 Traffic Incidents occurred and 50 Traffic Incidents were Cleared within 30 minutes after identification or receiving notification of the Traffic Incident.

Project Co's performance for the Month against this KPI is [not disclosed]% rounded to [not disclosed]% of the Traffic Incidents were Cleared within 30 minutes.

100 KPI Points would accrue under this KPI for the Month.

KPI 5 – Tunnel Availability Performance

| KPI description | KPI Benchmark | KPI Points | Assessment Period |
|--|------------------|--|-------------------|
| Availability of Tunnels Each Tunnel must be Available, other than to the extent a Permitted Tunnel Closure is subsisting. | [not disclosed]% | 0 points | Quarterly |
| | [not disclosed]% | 1 point per quarter hour or part thereof per Occurrence. | Quarterly |

Interpretation

For this KPI 5:

Available means, at any time after the West Gate Tunnel Opening Date until the Expiry Date, at least one Lane in each direction of the Tunnel is open to Users for the safe, efficient and continuous passage of vehicles.

Extended Tunnel Closure Window means between 8:00pm and 9:00am on the following day, where both days are not Business Days.

Permitted Tunnel Closure means a Tunnel Closure, to the extent that:

- (a) it occurs during the period commencing on the Date of West Gate Tunnel Completion and ending on the West Gate Tunnel Opening Date;
- (b) it occurs during a Tunnel Closure Window provided that the Tunnel Closure:
 - (i) is required for planned maintenance or inspections of and/or repairs to the Relevant Infrastructure or for the rectification of Defects, in accordance with the State Project Documents; and
 - (ii) occurs on no greater than 8 individual occasions during any Financial Year for each direction of the Tunnel;
- (c) it occurs during an Extended Tunnel Closure Window provided that the Tunnel Closure:
 - (i) is required for planned maintenance or inspections of and/or repairs to the Relevant Infrastructure or for the rectification of Defects, in accordance with the State Project Documents; and
 - (ii) occurs on no greater than 2 individual occasions during any Financial Year for each direction of the Tunnel;

- (d) it occurs outside a Tunnel Closure Window or an Extended Tunnel Closure Window, provided that the Tunnel Closure:
 - (i) is required for non-routine planned maintenance of and/or repairs to the Relevant Infrastructure (such as the resurfacing of the Tunnel or the replacement of major mechanical or electrical equipment in the Tunnel) and it is reasonable for that maintenance and/or those repairs to occur outside a Tunnel Closure Window or an Extended Tunnel Closure Window having regard to:
 - A. the nature and extent of that maintenance and/or those repairs;
 - B. the impact of undertaking that maintenance and/or those repairs (or deferring that maintenance and/or those repairs) on the safety of Users, users of the transport network or any other persons;
 - C. any disruption or risk to Users and to users of the transport network that may be caused by that maintenance and/or those repairs (or deferring that maintenance and/or those repairs); and
 - D. any performance requirements in respect of the Tunnel (including Handover); and
 - (ii) is agreed to by the State (such agreement not to be unreasonably withheld or delayed);
- (e) it is necessary as a result of the circumstances set out under clauses 25.4(b)(i) to 25.4(b)(v) of this Agreement;
- (f) it is necessary as a result of or to respond to an Incident, a Major Incident or Traffic Incident in accordance with the State Project Documents;
- (g) it is necessary for the safety of Users, users of the transport network or any other persons;
- (h) it is required for public events (including Run for the Kids and other fun runs) as agreed by the State (such agreement not to be unreasonably withheld or delayed);
- (i) it is necessary as a result of an act or omission of a third party which is beyond the control of Project Co or its Associates, including a Utility Interruption;
- (j) it is a result of the Over-height Vehicle System activating the Tunnel portal barriers;
- (k) it is necessary as a result of a party exercising a right or carrying out an obligation in accordance with the WGT Road Operating Agreement;
- (l) it is necessary as a result of the State or any of its Associates exercising a right under clause 13.3(a) of this Agreement;
- (m) it would be reasonable to expect that a reasonable and competent concessionaire maintaining a road similar to the Freeway to Best O&M Practices would implement a Tunnel Closure;

- (n) it is necessary as a result of a party exercising a right or carrying out an obligation in accordance with the FMS Agreement; or
- (o) it is otherwise contemplated by the State Project Documents or agreed in writing by the State,

and, other than for Tunnel Closures referred to in paragraphs (b), (c), (d), (h) and (o) of this definition, to the extent that the underlying event requiring such Tunnel Closure was not caused or contributed to by an act or omission of Project Co or its Associates.

Occurrence means each occasion when the Tunnel is not Available other than to the extent a Permitted Tunnel Closure is subsisting, provided that:

- (a) a Tunnel Closure which would otherwise be a Permitted Tunnel Closure under paragraph (b) of the definition of Permitted Tunnel Closure but for the Tunnel Closure occurring partly within a Tunnel Closure Window and partly outside that Tunnel Closure Window will:
 - (i) be considered as one Occurrence;
 - (ii) result in the accrual of KPI Points in accordance with, and subject to, this KPI 5 for the period of the Tunnel Closure which occurs outside the relevant Tunnel Closure Window; and
 - (iii) result in a reduction of one occasion where a Tunnel Closure is permitted under paragraph (b) of the definition of Permitted Tunnel Closure.
- (b) a Tunnel Closure which would otherwise be a Permitted Tunnel Closure under paragraph (c) of the definition of Permitted Tunnel Closure but for the Tunnel Closure occurring partly within an Extended Tunnel Closure Window and partly outside that Extended Tunnel Closure Window will:
 - (i) be considered as one Occurrence;
 - (ii) result in the accrual of KPI Points in accordance with, and subject to, this KPI 5 for the period of the Tunnel Closure which occurs outside the relevant Extended Tunnel Closure Window; and
 - (iii) result in a reduction of one occasion where a Tunnel Closure is permitted under paragraph (c) of the definition of Permitted Tunnel Closure.

Tunnel Closure Window means:

- (a) between 10:00pm on a Business Day to 5:00am on the following day, where the following day is a Business Day;
- (b) between 10:00pm on a Business Day to 7:00am on the following day, where the following day is not a Business Day;
- (c) between 8:00pm and 7:00am on the following day, where both days are not Business Days; and

- (d) between 8:00pm on a day which is not a Business Day to 5:00am on the following day, where the following day is a Business Day.

Example

During a Quarter, there were 2 Occurrences.

The first Occurrence was for planned maintenance and repairs and occurred partly within a Tunnel Closure Window and extended for two hours past the Tunnel Closure Window.

The second Occurrence was a Tunnel Closure which occurred for 5 hours.

The KPI Points accrued under this KPI 5 for the Quarter are:

- 2 hours equals 8 quarter hours: $(8 \times 1) = 8$ KPI Points for the first Tunnel Closure; plus
- 5 hours equals 20 quarter hours: $(20 \times 1) = 20$ KPI Points for the second Tunnel Closure.
- $8 + 20 = 28$ KPI Points.

KPI 6 – Traffic Lane Availability Performance

| KPI description | KPI Benchmark | KPI Points | Assessment Period |
|---|------------------|---|-------------------|
| Traffic lane availability All Lanes (excluding any shoulder used as an emergency stopping lane) must be Available other than to the extent a Permitted Lane Closure is subsisting. | [not disclosed]% | 1 point per quarter hour or part thereof per Occurrence | Monthly |

Interpretation

For this KPI 6:

Approved Closure Window has the meaning given in KPI 6.

Available means, at any time after the West Gate Tunnel Opening Date until the Expiry Date, all Lanes (excluding any shoulder used as an emergency stopping lane) are open to Users for the safe, efficient and continuous passage of vehicles.

Lane Closure Window means:

- (a) between 9:00am to 3:00pm on a Business Day;
- (b) between 8:00pm on a Business Day to 5:00am on the following day, where the following day is a Business Day;
- (c) between 8:00pm on a Business Day to 10:00am on the following day, where the following day is not a Business Day;
- (d) between 7:00pm and 10:00am on the following day, where both days are not Business Days; and
- (e) between 7:00pm on a day which is not a Business Day to 5:00am on the following day, where the following day is a Business Day.

Occurrence means each occasion when a Lane (excluding any shoulder used as an emergency stopping lane) is not Available other than to the extent a Permitted Lane Closure is subsisting, provided that a Lane Closure which would otherwise be a Permitted Lane Closure under paragraph (c) of the definition of Permitted Lane Closure but for the Lane Closure occurring partly within a Lane Closure Window and partly outside that Lane Closure Window will:

- (a) be considered as one Occurrence; and
- (b) result in the accrual of KPI Points in accordance with, and subject to, this KPI 6 for the period of the Lane Closure which occurs outside the relevant Lane Closure Window.

Permitted Lane Closure means a Lane Closure, to the extent that:

- (a) it occurs during the period commencing on the Date of West Gate Tunnel Completion and ending on the West Gate Tunnel Opening Date;
- (b) it occurs during a Lane Closure Window provided that the Lane Closure is required for planned maintenance or inspection of and/or repairs to the Relevant Infrastructure or for the rectification of Defects, in accordance with the State Project Documents;
- (c) it occurs outside a Lane Closure Window provided that the Lane Closure:
 - (i) is required for non-routine planned maintenance of and/or repairs to the Relevant Infrastructure (such as resurfacing of the pavement or the replacement of major mechanical or electrical equipment) and it is not reasonable for that maintenance and/or those repairs to occur within a Lane Closure Window having regard to:
 - A. the nature and extent of that maintenance and/or those repairs;
 - B. the impact of undertaking that maintenance and/or those repairs (or deferring that maintenance and/or those repairs) on the safety of Users, users of the transport network or any other persons;
 - C. any disruption or risk to Users and to users of the transport network that may be caused by that maintenance and/or those repairs (or deferring that maintenance and/or those repairs); and
 - D. any performance requirements in respect of the Freeway (including Handover); and
 - (ii) is agreed to by the State (such agreement not to be unreasonably withheld or delayed);
- (d) it is required for planned maintenance or inspection of and/or repairs to the Relevant Infrastructure or for the rectification of Defects, in accordance with the State Project Documents provided that, in Project Co's reasonable opinion, there is sufficient capacity within that section of the Freeway to provide for the expected traffic notwithstanding the relevant Lane Closure having regard to forecast demand based on recent historical traffic data or any other relevant data, provided by Project Co on an open book basis upon request by the State;
- (e) it is necessary as a result of the circumstances set out under clauses 25.4(b)(i) to 25.4(b)(v) of this Agreement;
- (f) necessary as a result of or to respond to an Incident, a Major Incident or Traffic Incident in accordance with the State Project Documents;
- (g) it is necessary for the safety of Users, users of the transport network or any other persons;
- (h) it is required for public events (including Run for the Kids and other fun runs) as agreed by the State (such agreement not to be unreasonably withheld or delayed);

- (i) it is necessary as a result of an act or omission of a third party which is beyond the control of Project Co or its Associates including a Utility Interruption;
- (j) it is necessary to prevent a detected over-height vehicle from entering the Tunnel;
- (k) it would be reasonable to expect that a reasonable and competent concessionaire maintaining a road similar to the Freeway to Best O&M Practices would implement a Lane Closure;
- (l) it is necessary as a result of a Permitted Tunnel Closure or forms part of a Permitted Tunnel Closure;
- (m) it is required by a Direct Interface Party or Road Interface Party or it is necessary as a result of a party exercising a right or carrying out an obligation in accordance with a Direct Interface Agreement, Road Interface Agreement or WGT Road Operating Agreement;
- (n) it is necessary as a result of the State or any of its Associates exercising a right under clause 13.3(a) of this Agreement;
- (o) it occurs during an Approved Closure Window;
- (p) it is a closure of the leftmost running lane via overhead LUMS on the westbound elevated carriageway of the Freeway (starting from the third closest LUMS gantry east of the entry ramp nose of Ramp P2) which is permitted for traffic operational reasons. When the leftmost running lane is closed, MacKenzie Road entry Ramp P2 is to operate as a lane gain rather than a single lane merge;
- (q) it is necessary as a result of a party exercising a right or carrying out an obligation in accordance with the FMS Agreement;
- (r) it is necessary as a result of the performance of OpCo's Activities (as defined in the IRS Agreement) in accordance with the IRS Agreement; or
- (s) it is otherwise contemplated by the State Project Documents or agreed in writing by the State,

and, other than for Lane Closures referred to in paragraphs (b), (c), (h), (o) or (s) of this definition, to the extent that the underlying event requiring such Lane Closure was not caused or contributed to by an act or omission of Project Co or its Associates.

Example

During a Month, there was 1 Occurrence.

The Occurrence was for planned maintenance and repairs and occurred partly within a Lane Closure Window and extended for four hours past the Lane Closure Window.

The KPI Points accrued under this KPI 6 for the Quarter are:

- 4 hours equals 16 quarter hours: $(16 \times 1) = 16$ KPI Points

KPI 7 – Road Safety Camera Electrical Availability

| KPI description | KPI Benchmark | | KPI Points | Assessment Period |
|---|--------------------|------------------|------------|-------------------|
| | Availability Range | | | |
| | From | To | | |
| System Availability of the road safety camera electrical system | [not disclosed]% | [not disclosed]% | 0 | Quarterly |
| | [not disclosed]% | [not disclosed]% | 50 | |
| | [not disclosed]% | [not disclosed]% | 100 | |
| | [not disclosed]% | | 150 | |

Interpretation

For this KPI 7:

Road safety camera electrical system has the meaning given in Part H19 of the PSR.

System Availability has the meaning given in Part H19 of the PSR.

Example

In a Quarter the total hours are 2,160 (HP) and the road safety camera electrical system which consists of 6 devices (ND) is measured to be unavailable for 250 hours (HL) during the Quarter. Of those hours when the devices are unavailable 50 hours are identified as NA under the definition of System Availability. The System Availability is therefore calculated as:

$$(2160 \times 6) - 250 / ((2160 \times 6) - 50) \times 100 = 12,710 / 12,910 \times 100 = \text{[not disclosed]\%}$$

This is within the range of [not disclosed]% to less than [not disclosed]% in the KPI table.

100 KPI Points would accrue under this KPI for the Quarter.

KPI 8 – Lane Use Management System Availability

| KPI description | KPI Benchmark | | KPI Points | Assessment Period |
|---|--------------------|------------------|------------|-------------------|
| | Availability Range | | | |
| | From | To | | |
| System Availability of the Lane Use Management System | [not disclosed]% | [not disclosed]% | 0 | Quarterly |
| | [not disclosed]% | [not disclosed]% | 50 | |
| | [not disclosed]% | [not disclosed]% | 100 | |
| | [not disclosed]% | | 150 | |

Interpretation

For this KPI 8:

Lane Use Management System has the meaning given in the PSR.

System Availability has the meaning given in Part H19 of the PSR.

Example

In a Quarter the total hours are 2,160 (HP) and the Lane Use Management System which consists of 100 devices (ND) is measured to be unavailable for 5,000 hours (HL) during the Quarter. Of those hours when the devices are unavailable 900 hours are identified as NA under the definition of System Availability. The System Availability is therefore calculated as:

$$((2160 \times 100) - 5000) / ((2160 \times 100) - 900) \times 100 = (211,000 / 215,100) \times 100 = \text{[not disclosed]\%}$$

This is within the range of [not disclosed]% to less than [not disclosed]% in the KPI table.

100 KPI Points would accrue under this KPI for the Quarter.

KPI 9 – Traffic Data System Availability

| KPI description | KPI Benchmark | | KPI Points | Assessment Period |
|--|--------------------|------------------|------------|-------------------|
| | Availability Range | | | |
| | From | To | | |
| System Availability of the Traffic Data System | [not disclosed]% | [not disclosed]% | 0 | Quarterly |
| | [not disclosed]% | [not disclosed]% | 50 | |
| | [not disclosed]% | [not disclosed]% | 100 | |
| | [not disclosed]% | | 150 | |

Interpretation

For this KPI 9:

System Availability has the meaning given in Part H19 of the PSR.

Traffic Data System has the meaning given in the PSR.

Example

In a Quarter the total hours are 2,160 (HP) and the Traffic Data System which consists of 30 devices (ND) is measured to be unavailable for 25,000 hours (HL) during the Quarter. Of those hours when the devices are unavailable 900 hours are identified as NA under the definition of System Availability. The System Availability is therefore calculated as:

$$((2160 \times 30) - 25,000) / ((2160 \times 30) - 900) \times 100 = (39,800 / 63,900) \times 100 = \text{[not disclosed]\%}$$

This is within the range of [not disclosed]% to less than [not disclosed]% in the KPI table.

100 KPI Points would accrue under this KPI for the Quarter.

KPI 10 – Traffic Data System Device Repair Time

| KPI description | KPI Benchmark | KPI Points | Assessment Period |
|---|------------------|--|-------------------|
| Where the State provides written notice to Project Co that a Device which forms part of the Traffic Data System is inoperable due to a fault in the Device, the Device must be replaced or the fault in the Device must be rectified within 90 days following the issuance of written notice. | [not disclosed]% | 1 point per Occurrence for every subsequent 10 days until replacement or rectification | Quarterly |

Interpretation

For this KPI 10:

Device has the meaning given in Part H19 of the PSR.

Occurrence means each Device which is not replaced or rectified within the timeframe contemplated under this KPI 10.

Traffic Data System has the meaning given in the PSR.

This KPI 10 does not apply in the event that the following occurs:

- (a) a State Act of Prevention;
- (b) a Key Risk Event;
- (c) a Force Majeure Event to the extent it is not a Key Risk Event;
- (d) faults or damage to the relevant Device caused by third party service providers or other civil contractors not engaged by Project Co and/or OpCo which cannot reasonably be mitigated by Project Co or OpCo;
- (e) restrictions or controls imposed by the Emergency Services;
- (f) events beyond the reasonable control of Project Co or OpCo (including where the fault to the relevant Device was caused by a traffic incident or any other act of a third party), and the effects of which cannot reasonably be minimised, mitigated or avoided by Project Co or OpCo;
- (g) a defect in or unavailability of a VicRoads nominated supplier device (only when spares or replacements are not reasonably available);

- (h) a direction is given to Project Co by the State or its Associates in accordance with this Agreement or Law which Project Co must comply with and which prevents, disrupts or hinders the ability of Project Co to comply with this KPI 10 within the required timeframe; or
- (i) the relevant Device is not accessible or available due to major road works which prevents, disrupts or hinders the ability of Project Co to comply with this KPI 10 within the required timeframe.

Example

The State has provided a written notice for 70 Devices with faults to be replaced or rectified during a Quarter, of which 50 were carried out within the required timeframe.

Accordingly, there were 20 Occurrences for the Quarter. Of those 20 Occurrences, 12 Occurrences were the result of the relevant Devices being replaced or rectified 9 days after the required timeframe and 8 Occurrences were the result of the relevant Devices being replaced or rectified 14 days after the required timeframe.

The KPI Points accrued under this KPI for the Quarter would be calculated as follows:

$(12 \times 1) + (8 \times 2) = 28$ KPI Points.

KPI 11 – Automatic Incident Detection System Availability

| KPI description | KPI Benchmark | | KPI Points | Assessment Period |
|--|--------------------|------------------|------------|-------------------|
| | Availability Range | | | |
| | From | To | | |
| System Availability of the Automatic Incident Detection System | [not disclosed]% | [not disclosed]% | 0 | Quarterly |
| | [not disclosed]% | [not disclosed]% | 50 | |
| | [not disclosed]% | [not disclosed]% | 100 | |
| | [not disclosed]% | | 150 | |

Interpretation

For this KPI 11:

Automatic Incident Detection System has the meaning given in the PSR.

System Availability has the meaning given in Part H19 of the PSR.

Example

In a Quarter the total hours are 2,160 (HP) and the Automatic Incident Detection System which consists of 75 devices (ND) is measured to be unavailable for 2,000 hours (HL) during the Quarter. Of those hours when the devices are unavailable 900 hours are identified as NA under the definition of System Availability. The System Availability is therefore calculated as:

$$((2160 \times 75) - 2000) / ((2160 \times 75) - 900) \times 100 = 160,000 / 161,100 \times 100 = \text{[not disclosed]\%}.$$

This is within the range of [not disclosed]% to less than [not disclosed]% in the KPI table.

50 KPI Points would accrue under this KPI for the Quarter.

KPI 12 – Closed Circuit Television System Availability

| KPI description | KPI Benchmark | | KPI Points | Assessment Period |
|---|--------------------|------------------|------------|-------------------|
| | Availability Range | | | |
| | From | To | | |
| System Availability of the Closed Circuit Television System | [not disclosed]% | [not disclosed]% | 0 | Quarterly |
| | [not disclosed]% | [not disclosed]% | 50 | |
| | [not disclosed]% | [not disclosed]% | 100 | |
| | [not disclosed]% | | 150 | |

Interpretation

For this KPI 12:

Closed Circuit Television System has the meaning given in the PSR.

System Availability has the meaning given in Part H19 of the PSR.

Example

In a Quarter the total hours are 2,160 (HP) and the Closed Circuit Television System which consists of 50 devices (ND) is measured to be unavailable for 3,000 hours (HL) during the Quarter. Of those hours when the devices are unavailable 900 hours are identified as NA under the definition of System Availability. The System Availability is therefore calculated as:

$$((2160 \times 50) - 3,000) / ((2160 \times 50) - 900) \times 100 = 105,000 / 107,100 \times 100 = \text{[not disclosed]\%}$$

This is within the range of [not disclosed]% to less than [not disclosed]% in the KPI table.

100 KPI Points would accrue under this KPI for the Quarter.

KPI 13 – Freeway Ramp Signal Repair time

| KPI description | KPI Benchmark | KPI Points | Assessment Period |
|--|------------------|--------------------------|-------------------|
| <p>Where the State provides written notice to Project Co that a Device which forms part of the Freeway Ramp Signal System is:</p> <p>(a) inoperable due to a fault in the Device (such notice to include details of the fault to the extent known by the State); and</p> <p>(b) Project Co is permitted to implement a Lane Closure without the State's prior approval, in order to replace the Device or rectify the fault in the Device pursuant to a Maintenance Traffic Management Plan,</p> <p>the Device must be replaced or the fault in the Device must be rectified within 48 hours of notification by the State or such longer period as agreed between the parties acting reasonably.</p> | [not disclosed]% | 20 points per Occurrence | Quarterly |
| <p>Where the State provides written notice to Project Co that a Device which forms part of the Freeway Ramp Signal System is:</p> <p>(a) inoperable due to a fault in the Device (such notice to include details of the fault to the extent known by the State); and</p> <p>(b) Project Co is not permitted to implement a Lane Closure without the State's prior approval, in order to replace the Device or rectify the fault in the Device pursuant to a Maintenance Traffic Management Plan,</p> <p>Project Co must:</p> <p>(i) provide a written request to the State for an Approved Closure Window within 48 hours; and</p> <p>(ii) replace the Device or rectify the fault in the Device within the Approved Closure Window or such longer period as agreed between the parties acting reasonably.</p> | [not disclosed]% | 20 points per Occurrence | Quarterly |

Interpretation

For this KPI 13:

Approved Closure Window means a continuous period of no less than 48 hours to be nominated by the State in writing acting reasonably, during which Project Co may implement a Lane Closure to replace the Device or rectify the fault in the Device.

Device has the meaning given in Part H19 of the PSR.

Freeway Ramp Signal System means the freeway ramp signal system to be provided in accordance with Section 13 of Part B of the PSR for Ramps within the Leased Area, and as specified in the VicRoads Freeway Ramp Systems Handbook.

Lane Closure means each separate instance in which a Lane (excluding any shoulder used as an emergency stopping lane) is not open to Users for the safe, efficient and continuous passage of vehicles.

Occurrence means:

- (a) each occasion Project Co fails to provide a written request to the State for an Approved Closure Window within the timeframe set out in this KPI 13;
- (b) each Device which is not replaced or rectified within the timeframe contemplated under this KPI 13.

This KPI 13 does not apply in the event that the following occurs:

- (a) a State Act of Prevention;
- (b) a Key Risk Event;
- (c) a Force Majeure Event to the extent it is not a Key Risk Event;
- (d) faults or damage to the relevant Device caused by third party service providers or other civil contractors not engaged by Project Co or OpCo which cannot reasonably be mitigated by Project Co or OpCo;
- (e) events beyond the reasonable control of Project Co or OpCo (including where the fault to the relevant Device was caused by a traffic incident or any other act of a third party), and the effects of which cannot reasonably be minimised, mitigated or avoided by Project Co or OpCo;
- (f) a defect in or unavailability of a VicRoads nominated supplier device (only when spares or replacements are not reasonably available);
- (g) a direction is given to Project Co by the State or its Associates in accordance with this Agreement or Law which Project Co must comply with and which prevents, disrupts or hinders the ability of Project Co to comply with this KPI 13 within the required timeframe; or
- (h) the Device is not accessible or available due to major road works which prevents, disrupts or hinders the ability of Project Co to comply with this KPI 13 within the required timeframe.

Example

In the Quarter, the State provides written notice to Project Co that there are 6 Devices which form part of the Freeway Ramp Signal System which are inoperable due to faults in the Devices.

Project Co rectifies 5 faults within 48 hours of receiving the State's written notice (or within the Approved Closure Window as applicable) and 1 fault within 50 hours of receiving the State's written notice (or outside the Approved Closure Window as applicable)

The KPI Points accrued under this KPI for the Quarter would be calculated as follows:

$$(5 \times 0) + (1 \times 20) = 20 \text{ KPI Points}$$

Schedule 4 - Change Compensation Principles

PART A - Change Compensation Principles

1. Definitions

Unless otherwise expressly defined, expressions used in this Schedule have the meanings given to them in or for the purposes of this Agreement:

Agreed Margins means the D&C Margin, the O&M Margin and the D&C Preliminaries.

Allowance means, subject to the terms of this Schedule, the percentage allowances to which Project Co is entitled for the relevant component identified in Table 1, Table 2 or Table 3 in section 3.2 of this Part A (as the case may be) depending on the applicable thresholds set out in column 2, 3 or 4 (as the case may be) of the relevant table.

Base Costs means Design Base Costs, D&C Base Costs, O&M Base Costs, CityLink Base Costs, Bureau System Costs and other Costs directly attributable to a Change Compensation Event or, in the case of CityLink Base Costs and Bureau System Costs, as a consequence of the occurrence of a Change Compensation Event, but excluding:

- (a) Prolongation Costs, any CityLink Revenue Impact and Financing Delay Costs;
- (b) any Agreed Margins or other Margin;
- (c) administrative and overhead costs reasonably and properly incurred by Project Co in administering the Change Compensation Event; and
- (d) any amount calculated in accordance with sections 3.6, 3.7 and 3.8 of this Part A.

Bureau System means each of the following:

- (a) the Tolling Back Office System; and
- (b) the Asset Management System.

Bureau System Costs means the actual costs properly and reasonably incurred or which will be properly and reasonably incurred by any entity within the Transurban Group carrying out capital works, non-capital works or activities in relation to a Bureau System as a consequence of the occurrence of a Change Compensation Event, including warranty costs and lifecycle costs but, for the avoidance of doubt, excluding costs that the relevant entity or entities (as applicable) within the Transurban Group would otherwise have incurred irrespective of the occurrence of the Change Compensation Event.

CCP Modification means a Modification other than:

- (a) a Modification the result of a Streamlined Modification Proposal; and
- (b) a Modification the result of a Modification Proposal under clause 34.6 of this Agreement.

Change Compensation Event means each event or change to which this Part A is expressed in this Agreement to apply, including the events or changes described in the clauses listed in the table in section 2 of this Part A.

Change Notice means the notice referred to in section 5 of this Part A, including any updated Change Notice.

Change Notice Request means the notice referred to in section 5.2(a) of this Part A.

Change Response means the notice referred to in section 6.1(a)(ii) of this Part A.

CityLink Base Costs means the actual costs properly and reasonably incurred or which will be properly and reasonably incurred by the CityLink Parties or any subcontractor of the CityLink Parties carrying out non-capital works or activities in respect of the CityLink Project and during the period of time that a Change Compensation Event is being implemented or carried out which are directly attributable to the Change Compensation Event or as a consequence of the occurrence of the Change Compensation Event, including warranty costs and lifecycle costs, but excluding any CityLink Revenue Impact.

CityLink O&M Activities means all things and tasks which the Company is required to carry out to discharge its operation, maintenance, repair and tolling obligations in accordance with the CityLink Concession Deed.

CityLink Revenue Impact means the net effect on actual CityLink toll revenue of:

- (a) the D&C Subcontractor implementing additional or fewer Traffic Impacts as a direct result of a Disruption Event when compared to:
 - (i) the Traffic Impacts set out in the Initial Traffic Impact Schedule; and
 - (ii) where applicable, any EOT Additional Traffic Impacts, Modification Additional Traffic Impacts or Rebuilding Event Additional Traffic Impacts that have been granted in accordance with the D&C Subcontract prior to the occurrence of the relevant Disruption Event; and / or
- (b) a Subcontractor (other than the D&C Subcontractor or a Subcontractor within a chain of Subcontracts which includes the D&C Subcontractor) implementing a traffic measure on CityLink:
 - (i) during the period of time that:
 - A. in the case of a Compensable Extension Event, the relevant event or its effects are subsisting;
 - B. in the case of a Rebuilding Event, the repair or rebuilding is being carried out; or
 - C. in the case of any other Disruption Event, the relevant event is being implemented; and
 - (ii) as a direct result of a Disruption Event.

Costs means all direct capital, operating, access and other costs properly and reasonably incurred or which will be properly and reasonably incurred by Project Co.

D&C Base Costs means the actual costs properly and reasonably incurred or which will be properly and reasonably incurred by the D&C Subcontractor, OpCo or other Subcontractor carrying out the works (as the case may be) and directly attributable to a Change Compensation Event, including any on site management and supervision costs that are properly and reasonably incurred or which will be properly and reasonably incurred and directly attributable to a Change Compensation Event, excluding all Agreed Margins, other preliminaries and Design Base Costs.

D&C IRS Base Costs means the actual costs properly and reasonably incurred or which will be properly and reasonably incurred by OpCo or any other Subcontractor (as the case may be) carrying out the OpCo D&C Phase IRS Activities and directly attributable to a Change Compensation Event, but excluding the O&M Margin.

D&C Margin means:

- (a) prior to the Date of Tolling Completion, the percentage for the “D&C Margin” that the D&C Subcontractor or OpCo may charge in accordance with Table 1 in section 3.2 of this Part A, or, in circumstances where neither the D&C Subcontractor nor OpCo undertakes the required works, the percentage that the Subcontractor carrying out the works may charge as determined through a competitive tender process in accordance with section 7 of this Part A;
- (b) during the first 2 years after the Date of Tolling Completion, the percentage for the “D&C Margin” that the D&C Subcontractor or OpCo (as the case may be) may charge in accordance with Table 2 in section 3.2 of this Part A or, in circumstances where neither the D&C Subcontractor nor OpCo undertakes the required works, the percentage that the Subcontractor carrying out the works may charge as determined through a competitive tender process in accordance with section 7 of this Part A; and
- (c) after the first 2 years after the Date of Tolling Completion, the percentage for the “D&C Margin” that OpCo may charge in accordance with Table 2 in section 3.2 of this Part A, or, in circumstances where OpCo does not undertake the required works, the percentage that the Subcontractor carrying out the works may charge as determined through a competitive tender process in accordance with section 7 of this Part A,

to cover all off-site overheads and administrative, corporate and other like costs and profits of the D&C Subcontractor, OpCo or other Subcontractor (as applicable) carrying out the works, but excludes D&C Preliminaries and D&C Base Costs.

D&C Modification means a CCP Modification to the extent that it is required to be undertaken prior to the Date of Tolling Completion.

D&C Preliminaries means the percentage that the D&C Subcontractor or OpCo may charge for “D&C Preliminaries” in accordance with Table 1 or Table 2 (as the case may be) in section 3.2 of this Part A or, in circumstances where neither the D&C Subcontractor nor OpCo undertakes the required works, the percentage that the Subcontractor carrying out the works may charge as determined through a competitive tender process in accordance with section 7 of this Part A to cover all on-site overheads (including, without limitation, overheads for staffing and management resources, facilities management and running costs, safety equipment, small tools, provision of additional bonding and training and social inclusion commitment costs) and other like costs.

Design Base Costs means the actual third party design fees properly and reasonably incurred or which will be properly and reasonably incurred, including architects’ engineers’ and other design consultants’ fees, and directly attributable to a Change Compensation Event, but excluding all other costs of the D&C Subcontractor and all Agreed Margins other than the Margin of the relevant third party design consultant.

Disruption Event means each of the following events:

- (a) a Compensable Extension Event;
- (b) a D&C Modification;
- (c) a Rebuilding Event; and

- (d) a CCP Modification that occurs on or after the Date of Tolling Completion.

Entitlement Period means the period of time which relates to each Category of Works as set out in Annexure 1 of this Schedule.

EOT Additional Traffic Impact has the meaning given in the D&C Subcontract.

Financing Delay Costs means the debt financing costs forecasted to be incurred (in the case of interest expense) or paid (in the case of principal amounts and interest expense) by Project Co in accordance with the Base Case Financial Model during the period of a delay to the achievement of Tolling Completion caused by an Uninsurable Force Majeure Event that occurs prior to the Date of Tolling Completion.

Initial Traffic Impact Schedule has the meaning given in the CityLink Access Deed.

Margin means an amount on account of off-site overheads and administrative, corporate and other like costs and profit.

Modification Additional Traffic Impact has the meaning given in the D&C Subcontract.

O&M Base Costs means the actual costs properly and reasonably incurred or which will be properly and reasonably incurred by OpCo or any other Subcontractors (as the case may be) to the extent that they exceed the relevant amounts (if any) assumed in the Notional Cost Profile for carrying out non-capital works or activities and directly attributable to a Change Compensation Event including warranty costs and lifecycle costs, but excluding the O&M Margin.

O&M Margin means the percentage that OpCo or any other Subcontractor may charge in accordance with Table 3 in section 3.2 of this Part A to cover all off-site and on-site overheads and administrative, corporate and other like costs and profits of OpCo or that other Subcontractor.

Project Discount Rate means a discount rate equal to the WGT Project IRR as set out in worksheet Wdef in the Base Case Financial Model.

Prolongation Costs means the lower of:

- (a) subject to section 3.3(b) of this Part A, the actual, additional net costs (excluding Financing Delay Costs) properly and reasonably incurred (or in the case of a D&C Modification, to be incurred) by Project Co and directly attributable to a delay to the achievement of West Gate Tunnel Completion or Tolling Completion caused by a Compensable Extension Event, a D&C Modification or a Rebuilding Event that occurs prior to the Date of Tolling Completion; and
- (b) the maximum daily rates, being:
- (i) in respect of the Prolongation Costs incurred by Project Co and its Subcontractors (other than the D&C Subcontractor and any Subcontractors of the D&C Subcontractor), \$[not disclosed]; and
 - (ii) in respect of the Prolongation Costs incurred by the D&C Subcontractor and Subcontractors of the D&C Subcontractor (the **D&C Subcontractor Prolongation Costs**), the maximum daily rate for the Category of Works to which the D&C Program Activity Items relate, that have been delayed by a Compensable Extension Event, a D&C Modification or a Rebuilding Event prior to the Date of West Gate Tunnel Completion during the relevant Entitlement Period,

as calculated under section 3.3 of this Part A.

Rebuilding Event means a determination by the State under clause 39.3(c) of this Agreement or an event under clause 39.3(d) of this Agreement.

Rebuilding Event Additional Traffic Impact has the meaning given in the D&C Subcontract.

Savings means:

- (a) in respect of costs that are not the subject of the Notional Cost Profile, the amount of any costs, including any Agreed Margins or other Margin, avoided or otherwise reduced in accordance with this Schedule arising in connection with a Change Compensation Event; and
- (b) in respect of costs that are the subject of the Notional Cost Profile, the amount of any costs, including any Agreed Margins or other Margin, avoided or otherwise reduced in accordance with this Schedule arising in connection with a Change Compensation Event, to the extent that they are less than the relevant amounts (if any) assumed in the Notional Cost Profile.

Toll Loss Liability Cap has the meaning given in the D&C Subcontract.

Traffic Impact has the meaning given in the CityLink Access Deed.

Traffic Impact Fee has the meaning given in the CityLink Access Deed.

Transport Network Changes means any transport network changes, including:

- (a) any Assumed Transport Network Enhancements;
- (b) the construction, operation, maintenance, alteration, upgrade or repair of any road or other means of vehicle, public transport, pedestrian or bicycle access; and
- (c) the connection of any road or other means of vehicle, public transport, pedestrian or bicycle access to the West Gate Tunnel.

Uninsurable Force Majeure Event means a Force Majeure Event as described in clause 23.14(c)(ii) of this Agreement.

2. Change Compensation Events

| Change Compensation Event | Clause of this Agreement | Compensation to be calculated in accordance with the following sections of this Part A or other provisions of this Agreement as identified |
|---------------------------------|---|--|
| Compensable Extension Event | Clause 23.10 | Sections 3.1, 3.3, 3.4, (where applicable) 3.6 and 3.9 of this Part A. |
| Uninsurable Force Majeure Event | Clause 23.14 | Sections 3.1 and 3.5 of this Part A. |
| D&C Modification | Clauses 34.1, 34.2, 34.3, 34.7, 34.8, 34.9, | Sections 3.1, 3.2, 3.3, 3.4, 3.6, (where applicable) 3.9 and |

| Change Compensation Event | Clause of this Agreement | Compensation to be calculated in accordance with the following sections of this Part A or other provisions of this Agreement as identified |
|--|---|---|
| | 34.10, 34.11 and 34.13 | 3.11 of this Part A. |
| CCP Modifications on or after the Date of Tolling Completion | Clauses 34.1, 34.2, 34.3, 34.8, 34.12 and 34.13 | Sections 3.1, 3.2, 3.4, 3.7, 3.10 and 3.11 of this Part A. |
| Streamlined Modification Proposal | Clause 34.14 | Sections 3.1 and 3.2 of this Part A. |
| Proximate State Works that are undertaken on or after the Date of Tolling Completion | Clause 26.4 | Sections 3.1 and 3.8 of this Part A. |
| Handover Services | Clause 28.4(h)(ii) | Sections 3.1 and 3.2 of this Part A. |
| Repair or rebuild to different specifications prior to the Date of Tolling Completion | Clause 39.3(c) | Sections 3.1, 3.2, 3.3, 3.4, 3.6 and 3.9 of this Part A. |
| Repair or rebuild to different specifications on or after the Date of Tolling Completion | Clause 39.3(c) | Sections 3.1, 3.2, 3.4, 3.7 and 3.10 of this Part A. |
| Repair or rebuild – State risk prior to the Date of Tolling Completion | Clause 39.3(d) | Sections 3.1, 3.2, 3.3, 3.4, 3.6 and 3.9 of this Part A. |
| Repair or rebuild – State risk on or after the Date of Tolling Completion | Clause 39.3(d) | Sections 3.1, 3.2, 3.4, 3.7 and 3.10 of this Part A. |

The table above is provided for ease of reference only, and is not intended to be an exhaustive description of the Change Compensation Events or a party's entitlement to compensation. A party's entitlement to compensation arising from any of the Change Compensation Events set out in the table above is subject to the relevant calculation specified in the third column of that table, the remainder of this Schedule and any relevant provisions of this Agreement.

3. Methodology for calculating compensation

3.1 Compensation for Change Compensation Events

- (a) Without limiting section 3.1(b) of this Part A, but subject to sections 3.2 to 3.11 of this Part A and the specific requirements otherwise set out in this Agreement including this Schedule, Project Co or the State's entitlement to compensation (other than positive revenue impact calculated in accordance with sections 3.9 and 3.10 of this Part A) in respect of a Change Compensation Event will be calculated as follows:

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$$P = C - D + E + F + G + H + I + J$$

where:

- P** = the amount payable to Project Co, where this is a positive amount, or the amount payable by Project Co, where this is a negative amount;
- C** = the amount of any Base Costs plus Agreed Margins or other Margins plus administrative and overhead costs calculated in accordance with section 3.2 of this Part A;
- D** = Savings;
- E** = Prolongation Costs calculated in accordance with section 3.3 of this Part A;
- F** = CityLink Revenue Impact calculated in accordance with section 3.4 of this Part A;
- G** = Financing Delay Costs calculated in accordance with section 3.5 of this Part A;
- H** = the adverse revenue impact calculated in accordance with section 3.6 of this Part A;
- I** = the adverse revenue impact calculated in accordance with section 3.7 of this Part A; and
- J** = the adverse impact on Net Operating Cashflows calculated in accordance with section 3.8 of this Part A.

The Agreed Margins or other Margin included in the calculation of D in the foregoing formula must be no less than the Allowance which would have applied to the relevant avoided costs if those costs were Base Costs or other Costs in respect of which the Agreed Margins or other Margin would have applied.

- (b) Without limiting section 3.1(a) of this Part A, but subject to sections 3.2 to 3.11 of this Part A and the specific requirements otherwise set out in this Agreement including this Schedule, the State's entitlement to positive revenue impact in respect of a Change Compensation Event will be calculated as follows:

$$P = K \text{ or } L \text{ (as applicable)}$$

where:

- P** = the amount payable to the State;
- K** = the positive revenue impact calculated in accordance with section 3.9 of this Part A; and
- L** = the positive revenue impact calculated in accordance with section 3.10 of this Part A.

3.2 Calculation of Base Costs, Agreed Margins and administrative and overhead costs

(a) **(Prior to Date of Tolling Completion – capital component):** For Change Compensation Events that occur prior to the Date of Tolling Completion that involve a capital component, the Base Costs, Agreed Margins and administrative and overhead costs for the capital cost component shall be calculated as:

| |
|------------------------------|
| A + B + C + D + E + F |
|------------------------------|

Where:

- A =** the Design Base Costs;
- B =** the D&C Base Costs;
- C =** the applicable D&C Preliminaries (set out in Table 1) multiplied by B;
- D =** the applicable D&C Margin (set out in Table 1) multiplied by the sum of B and C;
- E =** any other Base Costs (other than A, B and any O&M Base Costs) necessary to undertake the Change Compensation Event; and
- F =** any administrative and overhead costs (excluding permanent Project Co employees) reasonably and properly incurred by Project Co in administering the Change Compensation Event.

Table 1

| Column 1 | Column 2 | Column 3 | Column 4 |
|--|---|---|---|
| Threshold | \$[not disclosed] to \$[not disclosed] Base Cost ¹ | > \$[not disclosed] to \$[not disclosed] Base Cost ¹ | > \$[not disclosed] Base Cost ¹ |
| Component | Allowance | Allowance | Allowance |
| D&C Margin (D&C Subcontractor or OpCo, as applicable) | [not disclosed]% | [not disclosed]% | [not disclosed]% |
| D&C Preliminaries (D&C Subcontractor or OpCo, as applicable) | [not disclosed]% | [not disclosed]% | [not disclosed]% |
| ¹ The above dollar thresholds are as at Financial Close and will be Indexed thereafter. | | | |

(b) **(On or after Date of Tolling Completion – capital component):** For Change Compensation Events that occur on or after the Date of Tolling Completion that involve a capital component, the Base Costs, Agreed Margins and administrative and overhead costs for the capital cost component shall be calculated as:

$$A + B + C + D + E + F$$

Where:

- A =** the Design Base Costs;
- B =** the D&C Base Costs;
- C =** the applicable preliminaries multiplied by B, being:
 - (i) during the first 2 years after the Date of Tolling Completion, the applicable D&C Preliminaries (set out in Table 2) where the D&C Subcontractor or OpCo undertakes the works, or in circumstances where neither the D&C Subcontractor nor OpCo undertakes the works, the percentage that the Subcontractor carrying out the works may charge to cover all on-site overheads and other like costs as determined through a competitive process in accordance with section 7 of this Part A; or
 - (ii) after the first 2 years after the Date of Tolling Completion:
 - A. the applicable D&C Preliminaries where OpCo undertakes the works or where, in respect of a Change Compensation Event arising from a Contamination Modification Event of the kind described in paragraph (c) of the definition of Contamination Modification Event, the D&C Subcontractor undertakes the works; or
 - B. in circumstances where paragraph A does not apply, the percentage that the Subcontractor carrying out the works may charge to cover all on-site overheads and other like costs as determined through a competitive process in accordance with section 7 of this Part A;
- D =** the applicable margin multiplied by the sum of B and C, being:
 - (i) during the first 2 years after the Date of Tolling Completion, the applicable D&C Margin (set out in Table 2) where the D&C Subcontractor or OpCo undertakes the works, or in circumstances where neither the D&C Subcontractor nor OpCo undertakes the works, the percentage that the Subcontractor carrying out the works may charge as determined through a competitive process in accordance with section 7 of this Part A; or
 - (ii) after the first 2 years after the Date of Tolling Completion:
 - A. the applicable D&C Margin where OpCo undertakes the works or where, in respect of a Change Compensation Event arising from a Contamination Modification Event of the kind described in paragraph (c) of the definition of Contamination Modification Event, the D&C Subcontractor undertakes the works; or

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B. in circumstances where paragraph A does not apply, the percentage that the Subcontractor carrying out the works may charge as determined through a competitive process in accordance with section 7 of this Part A;

E = any other Base Costs (other than A, B and any O&M Base Costs) necessary to undertake the Change Compensation Event; and

F = any administrative and overhead costs (excluding permanent Project Co employees) reasonably and properly incurred by Project Co in administering the Change Compensation Event.

Table 2

| Column 1 | Column 2 | Column 3 | Column 4 |
|--|--|--|---|
| Threshold | \$[not disclosed] to \$[not disclosed] Base Cost ¹ | > \$[not disclosed] to \$[not disclosed] Base Cost ¹ | > \$[not disclosed] Base Cost ¹ |
| Component | Allowance | Allowance | Allowance |
| D&C Margin (D&C Subcontractor or OpCo, as applicable) | [not disclosed]% | [not disclosed]% | [not disclosed]% |
| D&C Preliminaries (D&C Subcontractor or OpCo, as applicable) | [not disclosed]% | [not disclosed]% | [not disclosed]% |
| ¹ The above dollar thresholds are as at Financial Close and will be Indexed thereafter. | | | |

(c) **(D&C Phase and O&M Phase – non-capital cost component):** Subject to section 3.2(d) of this Part A, for Change Compensation Events (including those with a capital cost component and whether the Change Compensation Event occurs before, on or after the Date of Tolling Completion) which impact on the cost of carrying out the OpCo D&C Phase IRS Activities, the O&M Activities or the CityLink O&M Activities, the Base Costs, Agreed Margins and administrative and overhead costs for the non-capital costs shall be calculated as:

$A + B + C + D + E + F + G$

Where:

A = the D&C IRS Base Costs;

B = the O&M Base Costs;

- C =** the CityLink Base Costs;
- D =** the Bureau System Costs;
- E =** the O&M Margin (set out in Table 3) multiplied by the sum of A, B, C and D;
- F =** any other Base Costs (other than Design Base Costs and D&C Base Costs) necessary to undertake the Change Compensation Event; and
- G =** any administrative and overhead costs (excluding permanent Project Co employees) reasonably and properly incurred by Project Co in administering the Change Compensation Event.

Table 3

| Column 1 | Column 2 | Column 3 | Column 4 |
|--|--|---|---|
| Threshold | \$[not disclosed] to \$[not disclosed] per annum Base Cost ¹ | > \$[not disclosed] to \$[not disclosed] per annum Base Cost ¹ | > \$[not disclosed] per annum Base Cost ¹ |
| Component | Allowance | Allowance | Allowance |
| O&M Margin | [not disclosed]% | [not disclosed]% | [not disclosed]% |
| ¹ The above dollar thresholds are as at Financial Close and will be Indexed thereafter. | | | |

- (d) **(Proximate State Works during the D&C Phase):** To the extent that a D&C Modification is required as a result of a Proximate State Works Notice in accordance with clause 34.10 of this Agreement then, in calculating the Base Costs under section 3.2(c) of this Part A, subject to clause 26.4(e) of this Agreement, Project Co will not be entitled to any amount attributable to the impact of Transport Network Changes undertaken outside of the Construction Areas, Maintenance Areas or Leased Area following completion of the carrying out of those Transport Network Changes.

3.3 Compensation for Prolongation Costs

- (a) Subject to section 3.3(b) of this Part A and the specific requirements otherwise set out in this Agreement, Project Co's entitlement to Prolongation Costs on the occurrence of a D&C Modification, Compensable Extension Event or Rebuilding Event prior to the Date of Tolling Completion will be calculated as follows for each day for which Project Co is granted an extension of time:
 - (i) in the case of a D&C Modification, from the Date for West Gate Tunnel Completion or Date for Tolling Completion at the time of the Modification Order until the revised Date for West Gate Tunnel Completion or Date for Tolling Completion (as applicable) set out in the Modification Order under clause 34.1(c)(iii) of this Agreement; and

- (ii) in the case of a Compensable Extension Event or Rebuilding Event that occurs prior to the Date of Tolling Completion, from the Date for West Gate Tunnel Completion or Date for Tolling Completion at the time of the relevant event or determination until the earlier of:
 - A. the revised Date for West Gate Tunnel Completion or Date for Tolling Completion (as applicable) due to that event or determination;
 - B. the Date of West Gate Tunnel Completion or Date of Tolling Completion (as applicable); and
 - C. any termination of this Agreement.
- (b) Project Co is not entitled to Claim, and the State will have no Liability to pay amounts on account of, D&C Subcontractor Prolongation Costs in respect of a delay to the Works relating to:
 - (i) a D&C Program Activity Item which occurs outside of an Entitlement Period; or
 - (ii) any activity or item of work which is not a D&C Program Activity Item.

3.4 Compensation for CityLink Revenue Impact

- (a) **(CityLink Revenue Impact):** The parties acknowledge and agree that any CityLink Revenue Impact will be agreed or determined in accordance with this section 3.4 of this Part A, and:
 - (i) will not be determined by the Independent Reviewer and Environmental Auditor; and
 - (ii) sections 5 and 6 of this Part A will not apply to such CityLink Revenue Impact
- (b) **(Negotiation in respect of CityLink Revenue Impact):** Once the impact of a Disruption Event has come to an end, or if the impact of the Disruption Event continues beyond a period of 6 months:
 - (i) Project Co may give the State a notice within 10 Business Days:
 - A. after the impact of the Disruption Event has come to an end; or
 - B. if the impact of the Disruption Event continues beyond a period of 6 months, at any time after each interval of 6 months since the commencement of the impact of the Disruption Event has elapsed (provided that such notice will not be given more than twice in any 12 month period),setting out Project Co's calculation of the CityLink Revenue Impact; and
 - (ii) provided Project Co has given the State a notice in accordance with section 3.4(b)(i) of this Part A, the parties must meet and negotiate in good faith to agree the CityLink Revenue Impact within 15 Business Days after the State receives Project Co's notice.

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- (c) **(Dispute):** If the parties are not able to agree all or any part of the CityLink Revenue Impact within the time period specified in section 3.4(b)(ii) of this Part A, Project Co may refer the matter for resolution in accordance with clauses 43 to 44 of this Agreement, in which case the disputed CityLink Revenue Impact payable by the State shall be the lower of:
- (i) the amount of the CityLink Revenue Impact set out in the notice given by Project Co in accordance with section 3.4(b)(i) of this Part A; and
 - (ii) the amount determined in accordance with clauses 43 to 44 of this Agreement.
- (d) **(D&C Subcontractor Impacts):** The parties acknowledge and agree that without limiting section 3.4(c) of this Part A and subject to section 3.4(f) of this Part A, for the purposes of the negotiations under section 3.4(b) of this Part A and any Dispute referred to resolution under section 3.4(c) of this Part A, any CityLink Revenue Impact resulting from the D&C Subcontractor implementing additional Traffic Impacts as a direct result of the relevant Disruption Event must not exceed the value of the Traffic Impacts (determined as the amount the D&C Subcontractor would ordinarily be required to pay to implement the Traffic Impacts under the CityLink Access Deed, being the Traffic Impact Fees) set out in any relevant:
- (i) Change Notice (as defined under the D&C Subcontract) issued in accordance with the D&C Subcontract; or
 - (ii) Modification Order (as defined in the D&C Subcontract) issued in accordance with the D&C Subcontract.
- (e) **(No claim):** Project Co will not be entitled to claim (and must procure that the CityLink Parties do not claim) any CityLink Revenue Impact:
- (i) in respect of a Traffic Impact, to the extent that Project Co or the CityLink Parties are entitled to recover Traffic Impact Fees from the D&C Subcontractor in respect of that Traffic Impact; and
 - (ii) in respect of a traffic measure on CityLink, to the extent that Project Co or the CityLink Parties are entitled to recover any CityLink Revenue Impact from a relevant Subcontractor (other than the D&C Subcontractor) in respect of that traffic measure on CityLink.
- (f) **(Liability exceeding Toll Loss Liability Cap):** Where the Toll Loss Liability Cap has been exhausted, Project Co will be entitled to compensation for an amount equal to the CityLink Revenue Impact attributable to the additional Traffic Impacts, which would have been assessed as payable to the CityLink Parties by the D&C Subcontractor in accordance with the CityLink Access Deed, but for the operation of the Toll Loss Liability Cap, provided that:
- (i) the nominal value of the CityLink Revenue Impact must not exceed the aggregate of the Traffic Impact Fees which, but for the Toll Loss Liability Cap, would have been payable by the D&C Subcontractor to the CityLink Parties; and
 - (ii) the State will not be liable for any interest or escalation between the date of the CityLink Revenue Impact and the date which is 30 days after the date of a notice given by Project Co under section 3.4(g)(i) of this Part A.
- (g) **(Notification of State liability for D&C Subcontractor impacts):** Project Co must promptly notify the State when:

- (i) the Toll Loss Liability Cap is exhausted; and
 - (ii) any Liability of the State described in section 3.4(f) of this Part A has accrued.
- (h) **(Sole remedy):** Project Co's entitlements under this section 3.4 of this Part A constitute Project Co's sole and exclusive remedy to recover CityLink revenue losses arising in respect of any CityLink Revenue Impacts.

3.5 Compensation for Financing Delay Costs

Subject to the specific requirements otherwise set out in this Agreement, Project Co's entitlement to Financing Delay Costs on the occurrence of an Uninsurable Force Majeure Event prior to the Date of Tolling Completion, will be calculated for each day for which Project Co is granted an extension of time, from the Date for Tolling Completion at the time of the relevant event or determination until the earlier of:

- (a) the revised Date for Tolling Completion due to that event or determination;
- (b) the Date of Tolling Completion; and
- (c) any termination of this Agreement.

3.6 Compensation for adverse revenue impact prior to Tolling Completion

- (a) **(Compensable Extension Events):** In respect of any Compensable Extension Event, that will:
- (i) delay the Date of Tolling Completion; and/or
 - (ii) necessitate a physical change to the scope of Works which will result in a decrease in Projected Revenue over the Term,

Project Co will be entitled to payment of an amount equal to:

- (iii) the lesser of:
 - A. the Projected Revenue immediately before the occurrence of the Compensable Extension Event; and
 - B. the Base Case Projected Revenue immediately before the occurrence of the Compensable Extension Event;minus
 - (iv) the Projected Revenue immediately after the occurrence of the Compensable Extension Event.
- (b) **(D&C Modification):** Subject to section 3.6(c) of this Part A, in respect of a D&C Modification:
- (i) that will delay the Date of Tolling Completion;
 - (ii) that will necessitate a physical change to the scope of Works which will result in a decrease in Projected Revenue over the Term;
 - (iii) that comprises a CMR Modification and will result in an adverse impact on Projected Revenue; and/or

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- (iv) that is required as a result of a Proximate State Works Notice in accordance with clause 34.10 of this Agreement and will result in a decrease in Projected Revenue over the Term,

Project Co will be entitled to payment of an amount equal to:

- (v) the lesser of:
 - A. the Projected Revenue immediately before the State issued a Modification Order to Project Co in respect of the D&C Modification; and
 - B. the Base Case Projected Revenue immediately before the State issued a Modification Order to Project Co in respect of the D&C Modification;

minus

- (vi) the Projected Revenue immediately after the State issued a Modification Order to Project Co in respect of the D&C Modification.

- (c) **(Proximate State Works during the D&C Phase):** To the extent that a D&C Modification is required as a result of a Proximate State Works Notice in accordance with clause 34.10 of this Agreement, in assessing whether there has been a decrease in Projected Revenue for the purposes of section 3.6(b) of this Part A, Project Co will not be entitled to any amount attributable to a reduction of the Projected Revenue arising from the impact of Transport Network Changes undertaken outside of the Construction Areas, Maintenance Areas or Leased Area following completion of the carrying out of those Transport Network Changes, other than a reduction in the Projected Revenue arising from:

- (i) a permanent reduction in the maximum posted speed applicable in the ordinary steady state operation of the part or parts of the Freeway that are impacted by the carrying out of the Transport Network Changes; or
- (ii) a removal or closure of a lane on a section or sections of the Freeway that is not on a temporary or short-term basis,

as a direct result of a Transport Network Change.

- (d) **(Rebuilding (State risk) prior to the Date of Tolling Completion):** In respect of an event under clause 39.3(d) of this Agreement which occurs prior to the Date of Tolling Completion that will delay the Date of Tolling Completion, Project Co will be entitled to payment of an amount equal to:

- (i) the lesser of:
 - A. the Projected Revenue immediately before the occurrence of the loss or damage referred to in clause 39.3(d) of this Agreement; and
 - B. the Base Case Projected Revenue immediately before the occurrence of the loss or damage referred to in clause 39.3(d) of this Agreement;

minus

- (ii) the Projected Revenue immediately after the occurrence of the loss or damage referred to in clause 39.3(d) of this Agreement.
- (e) **(Rebuilding to different specifications prior to the Date of Tolling Completion):** In respect of a determination by the State under clause 39.3(c) of this Agreement made prior to the Date of Tolling Completion that will:
 - (i) delay the Date of Tolling Completion; and/or
 - (ii) result in a decrease in Projected Revenue over the Term,Project Co will be entitled to payment of an amount equal to the lesser of:
 - A. the Projected Revenue had the State determined that the Relevant Infrastructure was to be repaired or rebuilt on the basis of the specifications in the PSR and the other requirements of this Agreement; and
 - B. the Base Case Projected Revenue had the State determined that the Relevant Infrastructure was to be repaired or rebuilt on the basis of the specifications in the PSR and the other requirements of this Agreement;minus
 - (iii) the Projected Revenue immediately after the State's determination under clause 39.3(c) of this Agreement that the Relevant Infrastructure is to be repaired or rebuilt on the basis of different specifications to the PSR or other requirements of this Agreement.

3.7 Compensation for adverse revenue impact on or after Tolling Completion

- (a) **(Modification on or after the Date of Tolling Completion):** Subject to section 3.7(b) of this Part A, in respect of a CCP Modification that:
 - (i) is required to be undertaken on or after the Date of Tolling Completion; and
 - (ii) has or will result in a decrease in Projected Revenue over the Term,Project Co will be entitled to payment of an amount equal to:
 - (iii) the Projected Revenue immediately before the State issued a Modification Order to Project Co in respect of the CCP Modification; minus
 - (iv) the Projected Revenue immediately after the State issued a Modification Order to Project Co in respect of the CCP Modification.
- (b) **(Latent Condition Event):** To the extent that a CCP Modification relates to a Latent Condition Event, Project Co will only be entitled to payment of an amount calculated in accordance with section 3.7(a) of this Part A if the net present value of that amount exceeds \$[not disclosed] (Indexed).
- (c) **(Rebuilding (State risk) on or after the Date of Tolling Completion):** In respect of an event under clause 39.3(d) of this Agreement which:
 - (i) occurs on or after the Date of Tolling Completion; and

- (ii) has or will result in a decrease in Projected Revenue over the Term,
Project Co will be entitled to payment of an amount equal to:
 - (iii) the Projected Revenue immediately before the occurrence of the loss or damage referred to in clause 39.3(d) of this Agreement; minus
 - (iv) the Projected Revenue immediately after the occurrence of the loss or damage referred to in clause 39.3(d) of this Agreement.
- (d) **(Rebuilding to different specifications on or after Date of Tolling Completion):** In respect of a determination by the State under clause 39.3(c) of this Agreement which:
 - (i) occurs on or after the Date of Tolling Completion; and
 - (ii) has or will result in a decrease in Projected Revenue over the Term,
Project Co will be entitled to payment of an amount equal to:
 - (iii) the Projected Revenue had the State determined that the Relevant Infrastructure was to be repaired or rebuilt on the basis of the specifications in the PSR and the other requirements of this Agreement; minus
 - (iv) the Projected Revenue immediately after the State's determination under clause 39.3(c) of this Agreement that the Relevant Infrastructure is to be repaired or rebuilt on the basis of different specifications to the PSR or other requirements of this Agreement.
- (e) **(Present values):** The amounts referred to in this section 3.7 of this Part A will be calculated using a discount rate in respect of Projected Revenue equal to the Project Discount Rate.

3.8 Adverse impact on Net Operating Cashflow in respect of Proximate State Works on or after the Date of Tolling Completion

- (a) Subject to section 3.8(b) of this Part A, in respect of Proximate State Works undertaken on or after the Date of Tolling Completion that has or will result in a decrease in Net Operating Cashflow over the Term, Project Co will be entitled to payment of an amount which restores it to the position it would be were the impact of the Proximate State Works overcome so that the Net Operating Cashflow after the State issued the relevant Proximate State Works Notice is the lower of:
 - (i) the Net Operating Cashflow immediately before the State issued the relevant Proximate State Works Notice; and
 - (ii) the Base Case Net Operating Cashflow immediately before the State issued the relevant Proximate State Works Notice.
- (b) In assessing whether there has been a decrease in Net Operating Cashflow for the purposes of section 3.8(a) of this Part A, Project Co will not be entitled to any amount attributable to a reduction of the Net Operating Cashflow arising from the impact of Transport Network Changes undertaken outside of the Maintenance Areas or Leased Area following completion of the carrying out of those Transport Network Changes, other than a reduction in the Projected Revenue arising from:

- (i) a permanent reduction in the maximum posted speed applicable in the ordinary steady state operation of the part or parts of the Freeway that are impacted by the carrying out of the Transport Network Changes; or
 - (ii) a removal or closure of a lane on a section or sections of the Freeway that is not on a temporary or short-term basis,
- as a direct result of a Transport Network Change.
- (c) The amounts referred to in this section 3.8 of this Part A will be calculated using a discount rate in respect of Net Operating Cashflow equal to the Project Discount Rate.

3.9 Positive revenue impact prior to Tolling Completion

- (a) **(Compensable Extension Events):** In respect of a Compensable Extension Event described in paragraphs (a), (b), (d), (e), (f) and (g) of the definition of Compensable Extension Event and an event that is deemed under clauses 2.20(n) or 13.7(b)(ii) of this Agreement to be a Compensable Extension Event, for which Project Co has been granted relief in accordance with this Agreement and that will necessitate a physical change to the scope of Works which will result in an increase in Projected Revenue over the Term, the State will be entitled to payment of an amount equal to [not disclosed]% of:
 - (i) the Projected Revenue immediately after the occurrence of the Compensable Extension Event; minus
 - (ii) the Projected Revenue immediately before the occurrence of the Compensable Extension Event.
- (b) **(D&C Modification):** In respect of a D&C Modification that will necessitate a physical change to the scope of Works which will result in an increase in Projected Revenue over the Term, the State will be entitled to payment of an amount equal to [not disclosed]% of:
 - (i) the Projected Revenue immediately after the State issued a Modification Order to Project Co in respect of the D&C Modification; minus
 - (ii) the Projected Revenue immediately before the State issued a Modification Order to Project Co in respect of the D&C Modification.
- (c) **(Rebuilding (State risk) prior to the Date of Tolling Completion):** In respect of an event under clause 39.3(d) of this Agreement which:
 - (i) occurs prior to the Date of Tolling Completion; and
 - (ii) has or will result in an increase in Projected Revenue over the Term,the State will be entitled to payment of an amount equal to [not disclosed]% of:
 - (iii) the Projected Revenue immediately after the occurrence of the loss or damage referred to in clause 39.3(d) of this Agreement; minus
 - (iv) the Projected Revenue immediately before the occurrence of the loss or damage referred to in clause 39.3(d) of this Agreement.

- (d) **(Rebuilding to different specifications prior to the Date of Tolling Completion):** In respect of a determination by the State under clause 39.3(c) of this Agreement which:
 - (i) is made prior to the Date of Tolling Completion; and
 - (ii) has or will result in an increase in Projected Revenue over the Term,
the State will be entitled to payment of an amount equal to [not disclosed]% of:
 - (iii) the Projected Revenue immediately after the State's determination under clause 39.3(c) of this Agreement that the Relevant Infrastructure is to be repaired or rebuilt on the basis of different specifications to the PSR or other requirements of this Agreement; minus
 - (iv) the Projected Revenue had the State determined that the Relevant Infrastructure was to be repaired or rebuilt on the basis of the specifications in the PSR and the other requirements of this Agreement.
- (e) **(Present values):** The amounts referred to in this section 3.9 of this Part A will be calculated using a discount rate in respect of Projected Revenue equal to the Project Discount Rate.

3.10 Positive revenue impact on or after Tolling Completion

- (a) **(Modification after the Date of Tolling Completion):** In respect of a CCP Modification that:
 - (i) is required to be undertaken on or after the Date of Tolling Completion; and
 - (ii) has or will result in an increase in Projected Revenue over the Term,
the State will be entitled to payment of an amount equal to [not disclosed]% of:
 - (iii) the Projected Revenue immediately after the State issued a Modification Order to Project Co in respect of the CCP Modification; minus
 - (iv) the Projected Revenue immediately before the State issued a Modification Order to Project Co in respect of the CCP Modification.
- (b) **(Rebuilding to different specifications after Date of Tolling Completion):** In respect of a determination by the State under clause 39.3(c) of this Agreement which:
 - (i) is made on or after the Date of Tolling Completion; and
 - (ii) has or will result in an increase in Projected Revenue over the Term,
the State will be entitled to payment of an amount equal to [not disclosed]% of:
 - (iii) the Projected Revenue immediately after the Relevant Infrastructure is repaired or rebuilt in accordance with the State's determination under clause 39.3(c) of this Agreement; minus
 - (iv) the Projected Revenue had the State determined that the Relevant Infrastructure was to be repaired or rebuilt on the basis of the specifications in the PSR and the other requirements of this Agreement.

- (c) **(Rebuilding (State risk) after the Date of Tolling Completion):** In respect of an event under clause 39.3(d) of this Agreement which:
- (i) occurs on or after the Date of Tolling Completion; and
 - (ii) has or will result in an increase in Projected Revenue over the Term,
the State will be entitled to payment of an amount equal to [not disclosed]% of:
 - (iii) the Projected Revenue immediately after the occurrence of the loss or damage referred to in clause 39.3(d) of this Agreement; minus
 - (iv) the Projected Revenue immediately before the occurrence of the loss or damage referred to in clause 39.3(d) of this Agreement.
- (d) **(Present values):** The amounts referred to in this section 3.10 of this Part A will be calculated using a discount rate in respect of Projected Revenue equal to the Project Discount Rate.

3.11 Payment for Modification Quotes

If clause 34.3(a) of this Agreement applies, the State must pay Project Co the third party costs calculated in accordance with this Part A up to the amount quoted by Project Co in accordance with clause 34.3(a)(ii)B of this Agreement for the preparation of the Modification Quote:

- (a) **(no State Modification Order):** if the State does not issue a Modification Order, within 20 Business Days of receiving an invoice from Project Co for such third party costs provided that the relevant Modification Quote has been prepared and submitted in accordance with this Agreement; or
- (b) **(State Modification Order):** if the State does issue a Modification Order, as part of the amount payable by the State for the Modification (including taking into account any Savings).

4. General

4.1 General principles for calculating compensation

- (a) Compensation in respect of a Change Compensation Event or Key Risk Event will be determined as follows:
 - (i) **(overriding considerations):** the overriding considerations will be that:
 - A. the State is receiving value for money; and
 - B. the compensation amount is fair and reasonable and is calculated in a manner that is transparent;
 - (ii) **(timing of payments):** all payments made in accordance with this Schedule will be made in accordance with section 4.2 of this Part A;
 - (iii) **(time value of money):**
 - A. appropriate regard must be given to the time value of money and timing of cash flows; and

- B. all cash flows must be discounted or inflated to reflect when they occur (if applicable) using, unless otherwise specified, a discount rate equal to the Project Discount Rate;
- (iv) **(open book basis):**
 - A. Project Co must:
 - 1) provide all information referred to in this Schedule on an open book basis, in accordance with section 4.1(iv)B of this Part A;
 - 2) if required by the State, make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
 - 3) allow the State to review and undertake reasonable audits to enable it to verify compliance with this section 4.1(iv) of this Part A in respect of the information referred to in section 4.1(iv)A1) of this Part A,

in order to enable the State to make an accurate assessment of actual Costs and Savings in accordance with this Schedule; and
 - B. "open book basis" will include Project Co providing a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontract, finance and other costs and Margins of Project Co and its Associates in a clear and transparent manner and other information reasonably requested by the State including reasonably available source documents required to verify such calculation;
- (v) **(no double counting):** without limiting section 4.1(b) of this Part A, no amounts will be double counted; and
- (vi) **(margins):** except as expressly provided for in section 3 of this Part A or clause 27 of this Agreement, the State will not pay or otherwise compensate Project Co (or any Associate of Project Co) for any Margin (or loss of Margin) in respect of a Change Compensation Event or Key Risk Event.
- (b) To the extent that an event constitutes a Change Compensation Event and a Key Risk Event, the redress agreed or determined under clause 27 of this Agreement will be reduced to the extent that Project Co has been paid compensation in accordance with this Schedule for that Change Compensation Event.

4.2 Form and timing of compensation

- (a) **(Form of compensation):** Subject to clause 27 of this Agreement, if a Change Compensation Event or Key Risk Event results in an amount owing from the State to Project Co, the State may elect to:
 - (i) pay such amount in accordance with sections 4.2(b), (c) and (d) of this Part A; or

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(ii) require that the parties negotiate in good faith an alternative form of redress, which may include:

- A. varying the Project Documents;
- B. varying the Term;
- C. varying the Toll Calculation Schedule; or
- D. taking such other action as the parties may agree,

provided that if the parties are unable to agree an alternative form of redress within a reasonable period of time, having regard to Project Co's Net Operating Cashflow immediately after the Change Compensation Event or Key Risk Event, the State will, without limiting its rights under clause 34 of this Agreement, pay the relevant amount owing in accordance with section 4.2(a)(i) of this Part A.

(b) **(Payment of Compensation):** If:

(i) a Change Compensation Event results in an amount owing from Project Co to the State:

- A. in accordance with section 3.1(a) of this Part A, such amount will be a debt due and payable by Project Co to the State; and
- B. in accordance with section 3.1(b) of this Part A such amount (being the **State Amount**) will be a debt due and payable by Project Co to the State on or after the Date of Tolling Completion, provided that if Project Co is not in a position to pay the State Amount and pay any amount contemplated in the Notional Cost Profile, the Notional Debt Profile or the Notional Tax Profile in the Financial Year in which the State Amount is due and payable to the State (including having regard to the relevant Change Compensation Event), Project Co's obligation to pay the State Amount will be deferred until the first date on which Project Co is able to pay the State Amount and the amount contemplated in the Notional Cost Profile, the Notional Debt Profile and the Notional Tax Profile;

(ii) a Change Compensation Event or Key Risk Event results in an amount owing from the State to Project Co and:

- A. the State has elected to pay the amount owing; and
- B. the amount owing is not financed by Project Co in accordance with section 4.2(c) of this Part A,

the State will pay such amount to Project Co:

- C. subject to sections 4.2(b)(ii)D, 4.2(b)(ii)E and 4.2(b)(ii)F of this Part A, in accordance with the payment arrangements set out in the Change Notice accepted in accordance with section 6.1(a)(ii)A of this Part A, Modification Order or as agreed or determined in accordance with clause 27.4 of this Agreement (which could include a lump sum payment, monthly payment in arrears, a series of milestone payments (or a combination

of these methods)) and, if applicable, section 4.2(d) of this Part A;

- D. in respect of Prolongation Costs, within 1 Month after the date of the receipt from Project Co of the Change Notice or in accordance with the payment arrangements set out in the Modification Order (as applicable), except to the extent that any Prolongation Costs are disputed by the State and referred for resolution in accordance with clauses 43 to 44 of this Agreement;
 - E. in respect of Financing Delay Costs, during the period from the date on which the Date of Tolling Completion would have occurred had Tolling Completion not been delayed by the relevant Change Compensation Event at the times when debt financing amounts were forecast to be paid or repaid during that period as set out in the Base Case Financial Model, and on the last date on which such Financing Delay Costs accrue (in respect of any Financing Delay Costs in the nature of interest expenses that have accrued but were not forecast to be paid at or before that time); and
 - F. in respect of any CityLink Revenue Impact, within 1 Month after the parties agree the CityLink Revenue Impact under section 3.4(b)(ii) of this Part A except to the extent that any part of a claim for CityLink Revenue Impact is referred for resolution in accordance with clauses 43 to 44 of this Agreement under section 3.4(c) of this Part A; or
- (iii) results in an amount owing from the State to Project Co that is financed by Project Co in accordance with section 4.2(c) of this Part A, the State will pay such an amount to Project Co by way of an agreed set of payments reflecting the amount and tenor of any financing costs incurred.
- (c) **(Funding):** Where the State requests Project Co to obtain funding for a Change Compensation Event or Key Risk Event, Project Co must use all reasonable endeavours to obtain such funding, including by:
- (i) using any Savings resulting from other Change Compensation Events which have resulted in amounts being available under the Finance Documents;
 - (ii) arranging for additional funding under the Finance Documents and from other sources (if permitted under the Finance Documents); and
 - (iii) arranging other funding obtained on commercial terms for Project Co by the State (without any obligation on the State to make any such arrangements and only if permitted under the Finance Documents and on terms reasonably acceptable to Project Co).

Where Project Co, having used all reasonable endeavours, is unable to obtain funding that is on terms which are satisfactory to the State, the State will, without limiting its rights under clause 34 of this Agreement, pay the relevant amounts in accordance with section 4.2(b) of this Part A.

- (d) **(Lump Sum Payments):** Without limiting section 4.2(b)(ii)C of this Part A, if the State's payment to Project Co of an amount calculated in accordance with this Part

A in respect of a CCP Modification will be a lump sum payment, the State will pay such amount to Project Co when the following requirements have been satisfied:

- (i) in respect of D&C Modifications, upon certification by the Independent Reviewer and Environmental Auditor that the CCP Modification has been completed in accordance with the relevant Modification Order and this Agreement; and
- (ii) in respect of Modifications occurring or required to be completed on or after the Date of Tolling Completion:
 - A. if the State requires certification of any works required as a result of the CCP Modification by a suitably qualified independent reviewer, upon such certification that the CCP Modification has been completed in accordance with the relevant Modification Order and this Agreement; or
 - B. otherwise as a debt due and payable,

and within 60 days after receiving a valid tax invoice from Project Co for the amount calculated in accordance with this Part A.

4.3 Modifications and Streamlined Modification Proposals

- (a) **(Application to Modifications):** Sections 5 and 6 of this Part A do not apply to Modifications (including where arising as a result of a Streamlined Modification Proposal).
- (b) **(Process for Modifications):** The process for dealing with Modifications, including the issue of Modification Requests, Modification Quotes, Modification Proposals and Modification Orders, is set out in clause 34 of this Agreement.
- (c) **(Obligations for Modifications):** Subject to section 4.3(f) of this Part A, any Modification Request, Modification Quote, Modification Proposal or Modification Order issued must comply with the applicable requirements of clause 34 of this Agreement and be prepared in accordance with and comply with Part B of this Schedule, and references in Part B of this Schedule to a "Change Notice" will be deemed to refer to each Modification Request, Modification Quote, Modification Proposal or Modification Order, as the case may be.
- (d) **(Tender process in respect of a Modification):** Without limiting the State's rights under this Agreement (including where Project Co fails to submit a Modification Quote in accordance with this Agreement), where:
 - (i) Project Co has not submitted a Modification Quote as required by and in accordance with clause 34 of this Agreement; or
 - (ii) the State responds to a Modification Quote in accordance with clause 34.4(b)(iv) of this Agreement,the State may request that Project Co carry out a tender process in respect of a Modification in accordance with section 7 of this Part A.
- (e) **(Undertake tender process):** Upon receipt of a request under section 4.3(d) of this Part A, Project Co must carry out a tender process in accordance with section 7 of this Part A.

- (f) **(Modification arising from Streamlined Modification Proposal):** In respect of any Modification arising as a result of a Streamlined Modification Proposal:
- (i) clause 34.14 of this Agreement will apply;
 - (ii) any amounts claimed or payable in respect of a Modification as a result of a Streamlined Modification Proposal must be calculated in accordance with this Schedule; and
 - (iii) Project Co must promptly provide such information as is reasonably requested by the State Representative to support the amount claimed to be payable for the Modification as a result of a Streamlined Modification Proposal; but
 - (iv) a Streamlined Modification Proposal (or response to it) is not otherwise required to comply with Part B of this Schedule.

5. Change Notice

5.1 Change Notice and State Response

- (a) **(Change Notice):** Any Change Notice submitted by Project Co must be prepared in accordance with and comply with Part B of this Schedule.
- (b) **(Requirements for Change Compensation Event):** If an event or change, other than a Key Risk Event, is expressed in this Agreement to be subject to, or an amount is to be calculated in accordance with, this Schedule, then, as a condition precedent to making a claim in respect of such a Change Compensation Event, Project Co must, subject to sections 3.4 and 4.3 of this Part A:
- (i) prepare and submit to the State Representative or Reviewing Party (as defined in the Review Procedures) specified in this Agreement a Change Notice within the time specified in this Agreement; or
 - (ii) if no time is specified in this Agreement, within 20 Business Days after the date on which Project Co first became aware of the Change Compensation Event.
- (c) **(Right of rejection):** Without limiting section 6.2 of this Part A, the State Representative or Reviewing Party (as defined in the Review Procedures) is entitled to reject a Change Notice where the Change Notice fails to meet the requirements of this Schedule and this Agreement.
- (d) **(Updated Change Notice):** Where:
- (i) a Change Notice is submitted;
 - (ii) the Change Compensation Event continues beyond the issue of the initial Change Notice; and
 - (iii) there is no obligation otherwise in this Agreement to submit an updated Change Notice,

Project Co must prepare and submit to the State an updated Change Notice every 20 Business Days (or such longer period as reasonably determined by the State, having regard to the extent and nature of the Change Compensation Event and its effects) for the period of the Change Compensation Event or the consequences of such event where either continue beyond the issue of the initial Change Notice.

5.2 State may request a Change Notice

- (a) **(Request):** Without limiting the State's rights under this Agreement (including where Project Co has failed to submit a Change Notice in accordance with this Agreement), where:
- (i) the State believes that a Change Compensation Event has occurred; and
 - (ii) Project Co has not submitted a Change Notice as required by and in accordance with section 5.1 of this Part A,
- the State may:
- (iii) in a notice entitled "Change Notice Request", request that Project Co prepare and submit a Change Notice in respect of the particular Change Compensation Event; or
 - (iv) subject to the terms of section 7 of this Part A, request Project Co to carry out a tender process in accordance with section 7 of this Part A,
- (Change Notice Request).**
- (b) **(Submission by Project Co):** Upon receipt of a Change Notice Request, Project Co must prepare and submit a Change Notice within 20 Business Days from receipt of the Change Notice Request in accordance with section 5.1(d) of this Part A.
- (c) **(Requirement for Tender):** Upon receipt of a request under section 5.2(a)(iv) of this Part A, Project Co must carry out a tender process in accordance with section 7 of this Part A.

6. Change Response

6.1 State to issue a Change Response

- (a) Unless otherwise expressly stated in this Agreement, within 20 Business Days of receipt of a Change Notice, or such other period as the State reasonably requires, the State Representative:
- (i) **(request for further information):** may request from Project Co any further information that the State Representative reasonably requires in order to assess Project Co's claim in accordance with this Schedule; and
 - (ii) **(Change Response notice):** must advise Project Co, in a notice entitled "Change Response", that the State:
 - A. accepts the Change Notice, in which case Project Co will, subject to Project Co complying with the other requirements of this Agreement (including this Schedule), be entitled to compensation in accordance with section 3 of this Part A;
 - B. does not accept the Change Notice (and the reasons for this) and that it requires Project Co to:
 - 1) subject to the terms of section 7 of this Part A, carry out a tender process in accordance with section 7 of this Part A;

2) have any amount that is not a fixed or specified amount under this Part A determined in accordance with section 8 of this Part A; or

3) amend any aspect of the Change Notice, in accordance with the Change Response; or

C. rejects the Change Notice and the reasons for this,

(Change Response).

(b) No failure of the State Representative to review a Change Notice or to issue a Change Response in accordance with this Agreement (including within any time period specified in this Agreement) will entitle Project Co to the relief or compensation set out in the Change Notice or put time at large or deprive the State of the power to grant the relief sought or such other relief as appropriate (including the power to extend time).

6.2 Options where the Change Notice is not accepted

If the State Representative does not accept or rejects a Change Notice under sections 6.1(a)(ii)B or 6.1(a)(ii)C of this Part A, Project Co must:

(a) submit an updated Change Notice to the State responding to the Change Response; or

(b) notify the State of any specific matters which it disputes in respect of the Change Response,

within 20 Business Days (or such other period as agreed with the State) of Project Co's receipt of the Change Response.

6.3 Dispute resolution

Any Disputes about the Change Response may be referred by either party for resolution in accordance with clauses 43 to 44 of this Agreement.

7. Tender process

(a) **(Conduct of the tender process):** Subject to section 7(g) of this Part A, if Project Co is required to carry out a tender process under sections 4.3(d), 5.2(c) or 6.1(a)(ii)B.1) of this Part A, Project Co must:

(i) obtain three separate quotes (or such lesser number of quotes as directed by the State) from experienced, independent and capable contractors which are acceptable to the State (acting reasonably) to carry out the work in respect of the relevant Change Compensation Event; and

(ii) conduct the tender process in accordance with Best Industry Practice.

(b) **(Project Co to select):** Project Co will be responsible for selecting a subcontractor from this process in consultation with (and subject to the prior agreement of) the State.

(c) **(Tender process material):** Project Co must permit the State to review all materials that are submitted in the tender process and provide any other

information that the State reasonably requires (including such consents as are required by Law to carry out any Probity Investigations).

- (d) **(Selection criteria):** Project Co must demonstrate, to the reasonable satisfaction of the State, that the subcontractor it intends to select is the best choice having regard to:
- (i) the price quoted in the prevailing market conditions;
 - (ii) the experience and capability of that subcontractor in the context of the relevant Change Compensation Event; and
 - (iii) the ability of the subcontractor to carry out the work in respect of the Change Compensation Event in the manner required by this Agreement.

The subcontractor must meet the requirements in respect of Subcontractors set out in this Agreement.

- (e) **(Effect of tender process):** Subject to section 7(f) of this Part A, Project Co must, within 10 Business Days of the outcome of the tender process, amend its Change Notice and submit it to the State, or where the State has exercised its right under section 5.2(a)(iv) of this Part A, submit a Change Notice which takes full account of the outcome of the tender process.

- (f) **(State not satisfied):** If, following the conduct of the tender process, the State is not reasonably satisfied as to the matters described in section 7(d) of this Part A, or that the tender process has not been conducted in accordance with Best Industry Practice, it may:

- (i) direct Project Co not to accept any tender;
- (ii) otherwise instruct Project Co not to proceed with the work in respect of the relevant Change Compensation Event;
- (iii) proceed to implement the work that would otherwise have been performed in respect of the relevant Change Compensation Event itself, through subcontractors selected by it; or
- (iv) instruct Project Co to proceed with the work in respect of the relevant Change Compensation Event, but on another basis under this Schedule.

- (g) **(No tender):** The State cannot require Project Co to conduct a tender process in accordance with this section 7 of this Part A in respect of:

- (i) the Tolling Works;
- (ii) the Tolling Back Office System;
- (iii) the OMCS;
- (iv) the essential fire and life safety systems within the Tunnel;
- (v) the RSS;
- (vi) any proprietary software system; and
- (vii) any other system, sub-system or item of technology which the parties agree is part of an integrated end-to-end solution for operating,

maintaining or tolling the West Gate Tunnel (acting reasonably and having regard to the risk that utilising a contractor procured through tender could result in a loss of functionality of the relevant system, sub-system or item of technology).

8. Dispute resolution

- (a) If either party does not accept an amount as calculated in any Change Notice, such amount not being a fixed or specified amount under this Part A, either party may refer the matter for resolution in accordance with clauses 43 to 44 of this Agreement, in which case:
- (i) **(Base Costs)**: the disputed Base Costs calculated in item C of section 3.1 of this Part A shall be the lower of:
 - A. the amount claimed by Project Co in accordance with this Schedule; and
 - B. the amount determined in accordance with clauses 43 to 44 of this Agreement;
 - (ii) **(Savings)**: the disputed Savings calculated in item D of section 3.1 of this Part A shall be the higher of:
 - A. the amount claimed by Project Co in accordance with this Schedule; and
 - B. the amount determined in accordance with clauses 43 to 44 of this Agreement;
 - (iii) **(adverse revenue and cashflows impact)**: the disputed adverse revenue or cashflow impacts (as applicable) calculated in sections 3.6, 3.7 and 3.8 of this Part A shall be the lower of:
 - A. the amount claimed by Project Co in accordance with this Schedule; and
 - B. the amount determined in accordance with clauses 43 to 44 of this Agreement; and
 - (iv) **(positive revenue and cashflows impact)**: the disputed positive revenue or cashflow impacts (as applicable) calculated in sections 3.9 and 3.10 of this Part A shall be the higher of:
 - A. the amount claimed by Project Co in accordance with this Schedule; and
 - B. the amount determined in accordance with clauses 43 to 44 of this Agreement.
- (b) If the parties do not reach agreement on the appropriate form of redress under section 4.2(a)(ii) of this Part A within 20 Business Days of the acceptance by the State of a Change Notice, either the State or Project Co may refer the matter directly for resolution in accordance with clauses 43 to 44 of this Agreement. In making the determination, the expert or arbitrator must ensure, and the parties must require that, his or her determination as to any redress does not involve a redress other than those set out in section 4.2(a) of this Part A without the parties' agreement.

PART B - Change Notice Requirements

1. Requirements for Change Notice

A Change Notice prepared by Project Co in respect of a Change Compensation Event must:

- (a) **(Change Notice contents)**: contain:
 - (i) the information, to the extent that it is relevant to the particular Change Compensation Event, outlined in this Part B; and
 - (ii) any additional information required under this Agreement in respect of a particular Change Compensation Event;
- (b) **(true and correct)**: be warranted by the Project Co Representative as being true and correct to the best of his or her knowledge;
- (c) **(signed)**: be signed by the Project Co Representative; and
- (d) **(attachments)**: attach copies of any required changes to the Project Plans and O&M Manuals.

2. Change Compensation Event

Project Co must set out detailed particulars of the occurrence and impact of the relevant Change Compensation Event.

3. Mitigating factors

Project Co must describe the actions Project Co and any of its Associates has taken (and any further action Project Co proposes to take in the future) to:

- (a) **(Project Co to mitigate, minimise or avoid)**: mitigate, minimise or avoid the adverse effects, costs, consequences or duration of the Change Compensation Event (including by putting in place temporary measures reasonably required by the State); and
- (b) **(effects and costs arising from the Change Compensation Event)**: take advantage of any positive or beneficial effects of the Change Compensation Event and maximise any reduction in costs arising from the Change Compensation Event.

4. Effects

Project Co must provide details, where applicable, and to the extent known or able to be predicted, of the effects of the Change Compensation Event on:

- (a) **(effect on quality)**: the workmanship, quality, appearance or durability of any part of the West Gate Tunnel;
- (b) **(effect on design and construction)**: the design, construction or commissioning of the Works;
- (c) **(effect on management and maintenance)**: the management and maintenance of the West Gate Tunnel or the Maintained Off-Freeway Facilities;

- (d) **(effect on use of West Gate Tunnel)**: the use of the West Gate Tunnel by Users for the safe, efficient and continuous passage of vehicles;
- (e) **(effect on ability to meet FFP Warranty)**: the West Gate Tunnel meeting, or the ability to maintain the West Gate Tunnel so that it meets, the FFP Warranty;
- (f) **(effect on Project Co's ability to carry out O&M Activities)**: the carrying out of the O&M Activities and Project Co's ability to carry out O&M Activities in accordance with the performance standards in the PSR;
- (g) **(effect on the warranties given by Project Co)**: the warranties given by Project Co in this Agreement (and in particular under clause 45.2 of this Agreement);
- (h) **(effect on this Agreement)**: any relevant part of this Agreement (including Schedules and Exhibits);
- (i) **(effect on Dates for Completion)**: the time consequences of the Change Compensation Event (including any impact on any Date for West Gate Tunnel Completion, Date for Tolling Completion, Date for Close-Out and the time during which Project Co will be unable to carry out any other obligations due to the relevant Change Compensation Event);
- (j) **(effect on a claimed revised Dates for Completion)**: any claimed revised Date for West Gate Tunnel Completion, Date for Tolling Completion and Date for Close-out;
- (k) **(financial impacts)**: revenues, costs and projected operating cashflows;
- (l) **(traffic impacts)**: traffic forecasts and projections for the West Gate Tunnel; and
- (m) **(effect on Project Co's performance of any other obligations)**: the performance of any other obligations of Project Co under the Project Documents.

5. Cost and Saving Implications

All Change Notices must fully document all estimated Costs and Savings on an open book basis and otherwise comply with section 3 of Part A, including:

- (a) **(amounts payable by or to Project Co)**: all amounts payable by or to Project Co, and each component of any payment calculation, for the proposed Change Compensation Event in accordance with this Schedule (in the form of and including all information required in accordance with this Schedule);
- (b) **(capital expenditure)**: whether or not any required capital expenditure can be accommodated within the next planned refurbishment of the West Gate Tunnel;
- (c) **(cost of Insurance)**: the cost of Insurances; and
- (d) **(proposed form and timing for compensation)**: the proposed form and timing for compensation in accordance with section 4.2 of Part A.

6. Time Implications

Without limiting clause 23.6 or 34.3 of this Agreement, all Change Notices in which Project Co claims an extension of time to a Date for West Gate Tunnel Completion, Date for Tolling Completion or Date for Close-Out must:

- (a) set out detailed particulars of the delay or likely delay and the occurrence causing the delay;
- (b) state the total number of days extension claimed together with the basis for calculating the total number of days claimed including a detailed critical path programming analysis which demonstrates how the relevant event has delayed Completion; and
- (c) include information reasonably required by the State Representative to demonstrate that Project Co has satisfied the conditions relevant to its extension of time claim as referred to in clauses 23.7 and 34.3 of this Agreement.

7. Warranty by Project Co

All Change Notices must:

- (a) **(Warranty)**: contain a warranty by Project Co in respect of any CCP Modification the subject of a Change Notice that the CCP Modification when implemented will:
 - (i) enable the West Gate Tunnel to meet, and continue to satisfy throughout the Term, the FFP Warranty and otherwise meet the requirements of this Agreement except to the extent that it is agreed or determined that the proposed CCP Modification will have an adverse effect on the matters referred to in section 4 of this Part B; and
 - (ii) enable Project Co at all times during the O&M Phase to carry out the O&M Activities in accordance with the PSR and to comply with the terms of this Agreement, except to the extent that it is agreed or determined that the proposed CCP Modification will have an adverse effect on the matters referred to in section 4 of this Part B,

in each case, without limiting the warranties given by Project Co in other clauses of this Agreement, except to the extent that it is agreed between the parties or determined in accordance with this Agreement that the proposed CCP Modification will have an adverse effect on the matters referred to in section 4 of this Part B; and

- (b) **(Bona fide)**: contain a warranty by Project Co that it is satisfied that the Claim the subject of the Change Notice is bona fide and the relief sought is an accurate reflection of Project Co's entitlement under this Agreement to the extent it is able to be known at the time.

Annexure 1 – Maximum Daily Rate for D&C Subcontractor Prolongation Costs

| Item | Category of Works | Category of Works | Entitlement Period | | Maximum Daily Rate (ex GST) |
|------|-------------------------------|-------------------|---|---|-----------------------------|
| | | | Period Start | Period End | |
| 1. | Support Office | PW-ANX1-ITEM01 | Financial Close | Date of OMCS Completion (as defined in the D&C Subcontract) | [\$not disclosed] |
| 2. | | PW-ANX1-ITEM02 | From the Date of OMCS Completion (as defined in the D&C Subcontract) | Date of West Gate Tunnel Completion | [\$not disclosed] |
| 3. | Design Office | PW-ANX1-ITEM03 | Financial Close | The date which is 18 months after Financial Close | [\$not disclosed] |
| 4. | Construction Support Services | PW-ANX1-ITEM04 | Date which is 18 months after Financial Close | Completion of Westgate civil works | [\$not disclosed] |
| 5. | Tunnel | PW-ANX1-ITEM05 | Date of commencement of the Works on the Construction Site to establish portals and/or relocate sewer | Date of commencement of tunnel boring machine assembly | [\$not disclosed] |
| 6. | | PW-ANX1-ITEM06 | From the date of commencement of tunnel boring machine assembly | Date of commencement of tunnelling | [\$not disclosed] |
| 7. | | PW-ANX1-ITEM07 | From the date of commencement of tunnelling | Date of completion of tunnelling | [\$not disclosed] |
| 8. | | PW-ANX1-ITEM08 | From the date of completion of tunnelling | Date of completion of tunnel fit out works | [\$not disclosed] |
| 9. | | PW-ANX1-ITEM09 | From the date of completion of tunnel fit out works | Date of completion of tunnel commissioning | [\$not disclosed] |

West Gate Tunnel
 Project Agreement
 Schedule 4 - Change Compensation Principles

| | | | | | |
|-----|------------------------|------------------------|---|---|-------------------|
| 10. | East Side Works | PW-ANX1-ITEM010 | Date of commencement of the Works on the Construction Site in the east area | Completion of civil works in the east area | [\$not disclosed] |
| 11. | Westgate | PW-ANX1-ITEM011 | Date of commencement of the Works on the Construction Site in the Westgate area | Completion of civil works in the Westgate area | [\$not disclosed] |
| 12. | Project wide | PW-ANX1-ITEM12 | Date of commencement of the building works on the Construction Site | Completion of the building works on the Construction Site | [\$not disclosed] |

Schedule 5 - Termination Payments

1. Definitions

Unless otherwise expressly defined, expressions used in this Schedule have the meanings given to them in or for the purposes of this Agreement:

Additional State Contribution Schedule End Date means the date on which sections 3, 4 and 5 of Part B of the Additional State Contribution Schedule cease to apply in accordance with section 1(a)(ii) of Part B of the Additional State Contribution Schedule.

Actual Subscription Amounts means each of the Actual Completion Subscription Amount, the Actual Initial Bullet Subscription Amount and the Actual Final Bullet Subscription Amount (each as defined in the Additional State Contribution Schedule).

B Class Share has the meaning given to that term in the NewCo Constitution.

CLUT Works Loan has the meaning given in the CLUT Works Loan Agreement.

Commitment means, in respect of the FS2 Tranche or FS3 Tranche, the "Commitment" under and as defined in the NewCo Loan Facility Agreement (prior to any cancellation or reduction of that Commitment), being the amount set out in the worksheet entitled 'Wdef' in the Base Case Financial Model as at Financial Close for that tranche, as increased or decreased with the consent of the State or as otherwise amended with the agreement of the parties to the NewCo Loan Facility Agreement, excluding any increases representing capitalised interest.

Completion State Contribution has the meaning given to that term in the Additional State Contribution Schedule.

Concession Enhancement Purchase Amount has the meaning given in the Concession Enhancement Payment Deed.

Concession Extension Purchase Amount has the meaning given in the Concession Enhancement Payment Deed.

Cost to Complete means the forecast reasonable cost for the State (or its nominees or contractors) to carry out the Works and achieve West Gate Tunnel Completion and State Tolling Completion in an efficient manner.

Early Termination Event means a termination of this Agreement in accordance with clause 39.6(b) or 42.5 of this Agreement.

ETE Termination Concession Enhancement Compensation Amount has the meaning given in the CityLink Concession Deed (as amended as contemplated in the CityLink Option Deed).

Final Bullet State Contribution has the meaning given to that term in the Additional State Contribution Schedule.

Final Bullet State Contribution Date has the meaning given to that term in the Additional State Contribution Schedule.

FM Project Equity means:

- (a) if the Expiry Date occurs prior to the Date of Tolling Completion, the lesser of [not disclosed]% of:

- (i) the Total WGT Co Equity Contribution Amount under and as defined in the Equity Subscription Deed; and
 - (ii) the aggregate of the WGT Co Equity Contributions made prior to the Expiry Date; and
- (b) if the Expiry Date occurs on or after the Date of Tolling Completion, the amount set out in the worksheet titled "Wdef" of the Base Case Financial Model for the period in which the Expiry Date occurs.

FS1 Committed Equity Return is the rate of return as set out in the line item 'FS1 Committed Equity Return' in the worksheet "Wdef" in the Base Case Financial Model.

FS2 Committed Equity Return is the rate of return as set out in the line item 'FS2 Committed Equity Return' in the worksheet "Wdef" in the Base Case Financial Model.

FS2 Tranche means the FS2 Tranche as defined under the NewCo Loan Facility Agreement.

FS2 Tranche Outstanding Moneys means at any time the aggregate of all Principal Outstanding under and as defined in the NewCo Loan Facility Agreement in respect of the FS2 Tranche at that time, but excluding actual or contingent amounts:

- (a) created or increased as a consequence of a breach of the NewCo Loan Facility Agreement (other than by the State);
- (b) which are as a direct result of payments by Project Co to the D&C Subcontractor as a result of a Construction Extension Event (as defined under the D&C Subcontract) or a Modification (as defined under the D&C Subcontract) directed by Project Co to the extent not arising as a result of a Modification directed under this Agreement;
- (c) to the extent that they have been used to fund project management costs and pre-operation and maintenance costs which are in the aggregate in excess of [not disclosed]% of the amounts attributed to the project management costs and pre-operation and maintenance costs as set out in worksheet "Wdef" of the Base Case Financial Model to that time, less any compensation received or payable from the State or the D&C Subcontractor in respect of those costs;
- (d) to the extent that they have been used to fund the costs of D&C Activities undertaken by OpCo (and are not costs described in paragraph (c) above) and are in the aggregate in excess of the amounts attributed to those activities as set out in worksheet "Wdef" of the Base Case Financial Model, less any compensation received or payable from the State in respect of those costs; or
- (e) that represent amounts of capitalised interest that have become or have been deemed to constitute a Funding Portion or Principal Outstanding (each under and as defined in the NewCo Loan Facility Agreement).

FS3 Tranche means the FS3 Tranche as defined under the NewCo Loan Facility Agreement.

FS3 Tranche Outstanding Moneys means at any time the aggregate of all Principal Outstanding under and as defined in the NewCo Loan Facility Agreement in respect of the FS3 Tranche at that time, but excluding actual or contingent amounts:

- (a) created or increased as a consequence of the NewCo Loan Facility Agreement (other than by the State);
- (b) which are as a direct result of payments by Project Co to the D&C Subcontractor as a result of a Construction Extension Event (as defined under the D&C Subcontract) or a

Modification (as defined under the D&C Subcontract) directed by Project Co to the extent not arising as a result of a Modification directed under this Agreement;

- (c) to the extent that they have been used to fund project management costs and pre-operation and maintenance costs which are in the aggregate in excess of [not disclosed]% of the amounts attributed to the project management costs and pre-operation and maintenance costs as set out in worksheet "Wdef" of the Base Case Financial Model to that time, less any compensation received or payable from the State or the D&C Subcontractor in respect of those costs;
- (d) to the extent that they have been used to fund the costs of D&C Activities undertaken by OpCo (and are not costs described in paragraph (c) above) and are in the aggregate in excess of the amounts attributed to those activities as set out in worksheet "Wdef" of the Base Case Financial Model, less any compensation received or payable from the State in respect of those costs; or
- (e) that represent amounts of capitalised interest that have become or have been deemed to constitute a Funding Portion or Principal Outstanding (each under and as defined in the NewCo Loan Facility Agreement).

Independent Expert means an independent expert appointed under section 2.

Initial Bullet State Contribution has the meaning given to that term in the Additional State Contribution Schedule.

NewCo Constitution means the constitution of NewCo.

Progressive State Contributions has the meaning given to that term in the Additional State Contribution Schedule.

Project Debt means, as at the Expiry Date, the lesser of:

- (a) the aggregate indebtedness that Project Co is at the Expiry Date actually or contingently liable to pay to or for account of any person under the Finance Documents other than the NewCo Loan Facility Agreement; and
- (b) the amount identified in the Base Case Financial Model as Project Debt for the period in which the Expiry Date occurs.

Project Equity means:

- (a) if the Expiry Date occurs prior to the Date of Tolling Completion, the lesser of:
 - (i) the amount identified in the Base Case Financial Model as Project Equity at that time; and
 - (ii) the aggregate of the WGT Co Equity Contributions made prior to the Expiry Date (**Aggregated Equity Contributions**), plus an amount required to provide the FS1 Committed Equity Return calculated from Financial Close to the Expiry Date on such Aggregated Equity Contributions; and
- (b) if the Expiry Date occurs on or after the Date of Tolling Completion, the amount set out in the worksheet titled "Wdef" of the Base Case Financial Model for the period in which the Expiry Date occurs.

Project Return means the forecast pre-financing, pre-tax project nominal internal rate of return for the Project as set out in the line item 'Project Return' in the worksheet "Wdef" of the Base Case Financial Model as at the date of this Agreement.

PSA Debt means the lower of:

- (a) the aggregate of:
- (i) an amount equal to all advances constituting the Principal Outstanding owing by Project Co under and as defined in the WGT Co Loan Facility Agreement (but excluding any amounts that represent amounts of capitalised interest that have become or have been deemed to constitute a Funding Portion or Principal Outstanding (each under and as defined in the WGT Co Loan Facility Agreement));
 - (ii) an amount equal to [not disclosed]% of each advance constituting the FS2 Tranche Outstanding Moneys (prior to any subscription for B Class Shares by the State under the State Equity Subscription Deed) less an amount equal to [not disclosed]% of any Progressive State Contributions paid by the State under the Additional State Contribution Schedule; and
 - (iii) an amount equal to [not disclosed]% of each advance constituting the FS3 Tranche Outstanding Moneys (prior to any subscription for B Class Shares by the State under the State Equity Subscription Deed),
- in each case as at the Expiry Date, plus an amount required to provide a return on such aggregate amount equal to the Project Return, calculated from the time at which each of the advances referred to in paragraphs (i), (ii) and (iii) above was made to the Expiry Date, and in the case of paragraph (ii), calculated on the basis that the Progressive State Contributions to be deducted under that paragraph will be taken to be deducted from advances made in the period in which they are received or made (as applicable) such that the return is calculated on the net amount at any time; and
- (b) the amount specified in worksheet "Wdef" of the Base Case Financial Model as Forecast PSA Debt for the period in which the Expiry Date occurs.

PSA Equity means the aggregate of:

- (a) the aggregate of:
- (i) an amount equal to the aggregate WGT Co Equity Contributions;
 - (ii) an amount equal to [not disclosed]% of the FS2 Tranche Outstanding Moneys (prior to any subscription for B Class Shares by the State under the State Equity Subscription Deed); and
 - (iii) an amount equal to [not disclosed]% of the FS3 Tranche Outstanding Moneys (prior to any subscription for B Class Shares by the State under the State Equity Subscription Deed),
- in each case as at the Expiry Date,
- (b) plus an amount required to provide a return equal to the Project Return calculated from the date of Financial Close to the date which is 3 months after the Expiry Date on the aggregate of:
- (i) the Total WGT Co Equity Contribution Amount as defined in the Equity Subscription Deed;
 - (ii) an amount equal to [not disclosed]% of the Commitment in respect of the FS2 Tranche; and

- (iii) an amount equal to [not disclosed]% of the Commitment in respect of the FS3 Tranche,
- (c) less an amount equal to [not disclosed]% of the present value (escalated at the Project Return to the date which is 3 months after the Expiry Date) of any Progressive State Contributions paid by the State, as at the Expiry Date, under the Additional State Contribution Schedule.

State Tolling Completion means delivery and commissioning of a tolling system for the State or its nominee, which functions and performs in the manner that the PSR requires the Tolling System (and all components of it) to function and perform, and which otherwise meets the requirements for the 'Standalone Tolling System' (as defined in the Separation Principles) that Project Co would have been required to implement for the State or its nominee under clause 28 of this Agreement and the relevant Separation Plan (including following the performance of the Integration Services) in the case of Single Asset Handover (WGT), and is licensed to the State or its nominee on the same basis as the Tolling System is required to be licensed to the State or its nominee under clause 52 of this Agreement (including as amended by clause 52.8 and Schedule 33 of this Agreement).

State Loan has the meaning given in the State Works Loan Agreement.

State Works Price has the meaning given in the D&C Subcontract.

SW Loan has the meaning given in the State Works Loan Agreement.

Trustee Works Price has the meaning given in the D&C Subcontract.

WGT Co Equity Contribution has the meaning given in the Equity Subscription Deed.

WGT Enhancement ESEP Project Debt has the meaning given in the ESEP Deed.

WGT Enhancement Project Debt has the meaning given in the CityLink Concession Deed.

WGT Reserve Tranche has the meaning given in the CityLink Concession Deed.

WGT Tolling Enhancements has the meaning given in the CityLink Concession Deed.

2. Independent Expert

- (a) **(Calculation of relevant Termination Payment):** If this Agreement is terminated and an Independent Expert is required to administer this Schedule, the parties will appoint an Independent Expert to act as an expert calculator of the relevant Termination Payment within 7 Business Days of the Expiry Date, and the following provisions of clause 43 of this Agreement will apply:
 - (i) clause 43.4 of this Agreement, as if:
 - A. the reference in paragraph (a) to "*(i) the date on which the parties agree to refer a Dispute to an expert for determination under clause 43.3; or (ii) the notice issued under clause 22.1(e)(iii) or 23.15*" were a reference to the time referred to in paragraph (a) of this section 2;
 - B. the reference in paragraph (b) to "*determine a Dispute*" were a reference to "*calculate a Termination Payment*" and the reference to "*the party that gave the notice under clause 22.1(e)(iii), 23.15 or 43.2(a)*" were a reference to "*the State*";

- C. paragraph (c) required both parties to procure the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 43.4(a) of this Agreement;
 - D. the reference in paragraph (d) to "*determine a Dispute*" were a reference to "*calculate a Termination Payment*" and the reference to the "*matters in dispute*" were a reference to the "*matters relevant to that calculation*"; and
 - E. the reference in paragraph (g) to "*the terms of the Expert Determination Agreement*" were a reference to "*subject to section 2 of the Termination Payments Schedule, the terms of the Expert Determination Agreement*";
- (ii) clause 43.6 of this Agreement; and
 - (iii) clause 43.7(a) of this Agreement, as if the reference to "*any person who is party to the Dispute*" were a reference to "*the parties*".
- (b) **(Independent Expert to consider):** In calculating a Termination Payment, the Independent Expert may have regard to submissions and information provided by the parties, but must have regard to the matters set out in this Schedule and calculate the Termination Payment as an expert calculator.
 - (c) **(Request for further information):** If the Independent Expert decides that further information is required, the Independent Expert may call for further submissions, documents or information from either or both parties and the Independent Expert must provide any information received from one party to the other party.
 - (d) **(Conduct of conferences by Independent Expert):** The Independent Expert may call and conduct one or more conferences between the parties as the Independent Expert sees fit, but must give the parties reasonable notice of the matters to be addressed at any such conference.
 - (e) **(Legal Representation of parties at conference):** The parties may be legally represented at any conference under this section 2.
 - (f) **(Conferences to be held in private):** All conferences under this section 2 must be held in private.
 - (g) **(Independent Expert may visit):** The Independent Expert may, if he or she considers it necessary, visit the Site, the Works, or the West Gate Tunnel (as the case may be), and the parties must facilitate the Independent Expert's access to any of those areas.
 - (h) **(Timing of determination by the Independent Expert):** The Independent Expert must make his or her determination in relation to the calculation of the Termination Payment:
 - (i) within 20 Business Days of the last of the steps set out in paragraphs (c) to (g); or
 - (ii) within 30 Business Days of the date of his or her appointment,whichever is the earliest. If the Independent Expert fails to make a determination within this time, either party may refer the matter to dispute resolution in accordance with clauses 43 to 44 of this Agreement.

- (i) **(Independent Expert to act as expert):** The Independent Expert will act as an expert and not an arbitrator and may make a decision from his or her own knowledge and expertise.
- (j) **(Cost of Independent Expert to be borne by State):** The cost of the Independent Expert will be borne by the State, but without limiting the State's right to add or deduct (as applicable) such costs in calculating any Termination Payment.

3. Termination for Default Termination Event

If the State terminates this Agreement due to the occurrence of, or during the subsistence of, a Default Termination Event (whether any other right of termination then applies but subject to part 5 below), and such Termination for a Default Termination Event occurs before the Date of Tolling Completion, the Default Termination Payment will be calculated as follows:

$$TP = A - B - C - D + E + F + G - H + I$$

where:

TP = the Default Termination Payment;

A = the Cost to Complete as at the Expiry Date determined by the Independent Expert.

In determining item A, the Independent Expert must:

- (i) assume that the Project Activities are carried out in accordance with, and to the standards set out in, the PSR (as at the Expiry Date) and in accordance with this Agreement (as at the Expiry Date); and
- (ii) take into account:
 - A. the reasonable costs (if any), and their timing, which are required to be incurred by the State to complete the Works in accordance with this Agreement and to achieve West Gate Tunnel Completion and State Tolling Completion;
 - B. any reasonable costs for the establishment of a new "Project Co" (if any), and their timing, required to be incurred to enable the establishment of that nominee to operate and toll the Works on State Tolling Completion to the standards set out in, the PSR (as at the Expiry Date) and in accordance with this Agreement (as at the Expiry Date); and
 - C. where:
 - 1) the State or its nominee assumes the benefit of D&C Subcontract by way of novation; or
 - 2) the D&C Subcontractor has not caused the Default Termination Event or the Major Default giving rise to the Default Termination Event and the State has no reasonable grounds for not assuming, or enabling the State's nominee to assume, the benefit of the D&C Subcontract by way of novation,

the amount payable to the D&C Subcontractor under the D&C Subcontract to achieve West Gate Tunnel Completion at the Expiry Date;

- B =** the net present value (as at the Expiry Date) of the forecasted net operating cashflows of the Project from the revised forecast date to achieve State Tolling Completion (as determined by the Independent Expert) to the Final Expiry Date, assuming that the Project Legislation had been enacted in the same form as the Project Bill (as defined in the Adjustment Events Schedule) prior to State Tolling Completion;
- C =** the amount of any remaining:
- (i) State Works Price not yet paid at the Expiry Date as set out in the D&C Subcontract; and
 - (ii) State Costs not yet paid at the Expiry Date as set out in the Base Case Financial Model,
- plus any amount owing by the State in respect of an SW Loan under the State Works Loan Agreement at the Expiry Date or less any amount owing by Project Co in respect of a State Loan under the State Works Loan Agreement;
- D =** the value of:
- (i) prior to the Additional State Contribution Schedule End Date, the aggregate Undrawn Commitment (as defined in the NewCo Loan Facility Agreement) as at the Expiry Date (prior to any subscription for B Class Shares by the State under the State Equity Subscription Deed); and
 - (ii) on or after the Additional State Contribution Schedule End Date, the aggregate of:
 - (A) any unpaid Concession Extension Purchase Amounts that would have been payable under the Concession Enhancement Payment Deed after the Expiry Date had this Agreement not been terminated;
 - (B) the amount of any remaining Trustee Works Price not yet paid at the Expiry Date as set out in the D&C Subcontract plus any amount owing by TIML in respect of a CLUT Works Loan under the CLUT Works Loan Agreement at the Expiry Date; and
 - (C) any unpaid Concession Enhancement Purchase Amounts that that would have been payable under the Concession Enhancement Payment Deed after the Expiry Date had this Agreement had not been terminated;
- E =** to the extent that the State intends to tender out the performance of the Project Activities to replace this Agreement and the other Project Documents to a buyer who will become the new "Project Co", the State's reasonable forecast internal and external tender costs;
- F =** any Liability of Project Co to the State under the State Project Documents, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Agreement but excluding any Liability in respect of a State Loan under the State Works Loan Agreement;
- G =** subject to clauses 39.15(c) and 39.15(d) of this Agreement, any additional costs reasonably incurred by the State as a direct result of the Default Termination Event;

H = any amounts owing by the State to Project Co under the State Project Documents as at the Expiry Date but excluding any Liability in respect of an SW Loan under the State Works Loan Agreement; and

I = the costs incurred by the State of engaging the Independent Expert to administer this Schedule.

In calculating items A to I, there will be no double counting of amounts.

4. Termination for an Early Termination Event or PSA Termination Event

If this Agreement is terminated pursuant to a Termination for an Early Termination Event (including for a PSA Termination Event), the Early Termination Payment will be calculated as follows:

$$\mathbf{TP = ETP1 + ETP2 + ETP3}$$

where:

TP = the Early Termination Payment;

ETP1 = $A + C - D - H - I + J + K + L + M + N + Q$

ETP2 = $O + P$

ETP3 = B

A = in the case of a PSA Termination Event, nil, and in the case of an Early Termination Event, an amount equal to the aggregate of:

(i) the Project Debt; and

(ii) the Project Equity,

in each case as at the Expiry Date;

B = in the case of an Early Termination Event, nil, and in the case of a PSA Termination Event, an amount equal to the aggregate of:

(i) the PSA Equity; and

(ii) the PSA Debt,

less the aggregate of the applicable Actual Subscription Amount paid on the Expiry Date or the Termination Payment Date (as applicable);

C = other than in the case of a PSA Termination Event, the relevant amount titled "West Gate Tunnel Forgone Equity Return Amount" as set out in the worksheet titled "Wdef" of the Base Case Financial Model, calculated by reference to the relevant quarter in which the date of termination of this Agreement occurs less an amount equal to the interest that could be earned on the principal amount on which the "West Gate Tunnel Forgone Equity Return Amount" was calculated assuming it was placed on deposit from the date of receipt for a period of 12 months at a deposit rate reflecting prevailing market rates for a deposits of similar amounts and duration;

D = any Liability of Project Co to the State under the State Project Documents, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Agreement but excluding the amount of any State Loan outstanding at that time;

H = the aggregate of the following amounts:

- (i) any other amounts owing to Project Co, other than by the State or any State Associate or by NewCo under the NewCo Works Loan Agreement; and
- (ii) any credit balances standing in accounts held by or for the benefit of Project Co (excluding any such amounts which Project Co holds on trust for a subcontractor in those accounts),

in each case only to the extent it has not otherwise been taken into account in calculating the Termination Payment;

I = any Insurance proceeds:

- (i) that would have been received before the Expiry Date if Project Co had complied with its obligations under this Agreement and which if so received would have been, or would have been required to be, applied towards any component of the Termination Payment otherwise payable under this section 4; and
- (ii) received or receivable by Project Co at any time during the period between the Expiry Date and the date on which the Termination Payment is made, except for Insurance proceeds:
 - A. that are actually or will be applied to repairing or rebuilding the Relevant Infrastructure; or
 - B. representing Insurance indemnification of Project Co against Liabilities to third parties;

J = any amounts owing by the State to Project Co under the State Project Documents as at the Expiry Date other than the amount of any SW Loan outstanding at that time;

K = redundancy payments for employees of Group Members that have been or will be reasonably and properly incurred by a Group Member as a direct result of the termination of this Agreement and which would not have been otherwise incurred if this Agreement was not terminated by an Early Termination Event or a PSA Termination Event;

L = the aggregate of amounts reasonably and properly incurred by Project Co and payable to OpCo in accordance with the Operating Services Agreement as a direct result of the termination of this Agreement to the extent Project Co had used its best endeavours to minimise such costs including amounts payable to OpCo for an early termination event (including any PSA Termination Event) under the Operating Services Agreement, including, for the avoidance of doubt, any redundancy payments;

M = amounts reasonably and properly incurred by Project Co and payable to the D&C Subcontractor in accordance with the D&C Subcontract as a direct result of the termination of this Agreement to the extent Project Co had used its best endeavours to minimise such costs including amounts payable to the D&C

Subcontractor for an early termination event (including any PSA Termination Event) under the D&C Subcontract;

N = amounts reasonably and properly incurred by Project Co and payable to any Subcontractor (other than the D&C Subcontractor or OpCo) in accordance with the terms of the relevant Subcontract as a direct result of the termination of this Agreement to the extent Project Co had used its best endeavours to minimise such costs including amounts payable to the Subcontractor for an early termination event (including any PSA Termination Event) under the relevant Subcontract;

O = other than in the case of a PSA Termination Event, prior to the Additional State Contribution Schedule End Date, if this Agreement is terminated prior to the date referred to in paragraph (b) of the definition of Final Bullet State Contribution Date:

(i) the aggregate of:

- A. if this Agreement is terminated prior to payment of the Initial Bullet State Contribution under the Additional State Contribution Schedule, the Initial Bullet State Contribution;
- B. if this Agreement is terminated after the Date for West Gate Tunnel Completion but prior to payment of the Final Bullet State Contribution under the Additional State Contribution Schedule, the Final Bullet State Contribution;
- C. if this Agreement is terminated prior to the Date of West Gate Tunnel Completion:
 - 1) an amount equal to the FS2 Tranche Outstanding Moneys as at the Expiry Date (prior to any subscription for B Class Shares by the State under the State Equity Subscription Deed) and [not disclosed]% of the accrued or capitalised interest on those amounts to the extent consistent with clause 10.4 of the Finance Direct Deed;
 - 2) the relevant amount titled "Enhancements Forgone Equity Return Amount" as set out in the worksheet titled "Wdef" of the Base Case Financial Model, calculated by reference to the relevant Quarter in which the date of termination of this Agreement occurs less an amount equal to the interest that could be earned on the principal amount on which the "Enhancements Forgone Return Amount" was calculated assuming it was placed on deposit from the date of receipt for a period of 12 months at a deposit rate reflecting prevailing market rates for a deposits of similar amounts and duration; and
 - 3) in respect of the FS2 Tranche Outstanding Moneys, an amount required to provide the FS2 Committed Equity Return calculated from Financial Close to the Expiry Date on [not disclosed]% of such FS2 Tranche Outstanding Moneys; and
- D. if this Agreement is terminated after the Date of West Gate Tunnel Completion but prior to payment of the Completion State Contribution under the Additional State Contribution Schedule, the Completion State Contribution,

less the aggregate of:

- E. the applicable Actual Subscription Amount(s) paid on the Expiry Date or the Termination Payment Date (as applicable); and
- F. if this Agreement is terminated prior to the Date of West Gate Tunnel Completion, the present value as at the Expiry Date of Progressive State Contributions received by Project Co in accordance with section 2 of Part B of the Additional State Contribution Schedule, escalated from the date of receipt at the Project Return; and

on or after the Additional State Contribution Schedule End Date, nil;

P = other than in the case of a PSA Termination Event, prior to the Additional State Contribution Schedule End Date, nil; and

on or after the Additional State Contribution Schedule End Date, if:

- (i) this Agreement is terminated prior to West Gate Tunnel Completion; and
- (ii) the State has given notice to the Company under clause 3(b) of Part A of Schedule 6 of the CityLink Concession Deed,

the aggregate of:

- (iii) an amount equal to the aggregate of the WGT Enhancement Project Debt and the WGT Enhancement ESEP Project Debt as at the Expiry Date;
- (iv) an amount equal to the aggregate of:
 - A. the retained cash applied by the CityLink Parties in consideration for the WGT Tolling Enhancements;
 - B. the WGT Reserve Tranche (if any); and
 - C. the value of the WGT Enhancement Project Securities as at the Expiry Date;
- (v) the relevant amount titled "Enhancements Forgone Equity Return Amount" as set out in the worksheet titled "Wdef" of the Base Case Financial Model, calculated by reference to the relevant quarter in which the date of termination of this Agreement occurs less an amount equal to the interest that could be earned on the principal amount on which the "Enhancements Forgone Return Amount" was calculated assuming it was placed on deposit from the date of receipt for a period of 12 months at a deposit rate reflecting prevailing market rates for a deposits of similar amounts and duration; and
- (vi) in respect of each amount referred to in paragraph (iv) above, an amount required to provide the FS2 Committed Equity Return calculated from Financial Close to the Expiry Date on such drawn amounts,

less the aggregate of:

- (vii) any ETE Termination Concession Enhancement Compensation Amounts paid by the State to the Company pursuant to the CityLink Concession Deed;
- (viii) the present value of tolling revenue derived from the Relevant Changes (as defined in the CityLink Concession Deed) made to the CityLink Concession Deed Toll Calculation Schedule (over and above the tolling revenue that would have been derived had no such amendments been made) prior to the Expiry Date, escalated from the date of receipt to the Expiry Date at the Project Return; and
- (ix) the present value as at the Expiry Date of Progressive State Contributions received by Project Co in accordance with section 2 of Part B of the Additional State Contribution Schedule, escalated from the date of receipt at the Project Return; and

Q = to the extent this Agreement is terminated prior to West Gate Tunnel Completion, any reasonable costs (if any) which are reasonably required to be incurred to reinstate those parts of CityLink which have been affected by the Works (the **Affected Area**) so that the CityLink Parties are able to comply with their obligations under the CityLink Concession Deed, the Affected Area is safe for use and does not negatively affect the functionality that existed prior to the commencement of the CityLink Returned Works and so that any adverse effect on the capacity or patronage of CityLink is minimised.

In calculating items A to Q, there will be no double counting of amounts.

5. Termination for Force Majeure Termination Event

The Force Majeure Termination Payment where this Agreement is terminated as a consequence of the occurrence of a Force Majeure Termination Event will be calculated as follows:

TP = FMTP1 + FMTP2

where:

TP = the Force Majeure Termination Payment;

FMTP1 = A + B - D - E - F + G + H

FMTP2 = C

A = an amount equal to the Project Debt as at the Expiry Date;

B = an amount equal to the FM Project Equity as at the Expiry Date; and

C = prior to the Additional State Contribution Schedule End Date:

- (i) the aggregate of:
 - A. if this Agreement is terminated prior to payment of the Initial Bullet State Contribution under the Additional State Contribution Schedule, the Initial Bullet State Contribution;
 - B. if this Agreement is terminated after the Date for West Gate Tunnel Completion but prior to payment of the Final Bullet

State Contribution under the Additional State Contribution Schedule, the Final Bullet State Contribution;

- C. if this Agreement is terminated prior to the Date of West Gate Tunnel Completion, an amount equal to [not disclosed]% of the aggregate of the FS2 Tranche Outstanding Moneys as at the Expiry Date (prior to any subscription for B Class Shares by the State under the State Equity Subscription Deed) and [not disclosed]% of the accrued or capitalised interest on those amounts to the extent consistent with clause 10.4 of the Finance Direct Deed; and
- D. if this Agreement is terminated after the Date of West Gate Tunnel Completion but prior to payment of the Completion State Contribution under the Additional State Contribution Schedule, the Completion State Contribution,

less the aggregate of:

- E. the applicable Actual Subscription Amount(s) paid on the Expiry Date or the Termination Payment Date (as applicable); and
- F. if this Agreement is terminated prior to the Date of West Gate Tunnel Completion, the present value as at the Expiry Date of Progressive State Contributions received by Project Co in accordance with section 2 of Part B of the Additional State Contribution Schedule, escalated from the date of receipt at the Project Return; and

on or after the Additional State Contribution Schedule End Date, nil.

D = any Liability of Project Co to the State under the State Project Documents, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Agreement but excluding the amount of any State Loan outstanding at that time;

E = the aggregate of the following amounts:

- (i) any amounts owing to Project Co, other than by the State or any State Associate or by NewCo under the NewCo Works Loan Agreement; and
- (ii) any credit balances standing in accounts held by or for the benefit of Project Co on the Expiry Date,

in each case only to the extent that it has not otherwise been taken into account in calculating the Termination Payment;

F = any Insurance proceeds:

- (i) that would have been received before the Expiry Date if Project Co had complied with its obligations under this Agreement and which if so received would have been, or would have been required to be, applied towards any component of the Termination Payment otherwise payable under this section 5; and
- (ii) received or receivable by Project Co at any time during the period between the Expiry Date and the date on which the Termination Payment is made, except for Insurance proceeds:

- A. that are actually or will be applied to repairing or rebuilding the Relevant Infrastructure; or
- B. representing Insurance indemnification of Project Co against Liabilities to third parties;
- G =** any amounts owing by the State to Project Co under the State Project Documents as at the Expiry Date other than the amount of any SW Loan outstanding at that time; and
- H =** to the extent this Agreement is terminated prior to West Gate Tunnel Completion, the reasonable costs (if any) which are reasonably required to be incurred to reinstate those parts of CityLink which have been affected by the Works (the **Affected Area**) so that the CityLink Parties are able to comply with their obligations under the CityLink Concession Deed, the Affected Area is safe for use and does not negatively affect the functionality that existed prior to the commencement of the CityLink Returned Works and so that any adverse effect on the capacity or patronage of CityLink is minimised.

In calculating items A to H, there will be no double counting of amounts.

6. Insurance

If any proceeds of Insurance are received by Project Co after this Agreement is terminated (other than those Insurance proceeds representing Insurance indemnification of Project Co against Liabilities to third parties) and those proceeds:

- (a) were not taken into account in calculating the Termination Payment that has already been made on the basis that the amounts were not "owing to Project Co", "received" or "received or receivable" by Project Co at the relevant time;
- (b) would have been so taken into account had they been owing, received or receivable at the time of calculating the Termination Payment; and
- (c) apply to the period up to and including the date of payment of the Termination Payment,

then those proceeds are held on trust by Project Co for the State, and Project Co must pay those proceeds, or cause those proceeds to be paid, to the State for the State's retention promptly on receipt. If the proceeds are not yet received then, to the maximum extent legally possible, the State will be subrogated to the rights of Project Co in respect of those proceeds, and entitled to recover and retain the proceeds accordingly. The rights and obligations in this section 6 survive the expiry or early termination of this Agreement.

7. Mitigation

Each party must use all reasonable endeavours to mitigate and minimise losses or costs to be included in the calculation of the relevant Termination Payment. Project Co and the State must use all reasonable endeavours to maximise receipts and gains which are to be calculated within any Termination Payment.

8. No right to set-off

Notwithstanding anything else in this Agreement, the State agrees:

West Gate Tunnel
Project Agreement
Schedule 5 - Termination Payments

- (a) that in calculating the ETP2 amount, the ETP3 amount or the FMTP2 amount under this Schedule the State will not be entitled to set-off or deduct any amounts (other than as expressly set out in the relevant calculation); and
- (b) to make the ETP2 payment and the ETP3 payment under section 4 of this Schedule and the FMTP2 payment under section 5 of this Schedule in full without set-off or counterclaim and without any deduction unless prohibited by law.

Schedule 6 - Material Subcontracts

The following are D&C Activities for the purposes of paragraph (d) of the definition of Material Subcontract:

- (a) works and equipment related to RSS (as defined in the PSR) and OMCS;
- (b) works and equipment related to ITS;
- (c) work and equipment related to network communications systems or motorway network communications system (Communications) - Network Switches; and
- (d) the supply of any tunnel boring machine. For the avoidance of doubt, this does not include the hiring of pipe jacking and associated equipment for the North Yarra Main Sewer works.

Schedule 7 - Review Procedures

1. Submission and review

1.1 Submission

- (a) **(Submission):** Subject to section 1.1(b), Project Co must submit all documents, data or other information which a State Project Document requires it to provide for review in accordance with this Schedule (**Submitted Documents**) to the State, the Independent Reviewer and Environmental Auditor or both of them (as the case may be) and, in respect of the agreed terms of each Utility Agreement in accordance with clause 13.5(e)(ii) of the Agreement, the Project Proponent (**Reviewing Party**), in accordance with this Schedule and the terms of the relevant State Project Document.
- (b) **(Specified documents):** The Design Documentation, WTMP and WEMP (as defined in the PSR) are the subject of a separate review process under the PSR and will not be reviewed in accordance with this Schedule.
- (c) **(Requirements for submission):** With each Submitted Document, Project Co must provide:
 - (i) details of the Submitted Document, including its nature and the relevant clause or schedule of the applicable State Project Document in accordance with which it is submitted for review; and
 - (ii) any other information that is required by the relevant State Project Document or that is otherwise necessary for the review of the Submitted Document in accordance with this Schedule.

1.2 Review Period

For the purpose of this Schedule, the “**Review Period**” means:

- (a) **(period in State Project Document):** where the period is expressly specified in the applicable State Project Document, that period; or
- (b) **(no period specified):** where no period is expressly specified, 15 Business Days.

1.3 Approval by the Minister for Planning or other State Minister

Nothing in this Schedule or in any response by the State to any Submitted Document constitutes an approval of that document by the Victorian Minister for Planning or any other Minister of the State for the purposes of satisfying the requirements of any Approval or Approval condition.

1.4 Approval by Project Proponent

- (a) The Project Proponent has been appointed as the project authority for the Project under the Relevant Legislation to exercise the rights and carry out the obligations set out in the Relevant Legislation with respect to the Project.

- (b) Without limiting clause 2.12(b) of the Agreement, nothing in this Schedule limits the Project Proponent in the exercise of its rights or obligations under the Relevant Legislation or any other Law.

2. Further information

Project Co must, as soon as possible upon request by the Reviewing Party:

- (a) submit any further information, data or documents;
- (b) make available appropriately qualified personnel; and
- (c) provide access to Project Co Material,

that the Reviewing Party reasonably requires in order to review the Submitted Document and respond in accordance with this Schedule.

3. Review in stages

- (a) **(Stages):** If Submitted Documents are to be reviewed in stages, each stage must (unless reasonably necessary to do otherwise) be submitted for review and the review completed in accordance with this Schedule before any subsequent stage may be submitted for review.
- (b) **(Further review):** Unless otherwise expressly agreed by the Reviewing Party, if, for any reason, any stage is reviewed out of sequence as a consequence of any act or omission of Project Co, the Reviewing Party will be entitled to further review or to complete a new review of those stages of the Submitted Documents that have already been reviewed in accordance with this Schedule.

4. Comments on, approval or rejection of Submitted Document

4.1 Comments or no comments

- (a) **(Options for review):** Subject to section 4.1(b), the Reviewing Party may:
 - (i) review any Submitted Document; and
 - (ii) within the Review Period, comment on or reject the Submitted Document in accordance with this section 4.
- (b) **(Documents requiring approval):** With respect to any of the following documents:
 - (i) a Utility Agreement;
 - (ii) a Construction Environmental Management Plan (as defined in the PSR);
 - (iii) a Construction Traffic Management Plan (as defined in the PSR);
 - (iv) an Operations Environmental Management Plan (as defined in the PSR); and
 - (v) an O&M Manual,

the Reviewing Party must, within the Review Period, review the Submitted Document and either:

- (vi) approve; or
- (vii) reject or comment on,
the Submitted Document.

- (c) **(Proceeding with Submitted Document):** Project Co must not proceed with, or proceed to implement, a Submitted Document:
 - (i) subject to section 4.1(c)(ii), unless the Reviewing Party has been afforded the Review Period to review the Submitted Document and has not rejected or commented on the Submitted Document; and
 - (ii) with respect to the documents listed in section 4.1(b), unless the Reviewing Party has approved the Submitted Document.

4.2 Grounds upon which Reviewing Party may comment or reject

Subject to section 4.4, the Reviewing Party may only provide comments on or reject a Submitted Document if the Submitted Document:

- (a) **(incomplete):** is incomplete or inaccurate, of poor quality, is ambiguous or unclear or otherwise is not in a condition to allow the Reviewing Party, in its reasonable opinion, to adequately review it;
- (b) **(applicable Laws or Standards):** does not comply with the applicable Laws or, subject to section 2.1 of Part A of the PSR, applicable Standards;
- (c) **(non-compliance with State Project Documents):** is otherwise not in accordance with, or is not submitted in accordance with, the requirements of the relevant State Project Document(s) (including that Project Co will not satisfy the FFP Warranty or the requirements of the PSR);
- (d) **(adverse effect on State):** adversely affects any right of the State under any State Project Document or the State's ability to enforce any such right, the State's ability to perform its obligations under any State Project Document, or the State's ability to perform any of its statutory functions; or
- (e) **(increase in State's Liabilities):** would result in an increase to the State's Liabilities under a State Project Document.

4.3 Substantiate rejection or comments

If the Reviewing Party provides Project Co with comments on or rejects a Submitted Document, the Reviewing Party must:

- (a) **(sufficient details):** provide sufficient detail to Project Co within the Review Period to substantiate those comments or that rejection including as set out in section 6.1; and
- (b) **(resubmission period):** notify Project Co of the time within which Project Co must resubmit the Submitted Document to the Reviewing Party, which must be

reasonable having regard to the amount of work required to be undertaken by or on behalf of Project Co to address those comments or that rejection.

4.4 D&C Program

If the Submitted Document is the D&C Program, in addition to its rights in accordance with section 4.2, the Reviewing Party may provide comments in connection with the D&C Program or reject the D&C Program and Project Co must amend:

- (a) the D&C Program accordingly if compliance with the D&C Program would mean that:
 - (i) a requirement under a State Project Document would not be achieved (however in so far as this concerns the Date for West Gate Tunnel Completion or Date for Tolling Completion and the Date for West Gate Tunnel Completion or Date for Tolling Completion cannot be practicably achieved by Project Co, amendments will only be required to the extent necessary to ensure the D&C Program has a Date for West Gate Tunnel Completion or Date for Tolling Completion that is the earliest possible date following the Date for West Gate Tunnel Completion or Date for Tolling Completion, provided that:
 - A. such amendment will not relieve Project Co from its obligation to achieve:
 - 1) West Gate Tunnel Completion by the Date for West Gate Tunnel Completion; and
 - 2) Date for Tolling Completion by the Date for Tolling Completion; and
 - B. the D&C Program is amended to clearly differentiate between the Date for West Gate Tunnel Completion and Date for Tolling Completion and the expected Date of West Gate Tunnel Completion and the Date of Tolling Completion (respectively);
 - (ii) Project Co would be in breach of a warranty set out in clause 15(f) of the Agreement; or
- (b) such other program or timing requirement as may be:
 - (i) specified in a Remediation Plan notified by the Independent Reviewer and Environmental Auditor as satisfactory under clause 23.2(d), 23.2(h), or 23.2(i)(ii)(A) of the Agreement or a remedy program prepared under clause 41.2 of the Agreement; or
 - (ii) required so that the D&C Program accurately reflects the actual progress of the Works in accordance with clause 15 of the Agreement.

5. Document management

5.1 Copies of Submitted Documents

- (a) **(Copies required):** Unless otherwise expressly provided in the State Project Documents or directed by the Reviewing Party, Project Co must provide:
- (i) one electronic version in .pdf format; and
 - (ii) one electronic version in original format (in accordance with section 5.1(b)),
- of each Submitted Document to the Reviewing Party for review in accordance with this Schedule.
- (b) **(Form for electronic copies):** An electronic copy of a Submitted Document must be an electronic copy of that document that is:
- (i) in the format of the software in which the document was originally created, or in excel or word format where the Reviewing Party is reviewing and making comment; and
 - (ii) configured to allow the Reviewing Party to access and review the information contained therein in the same manner as the original creator(s) of that document.

5.2 Register of Submitted Documents

- (a) **(Register):** Project Co must compile and maintain a register of the date of submission and content of each Submitted Document and must regularly update that register to record:
- (i) each Submitted Document to which it receives a response or comment from the Reviewing Party, including a copy of that response or comment; and
 - (ii) each Submitted Document to which it receives no response or comment within the Review Period.
- (b) **(Access):** The register must be capable of access by the State, the Independent Reviewer and Environmental Auditor and any person authorised by the State.

6. Compliance with Submitted Documents

6.1 Rejected or commented on Submitted Document

Subject to section 6.2, if the Reviewing Party comments on or rejects a Submitted Document in accordance with sections 4.2 or 4.4, Project Co must:

- (a) **(amend Submitted Document):** to the extent necessary to address the comments of the Reviewing Party:
- (i) amend the Submitted Document in accordance with the comments of the Reviewing Party; and

(ii) provide such information that is reasonably necessary,

to ensure that the Submitted Document meets the requirements of the State Project Documents, and resubmit the revised Submitted Document to the Reviewing Party within the time specified in the notice under section 4.3(b); or

(b) **(provide information)**: provide such information that is reasonably necessary to otherwise address the comments of the Reviewing Party,

and the provisions of sections 1 to 6 will reapply to the Submitted Document until such time as Project Co is entitled to proceed with, or proceed to implement, the Submitted Document in accordance with section 4.1(c).

6.2 Disputed amendments

(a) **(Disagreement)**: If Project Co does not agree that any amendments or comments requested by the Reviewing Party to a Submitted Document are required or required to be addressed, Project Co must notify the Reviewing Party and Project Co and the Reviewing Party must meet to try to resolve the difference of opinion in good faith.

(b) **(No resolution)**: If, within 5 Business Days of Project Co's notice under section 6.2(a), Project Co still disputes that any amendments are required to the Submitted Document, Project Co may refer the matter for resolution in accordance with clauses 43 and 44 of the Agreement.

6.3 Compliance with Submitted Document

If:

(a) **(entitled to proceed)**: Project Co is entitled to proceed with, or proceed to implement, a Submitted Document in accordance with section 4.1(c); or

(b) **(no amendment required)**: it is determined in accordance with section 6.2 that no further amendment to the Submitted Document is required,

then, subject to section 1.3:

(c) **(delivery by Project Co)**: Project Co must deliver the Project Activities in accordance with the Submitted Document and otherwise in accordance with the State Project Documents;

(d) **(departure by Project Co)**: subject to section 6.3(e), Project Co may depart from that Submitted Document where it is necessary to do so to comply with the State Project Documents; and

(e) **(notice of departure)**: if Project Co wishes to depart from that Submitted Document, then:

(i) it must give the Reviewing Party prior notice of this intention together with an updated version of the Submitted Document incorporating all or any changes proposed; and

(ii) the provisions of sections 1 to 5 will apply again to such re-submission.

Schedule 8 - Schedule of Certificates and Notices

Project Co must provide to the State and (where applicable) the Independent Reviewer and Environmental Auditor those certificates and notices that are specified in this Schedule to be signed by Project Co and those to be signed by the D&C Subcontractor, Proof Engineer and Construction Quality Representative (as defined in the PSR), substantially in the form required by this Schedule, in accordance with this Agreement.

The State may, at its absolute discretion, provide the notices that are specified in this Schedule to be signed by the State, substantially in the form required by this Schedule, in accordance with this Agreement.

The Independent Reviewer and Environmental Auditor must provide to the State and (where applicable) Project Co those certificates and notices that are specified in this Schedule to be signed by the Independent Reviewer and Environmental Auditor, substantially in the form required by this Schedule, in accordance with this Agreement.

| Part of the Schedule containing the form | Title of certificate or notice | Certificate or notice to be signed by | Clause/Section of the State Project Documents |
|---|--|--|---|
| Part 1 | Project Co's Certificate - Certified Design Documentation | Project Co | Section 2.4(c)(i) of the Design Review Section |
| Part 2 | D&C Subcontractor's Certificate - Certified Design Documentation | D&C Subcontractor | Section 2.4(c)(ii) of the Design Review Section |
| Part 3 | Independent Reviewer and Environmental Auditor's Notice - Certified Design Documentation | Independent Reviewer and Environmental Auditor | Section 2.4(e)(ii) of the Design Review Section |
| Part 4 | Project Co's Notice - Design Explanation | Project Co | Section 2.4(f)(iii) of the Design Review Section |
| Part 5 | Independent Reviewer and Environmental Auditor's Notice - Response to Design Explanation | Independent Reviewer and Environmental Auditor | Section 2.4(g) of the Design Review Section |
| Part 6 | Project Co's Notice - Intention to Proceed at Own Risk (Certified Design) | Project Co | Sections 2.4(h) and 2.4(i) of the Design Review Section |
| Part 7 | Project Co's Notice - Design Change Notice | Project Co | Section 2.5(c) of the Design Review Section |
| Part 8 | Proof Engineer's Certificate - Design Documentation | Proof Engineer | Section 2.7(a) of the Design Review Section |

West Gate Tunnel
Project Agreement
Schedule 8 - Schedule of Certificates and Notices

| Part of the Schedule containing the form | Title of certificate or notice | Certificate or notice to be signed by | Clause/Section of the State Project Documents |
|---|--|--|--|
| Part 9 | Proof Engineer's Certificate - Erection of Load Bearing Falsework | Proof Engineer | Section 2.7(b)(ii) of the Design Review Section |
| Part 10 | Construction Quality Representative's Certificate - As-Built Records | Construction Quality Representative | Section 11.2(c)(v) of Part F6 of the PSR |
| Part 11 | Project Co's Notice - Expectation of achieving Temporary Operational Completion | Project Co | Clause 19(b)(i) |
| Part 12 | Project Co's Notice - Temporary Operational Completion | Project Co | Clause 19(b)(ii) |
| Part 13 | State's Notice – Response to achievement of Temporary Operational Completion | State | Clause 19(c) |
| Part 14 | Project Co's Notice - Request to determine Temporary Operational Completion | Project Co | Clause 19(c) |
| Part 15 | Independent Reviewer and Environmental Auditor's Notice - Temporary Operational Completion achieved | Independent Reviewer and Environmental Auditor | Clause 19(d)(i) |
| Part 16 | Independent Reviewer and Environmental Auditor's Notice - Temporary Operational Completion not achieved (List of work remaining to be performed) | Independent Reviewer and Environmental Auditor | Clause 19(d)(ii) |
| Part 17 | Project Co's Notice – Temporary Operational Completion of outstanding work | Project Co | Clause 19(e) |
| Part 18 | Project Co's Notice - Expectation of achieving West Gate Tunnel Completion | Project Co | Clause 20.1(a) |

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Schedule 8 - Schedule of Certificates and Notices

| Part of the Schedule containing the form | Title of certificate or notice | Certificate or notice to be signed by | Clause/Section of the State Project Documents |
|---|--|--|--|
| Part 19 | Project Co's Notice - Expectation of achieving Tolling Completion | Project Co | Clause 20.1(a) |
| Part 20 | Project Co's Notice - West Gate Tunnel Completion | Project Co | Clause 20.2(a) |
| Part 21 | Project Co's Notice - Tolling Completion | Project Co | Clause 20.2(a) |
| Part 22 | State's Notice - West Gate Tunnel Completion | State | Clause 20.2(b) |
| Part 23 | Independent Reviewer and Environmental Auditor's Certificate of West Gate Tunnel Completion | Independent Reviewer and Environmental Auditor | Clause 20.2(c)(i) |
| Part 24 | Independent Reviewer and Environmental Auditor's Certificate of Tolling Completion | Independent Reviewer and Environmental Auditor | Clause 20.2(c)(i) |
| Part 25 | Independent Reviewer and Environmental Auditor's Notice - West Gate Tunnel Completion not achieved (List of work remaining to be performed) | Independent Reviewer and Environmental Auditor | Clause 20.2(c)(ii)A |
| Part 26 | Independent Reviewer and Environmental Auditor's Notice - Tolling Completion not achieved (List of work remaining to be performed) | Independent Reviewer and Environmental Auditor | Clause 20.2(c)(ii)A |
| Part 27 | Independent Reviewer and Environmental Auditor's Notice - West Gate Tunnel Completion not achieved (No list of work remaining to be performed) | Independent Reviewer and Environmental Auditor | Clause 20.2(c)(ii)B |

West Gate Tunnel
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Schedule 8 - Schedule of Certificates and Notices

| Part of the Schedule containing the form | Title of certificate or notice | Certificate or notice to be signed by | Clause/Section of the State Project Documents |
|---|--|--|--|
| Part 28 | Independent Reviewer and Environmental Auditor's Notice - Tolling Completion not achieved (No list of work remaining to be performed) | Independent Reviewer and Environmental Auditor | Clause 20.2(c)(ii)B |
| Part 29 | Project Co's Notice - West Gate Tunnel Completion – completion of outstanding work | Project Co | Clause 20.2(d) |
| Part 30 | Project Co's Notice - Tolling Completion – completion of outstanding work | Project Co | Clause 20.2(d) |
| Part 31 | Project Co's Notice - Returned Works completion achieved | Project Co | Clause 20.3(c)(ii) |
| Part 32 | Independent Reviewer and Environmental Auditor's Notice - Returned Facility | Independent Reviewer and Environmental Auditor | Clause 20.3(e)(i) |
| Part 33 | Independent Reviewer and Environmental Auditor's Notice - Returned Works completion not achieved (List of work remaining to be performed) | Independent Reviewer and Environmental Auditor | Clause 20.3(e)(ii)A |
| Part 34 | Independent Reviewer and Environmental Auditor's Notice - Returned Works completion not achieved (No list of work remaining to be performed) | Independent Reviewer and Environmental Auditor | Clause 20.3(e)(ii)B |
| Part 35 | Project Co's Notice - Returned Works completion of outstanding work | Project Co | Clause 20.3(g) |
| Part 36 | Project Co's Notice - Handback of Returned Works | Project Co | Clause 20.3(j)(i) |

West Gate Tunnel
Project Agreement
Schedule 8 - Schedule of Certificates and Notices

| Part of the Schedule containing the form | Title of certificate or notice | Certificate or notice to be signed by | Clause/Section of the State Project Documents |
|---|---|--|--|
| Part 37 | Project Co's Notice - Close-Out | Project Co | Clause 21.1(b) |
| Part 38 | Independent Reviewer and Environmental Auditor's Certificate - Close-Out | Independent Reviewer and Environmental Auditor | Clause 21.1(c)(i) |
| Part 39 | Independent Reviewer and Environmental Auditor's Notice - Close-Out (Work remaining to be performed) | Independent Reviewer and Environmental Auditor | Clause 21.1(c)(ii) |
| Part 40 | Project Co's Notice - Close-out completion of outstanding work | Project Co | Clause 21.1(e) |
| Part 41 | State's Notice - Late Close-Out | State | Clause 21.2(a)(iii) |
| Part 42 | Independent Reviewer and Environmental Auditor's Notice - Late Close-Out (Work remaining and cost) | Independent Reviewer and Environmental Auditor | Clause 21.2(a)(iv) |
| Part 43 | State's Notice - Late Close-Out | State | Clause 21.2(c)(i) |
| Part 44 | Independent Reviewer and Environmental Auditor's Notice - Late Close-Out (Work remaining and cost) | Independent Reviewer and Environmental Auditor | Clause 21.2(c)(ii) |
| Part 45 | Independent Reviewer and Environmental Auditor's Notice - Non-compliance | Independent Reviewer and Environmental Auditor | Clause 23.2(b) |
| Part 46 | Project Co's Notice - Explanation and/or Remediation Plan | Project Co | Clause 23.2(c) |
| Part 47 | Independent Reviewer and Environmental Auditor's Notice - Response to Explanation and/or Remediation Plan | Independent Reviewer and Environmental Auditor | Clause 23.2(d) |

West Gate Tunnel
 Project Agreement
 Schedule 8 - Schedule of Certificates and Notices

| Part of the Schedule containing the form | Title of certificate or notice | Certificate or notice to be signed by | Clause/Section of the State Project Documents |
|---|---|--|--|
| Part 48 | Independent Reviewer and Environmental Auditor's Notice - Response to amended Explanation and/or Remediation Plan | Independent Reviewer and Environmental Auditor | Clause 23.2(h) |

Part 1 Project Co's Certificate - Certified Design Documentation

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. In accordance with section 2.4(c)(i) of the Design Review Section, Project Co hereby confirms that the attached Certified Design Documentation for the Construction Package(s) specified in paragraph 2 complies with the requirements of the State Project Documents.
2. The Construction Package(s) to which this certificate applies is/are as follows:
 - (a) [#insert].
3. Terms defined in the project agreement entered into between the State and Project Co dated [#insert date] have the same meaning in this certificate.

Signed for and on behalf of
[#insert name and address of Project Co]

Date

Part 2 D&C Subcontractor's Certificate - Certified Design Documentation

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Independent Reviewer and Environmental Auditor**)

From: [] (**D&C Subcontractor**)

1. In accordance with section 2.4(c)(ii) of the Design Review Section, the D&C Subcontractor hereby confirms that the attached Certified Design Documentation for the Construction Package(s) specified in paragraph 2 complies with the requirements of the Project Agreement, including the PSR, and the D&C Project Documents (as defined in the D&C Subcontract).
2. The Construction Package(s) to which this certificate applies is/are as follows:
 - (a) [#insert].
3. Terms defined in the project agreement entered into between the State and Project Co dated [#insert date] have the same meaning in this certificate.

Signed for and on behalf of
[#insert name and address of D&C Subcontractor]

Date

Part 3 Independent Reviewer and Environmental Auditor's Notice - Certified Design Documentation

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to section 2.4(e)(ii) of the Design Review Section, I hereby notify the State and Project Co that the proposed Certified Design Documentation for the Construction Package(s) specified in paragraph 2 [*complies/does not comply - delete as inapplicable*] with the State Project Documents for the reasons set out in the attached schedule.
2. The Construction Package(s) to which this certificate applies is/are as follows:
 - (a) [*insert*].
3. Terms defined in the project agreement entered into between the State and Project Co dated [*insert date*] have the same meaning in this notice.

Signed for and on behalf of
[*insert name of Independent Reviewer and Environmental Auditor*]

Date

Schedule

[*Insert reasons for Independent Reviewer and Environmental Auditor's opinion.*]

Part 4 Project Co's Notice - Design Explanation

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. Pursuant to section 2.4(f)(iii) of the Design Review Section, Project Co hereby notifies the State and the Independent Reviewer and Environmental Auditor that it disagrees with the opinion contained within the Independent Reviewer and Environmental Auditor's Notice - Certified Design Documentation dated [#insert date] for the reasons set out in the attached schedule (**Design Explanation**).
2. Terms defined in the project agreement entered into between the State and Project Co dated [#insert date] have the same meaning in this notice.

Signed for and on behalf of
[#insert name and address of Project Co]

Date

Schedule

[#Insert Project Co's Design Explanation.]

Part 5 Independent Reviewer and Environmental Auditor's Notice - Response to Design Explanation

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to section 2.4(g) of the Design Review Section, I hereby notify the State and Project Co that the Design Explanation provided by Project Co pursuant to section 2.4(f)(iii) of the Design Review Section dated [#insert] [*satisfactorily addresses/does not satisfactorily address - delete as inapplicable*] the concerns I raised in the Independent Reviewer and Environmental Auditor's Notice - Certified Design Documentation dated [#insert], for the reasons set out in the attached schedule.
2. Terms defined in the project agreement entered into between the State and Project Co dated [#insert date] have the same meaning in this notice.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date

Schedule

[#Insert reasons for Independent Reviewer and Environmental Auditor's opinion.]

Part 6 Project Co's Notice - Intention to Proceed at Own Risk (Certified Design)

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. In accordance with sections 2.4(h) and 2.4(i) of the Design Review Section, Project Co hereby notifies the State and the Independent Reviewer and Environmental Auditor that, despite any opinion of the Independent Reviewer and Environmental Auditor in the Independent Reviewer and Environmental Auditor's Notice - Certified Design Documentation dated [#insert date] or the Independent Reviewer and Environmental Auditor's Notice - Response to Design Explanation dated [#insert date] (together, **IREA Notices**), Project Co intends to proceed with construction of the Construction Package(s) specified in paragraph 2, at its own cost and risk (including the risk that a Certificate of West Gate Tunnel Completion may not be issued).
2. The Construction Package(s) to which this notice applies is/are as follows:
 - (a) [#insert].
3. Details of the reasons why Project Co intends to proceed with construction of the Construction Package(s) specified in paragraph 2 despite the opinion provided in the IREA Notices are set out in the attached schedule.
4. Terms defined in the project agreement entered into between the State and Project Co dated [#insert date] have the same meaning in this notice.

Signed for and on behalf of
[#insert name and address of Project Co]

Date

Schedule

[#Insert details of the reasons why Project Co intends to proceed at its own risk despite the Independent Reviewer and Environmental Auditor's opinion in the IREA Notices.]

Part 7 Project Co's Notice - Design Change Notice

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. In accordance with section 2.5(c) of the Design Review Section, Project Co hereby notifies the State and the Independent Reviewer and Environmental Auditor that it proposes a design change to the IFC Design Documentation.
2. The Construction Package(s) and the drawings within the IFC Design Documentation to which this notice applies is/are as follows:
 - (a) [#insert].
3. Details of the design change and the reasons for the design change are set out in the attached schedule including copies of all drawings affected by the design change marked up and annotated in accordance with section 2.5(c)C. of the Design Review Section.
4. Project Co confirms that the design change specified in paragraph 3 complies with the requirements of the State Project Documents.
5. Terms defined in the project agreement entered into between the State and Project Co dated [#insert date] have the same meaning in this notice.

Signed for and on behalf of
[#insert name and address of Project Co]

Date

Schedule

[#Insert details of the design change and Project Co's reasons for the design change.]

Part 8 Proof Engineer's Certificate - Design Documentation

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Proof Engineer**)

1. In accordance with section 2.7(a) of the Design Review Section, in relation to the Certified Design Documentation provided by Project Co and listed in the attached schedule:
 - (a) I have undertaken an independent detailed check of the attached Certified Design Documentation (subject to Schedule B); and
 - (b) I certify the adequacy of the attached Certified Design Documentation.
2. In performing the functions of the Proof Engineer, I have used due skill, care and diligence. From my review and in my opinion as a professional engineer, I consider that, in relation to the Certified Design Documentation listed in the Schedule A:
 - (a) all relevant design actions and design criteria have been addressed by the design included and that these actions and criteria and the overall concept meet the requirements of the State Project Documents, including the PSR;
 - (b) the strength, stability and serviceability requirements and other Project Requirements are met; and
 - (c) the drawings and specifications accurately describe the following matters critical to structural integrity:
 - (i) the detailing and dimensions;
 - (ii) the required material properties; and
 - (iii) the Construction Procedures and any Temporary Works.
3. In fulfilling the requirements of section 1 and 2 above, I have carried out a review and assessment of the documents referred to in Schedule B.
4. Terms defined in the project agreement entered into between the State and Project Co dated [insert date] have the same meaning in this certificate.

Signed for and on behalf of
[insert name of Proof Engineer]

Date

Schedule A

[#Insert details of Certified Design Documentation including Design Package Number.]

Schedule B

Documents contained within the Certified Design Documentation that have been relied upon and have not been subjected to an independent detailed check are listed below.

Documents in this list may only be within the following categories:-

- Design Criteria Reports;
- Road and Rail Designs and Layout;
- Hydrology and Drainage Design and Reports;
- Asset Condition Reports of Existing Structures;
- Geotechnical and Groundwater Reports;
- Noise and Vibration Reports;
- Design related to proprietary elements of structural systems; and
- Mechanical and Electrical Designs and Reports.

[#Insert details of documents referenced in Certified Design Documentation which were not subject to an independent detailed check but are relied upon for the certification]

Part 9 Proof Engineer's Certificate - Erection of Load Bearing Falsework

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Proof Engineer**)

1. In accordance with section 2.7(b)(ii) of the Design Review Section, I hereby certify that, in relation to the load bearing falsework and/or formwork listed in the attached Schedule, I have verified by inspection (as listed in the schedule) that the falsework and/or formwork has been erected in accordance with the IFC Design Documentation.
2. Terms defined in the project agreement entered into between the State and Project Co dated [insert date] have the same meaning in this certificate.

Signed for and on behalf of
[insert name of Proof Engineer]

Date

Schedule

[insert relevant details of load bearing falsework and/or formwork being certified.]

[insert relevant details of inspections undertaken, including dates of inspections]

Part 10 Construction Quality Representative's Certificate - As-Built Records

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) [and
[] (**Independent Reviewer and Environmental Auditor**) (if applicable)]

From: [] (**Construction Quality Representative**)

1. In accordance with section 11.2(c)(v) of Part F6 of the PSR, I hereby certify that I have inspected the As-Built Records for the Construction Package(s) (or part thereof) specified in paragraph 2 and I have verified that:
 - (a) the Work Lots described in Schedule A cover all materials and works required to complete the Construction Package(s) or part thereof;
 - (b) the as-built drawings listed in Schedule B are all of the as-built drawings required to completely describe the Construction Package(s) or part thereof;
 - (c) all inspections and tests required for all of the Work Lots in Schedule A have been completed and the test results recorded;
 - (d) any Non-Conformances and Defects that cannot be corrected promptly have been notified and recorded on the Defects list in accordance with section 13 of Part F6 of the PSR, and the Non-Conformance report marked accordingly;
 - (e) the final marked-up copy of every drawing listed in Schedule B, including drawings without change, have been checked for completeness and signed by a person with responsibility for supervision of the work; and
 - (f) the complete set of closed As-Built Records for the Construction Package(s) or part thereof has been made available to the State and the Independent Reviewer and Environmental Auditor.
2. The Construction Package(s) (or part thereof) to which this certificate applies is/are as follows:
 - (a) [#insert].
3. Terms defined in the project agreement entered into between the State and Project Co dated [#insert date] have the same meaning in this certificate.

Signed by
[*#insert name of Construction Quality Representative*]

Date

Schedule A

[*#insert details of Work Lots.*]

Schedule B

[*#insert details of As-built records.*]

Part 12 Project Co's Notice - Temporary Operational Completion

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**)

Copy: [] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. Pursuant to clause 19(b)(ii) of the project agreement entered into between the State and Project Co dated [*#insert date*] (**Agreement**), Project Co hereby notifies the State that it considers that it has achieved Temporary Operational Completion.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[*#insert name and address of Project Co*]

Date

Part 13 State's Notice – Response to achievement of Temporary Operational Completion

West Gate Tunnel (Project)

To: [] (Project Co)

From: [], on behalf of the Crown in right of the State of Victoria (**State**)

1. Pursuant to clause 19(c) of the project agreement entered into between the State and Project Co dated [*#insert date*] (**Agreement**), the State hereby advises Project Co that it does not agree that Temporary Operational Completion has been achieved for the reasons set out in the attached schedule.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of the State

Date

Schedule

[*#Insert reasons for State's opinion.*]

**Part 14 Project Co's Notice - Request to determine Temporary
Operational Completion**

West Gate Tunnel (Project)

To: [] (Independent Reviewer and Environmental Auditor)

Copy: [], on behalf of the Crown in right of the State of Victoria (**State**)

From: [] (Project Co)

1. Pursuant to clause 19(c) of the project agreement entered into between the State and Project Co dated [*#insert date*] (**Agreement**), Project Co hereby requests the Independent Reviewer and Environmental Auditor to determine whether Temporary Operational Completion has been achieved.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[*#insert name and address of Project Co*]

Date

**Part 15 Independent Reviewer and Environmental Auditor's Notice -
Temporary Operational Completion achieved**

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 19(d)(i) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I hereby notify that Temporary Operational Completion has been achieved as at the date of this notice.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date of Temporary Operational Completion and Date of Certificate

**Part 16 Independent Reviewer and Environmental Auditor's Notice -
Temporary Operational Completion not achieved (List of work
remaining to be performed)**

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 19(d)(ii) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I advise that Temporary Operational Completion has not been achieved.
2. The work remaining to be performed in order for Project Co to achieve Temporary Operational Completion is listed in the attached schedule.
3. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date

Schedule

[#Insert details of work remaining to be performed.]

Part 17 **Project Co's Notice – Temporary Operational Completion of outstanding work**

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
 [] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. Pursuant to clause 19(e) of the project agreement entered into between the State and Project Co dated [*#insert date*] (**Agreement**), Project Co hereby notifies the State and the Independent Reviewer and Environmental Auditor that the work listed in the Independent Reviewer and Environmental Auditor's Notice – Temporary Operational Completion not achieved (List of work remaining to be performed) issued pursuant to clause 19(d)(ii) of the Agreement dated [*#insert date*] has been completed.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[*#insert name and address of Project Co*]

Date

Part 18 Project Co's Notice - Expectation of achieving West Gate Tunnel Completion

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**)

Copy: [] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. Pursuant to clause 20.1(a) of the project agreement entered into between the State and Project Co dated [*#insert date*] (**Agreement**), Project Co notifies the State that it reasonably expects to achieve West Gate Tunnel Completion on [*#insert date*].
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[*#insert name and address of Project Co*]

Date

Part 19 Project Co's Notice - Expectation of achieving Tolling Completion

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**)

Copy: [] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. Pursuant to clause 20.1(a) of the project agreement entered into between the State and Project Co dated [insert date] (**Agreement**), Project Co notifies the State that it reasonably expects to achieve Tolling Completion on [insert date].
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[insert name and address of Project Co]

Date

Part 20 Project Co's Notice - West Gate Tunnel Completion

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. Pursuant to clause 20.2(a) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), Project Co hereby:
 - (a) notifies the State and the Independent Reviewer and Environmental Auditor that it considers that it has achieved West Gate Tunnel Completion;
 - (b) requests that the Independent Reviewer and Environmental Auditor issue a Certificate of West Gate Tunnel Completion; and
 - (c) notifies the State and the Independent Reviewer and Environmental Auditor that the detailed list of work in the attached schedule (including minor Defect correction) remains to be performed in its opinion to achieve Close-Out.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name and address of Project Co]

Date

Schedule

[#Insert details of work that remains to be performed to achieve Close-Out.]

Part 21 Project Co's Notice - Tolling Completion

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. Pursuant to clause 20.2(a) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), Project Co hereby:
 - (a) notifies the State and the Independent Reviewer and Environmental Auditor that it considers that it has achieved Tolling Completion;
 - (b) requests that the Independent Reviewer and Environmental Auditor issue a Certificate of Tolling Completion; and
 - (c) notifies the State and the Independent Reviewer and Environmental Auditor that the detailed list of work in the attached schedule (including minor Defect correction and any relevant Remaining Works) remains to be performed in its opinion to achieve Close-Out.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name and address of Project Co]

Date

Schedule

[#Insert details of work that remains to be performed to achieve Close-Out.]

Part 22 State's Notice - West Gate Tunnel Completion

West Gate Tunnel (Project)

To: [] (Project Co) and
[] (Independent Reviewer and Environmental Auditor)

From: [], on behalf of the Crown in right of the State of Victoria (**State**)

1. Pursuant to clause 20.2(b) of the project agreement entered into between the State and Project Co dated [*#insert date*] (**Agreement**), the State hereby:
 - (a) notifies Project Co and the Independent Reviewer and Environmental Auditor that it considers that Project Co has achieved West Gate Tunnel Completion; and
 - (b) requests that the Independent Reviewer and Environmental Auditor issues a Certificate of West Gate Tunnel Completion.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of the State

Date

Part 23 Independent Reviewer and Environmental Auditor's Certificate of West Gate Tunnel Completion

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 20.2(c)(i) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I certify that West Gate Tunnel Completion has been achieved as at the date of this certificate.
2. In accordance with clause 20.2(c)(i) of the Agreement, I set out in the attached schedule:
 - (a) a list of Defects of the kind referred to in paragraph (a) of the definition of West Gate Tunnel Completion (including any Defects in a Returned Facility) required to be corrected by Project Co; and
 - (b) details of the work remaining to be performed in order for Project Co to achieve Close-Out.
3. Terms defined in the Agreement have the same meaning in this certificate.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date of West Gate Tunnel Completion and Date of Certificate

Schedule

[#Insert details of Defects and work remaining to be performed in order for Project Co to achieve Close-Out.]

Part 24 Independent Reviewer and Environmental Auditor's Certificate of Tolling Completion

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 20.2(c)(i) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I certify that Tolling Completion has been achieved as at the date of this certificate.
2. In accordance with clause 20.2(c)(i) of the Agreement, I set out in the attached schedule:
 - (a) a list of Defects of the kind referred to in paragraph (b) of the definition of Tolling Completion required to be corrected by Project Co; and
 - (b) details of the work remaining to be performed in order for Project Co to achieve Close-Out.
3. Terms defined in the Agreement have the same meaning in this certificate.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date of Tolling Completion and Date of Certificate

Schedule

[#Insert details of Defects and work remaining to be performed in order for Project Co to achieve Close-Out.]

Part 25 Independent Reviewer and Environmental Auditor's Notice - West Gate Tunnel Completion not achieved (List of work remaining to be performed)

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 20.2(c)(ii)A of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I advise that West Gate Tunnel Completion has not been achieved.
2. The work remaining to be performed in order for Project Co to achieve West Gate Tunnel Completion is listed in the attached schedule.
3. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date

Schedule

[#Insert details of work remaining to be performed.]

**Part 26 Independent Reviewer and Environmental Auditor's Notice -
Tolling Completion not achieved (List of work remaining to be
performed)**

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 20.2(c)(ii)A of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I advise that Tolling Completion has not been achieved.
2. The work remaining to be performed in order for Project Co to achieve Tolling Completion is listed in the attached schedule.
3. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date

Schedule

[#Insert details of work remaining to be performed.]

Part 27 Independent Reviewer and Environmental Auditor's Notice - West Gate Tunnel Completion not achieved (No list of work remaining to be performed)

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 20.2(c)(ii)B of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I advise that West Gate Tunnel Completion has not been achieved.
2. I advise that West Gate Tunnel Completion is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 20.2(c)(ii)A of the Agreement.
3. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date

**Part 28 Independent Reviewer and Environmental Auditor's Notice -
Tolling Completion not achieved (No list of work remaining to be
performed)**

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 20.2(c)(ii)B of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I advise that Tolling Completion has not been achieved.
2. I advise that Tolling Completion is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 20.2(c)(ii)A of the Agreement.
3. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date

Part 29 Project Co's Notice - West Gate Tunnel Completion – completion of outstanding work

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
 [] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. Pursuant to clause 20.2(d) of the project agreement entered into between the State and Project Co dated [*#insert date*] (**Agreement**), Project Co hereby notifies the State and the Independent Reviewer and Environmental Auditor that the work listed in the Independent Reviewer and Environmental Auditor's Notice - West Gate Tunnel Completion not achieved (List of work remaining to be performed) issued pursuant to clause 20.2(c)(ii)A of the Agreement dated [*#insert date*] has been completed.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[*#insert name and address of Project Co*]

Date

Part 31 Project Co's Notice - Returned Works completion achieved

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**),
[] (**Independent Reviewer and Environmental Auditor**) and
[] (**Facility Owner**)

From: [] (**Project Co**)

1. Pursuant to clause 20.3(c)(ii) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), Project Co hereby notifies the State, the Independent Reviewer and Environmental Auditor and the Facility Owner that, with the exception of the Defects referred to in clause 20.3(c)(i) of the Agreement and specified in the attached schedule, the Returned Facility described generally below has been completed and is otherwise in accordance with the State Project Documents.

Returned Facility:

2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name and address of Project Co]

Date

Schedule

[#Insert details of Defects.]

Part 32 Independent Reviewer and Environmental Auditor's Notice - Returned Facility

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**), and
[] (**Project Co**)

Copy: [] (**Facility Owner**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 20.3(e)(i) of the project agreement entered into between the State and Project Co dated [insert date] (**Agreement**), I confirm that with the exception of the Defects referred to in clause 20.3(c)(i) of the Agreement and specified in the attached schedule, the Returned Facility described generally below has been completed.

Returned Facility:

2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[insert name of Independent Reviewer and Environmental Auditor]

Date

Schedule

[Insert details of Defects.]

**Part 33 Independent Reviewer and Environmental Auditor's Notice -
Returned Works completion not achieved (List of work remaining
to be performed)**

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**), and
[] (**Project Co**)

Copy: [] (**Facility Owner**) (where requested)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 20.3(e)(ii)A of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I advise that the Returned Facility described generally below has not been completed in accordance with the State Project Documents or Rail Interface Party's Requirements.
2. The work remaining to be performed for the Returned Facility described generally below to be completed (subject only to Defects of the kind referred to in clause 20.3(c)(i) of the Agreement) is listed in the attached schedule.
3. Terms defined in the Agreement have the same meaning in this notice.

Returned Facility:

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date

Schedule

[#Insert details of work to be performed.]

**Part 34 Independent Reviewer and Environmental Auditor's Notice -
Returned Works completion not achieved (No list of work
remaining to be performed)**

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**), and
[] (**Project Co**)

Copy: [] (**Facility Owner**) (where requested)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 20.3(e)(ii)B of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I advise that the Returned Facility described generally below is so far from being completed in accordance with the State Project Documents that it is not practicable to provide a list of the type referred to in clause 20.3(e)(ii)A of the Agreement.
2. Terms defined in the Agreement have the same meaning in this notice.

Returned Facility:.....

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date

Part 35 Project Co's Notice - Returned Works completion of outstanding work

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
 [] (**Independent Reviewer and Environmental Auditor**) and
 [] (**Facility Owner**)

From: [] (**Project Co**)

1. Pursuant to clause 20.3(g) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I hereby confirm that the work identified in the Independent Reviewer and Environmental Auditor's Notice - Returned Works completion not achieved (List of work remaining to be performed) issued under clause 20.3(e)(ii)A of the Agreement dated [#insert date] and identified in the attached schedule has now been completed.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name and address of Project Co]

Date

Schedule

[#Insert details of work that has been completed.]

Part 36 Project Co's Notice - Handback of Returned Works

West Gate Tunnel (Project)

To: [] (Facility Owner)

Copy: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. Pursuant to clause 20.3(j)(i) of the agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), Project Co hereby notifies the Facility Owner that the Date of Handback of the Returned Facility described generally below, will be on [#insert date].

Returned Facility:

.....

2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name and address of Project Co]

Date

Part 37 Project Co's Notice - Close-Out

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. Pursuant to clause 21.1(b) of the agreement entered into between the State and Project Co dated [*#insert date*] (**Agreement**), Project Co hereby:
 - (a) notifies the State and the Independent Reviewer and Environmental Auditor that it considers Close-Out has been achieved; and
 - (b) requests that the Independent Reviewer and Environmental Auditor issues a Certificate of Close-Out.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[*#insert name and address of Project Co*]

Date

Part 38 Independent Reviewer and Environmental Auditor's Certificate - Close-Out

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and [] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 21.1(c)(i) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I certify that Close-Out has been achieved as at the date of this certificate.
2. Terms defined in the Agreement have the same meaning in this certificate.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date of Close-Out and Date of Certificate

**Part 39 Independent Reviewer and Environmental Auditor's Notice -
Close-Out (Work remaining to be performed)**

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 21.1(c)(ii) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I advise that Close-Out has not been achieved.
2. The work remaining to be performed in order to achieve Close-Out, including any Remaining Works, is listed in the attached schedule.
3. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date

Schedule

[#Insert details of work to be performed.]

Part 40 Project Co's Notice - Close-out completion of outstanding work

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. Pursuant to clause 21.1(e) of the project agreement entered into between the State and Project Co dated [*#insert date*] (**Agreement**), I hereby confirm that the work listed in the Independent Reviewer and Environmental Auditor's Notice - Close-Out (Work remaining to be performed) issued under clause 21.1(c)(ii) of the Agreement dated [*#insert date*] and identified in the attached schedule has now been completed.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[*#insert name and address of Project Co*]

Date

Schedule

[*#Insert details of the work that has been completed.*]

Part 41 State's Notice - Late Close-Out

West Gate Tunnel (Project)

To: [] (Project Co) and
[] (Independent Reviewer and Environmental Auditor)

From: [], on behalf of the Crown in right of the State of Victoria (**State**)

1. Pursuant to clause 21.2(a)(iii) of the project agreement entered into between the State and Project Co dated [*insert date*] (**Agreement**), the State hereby requires the Independent Reviewer and Environmental Auditor to:
 - (a) identify the work remaining to be undertaken to achieve Close-Out; and
 - (b) determine the cost of performing such work.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of the State

Date

Part 43 State's Notice - Late Close-Out

West Gate Tunnel (Project)

To: [] (Project Co) and
[] (Independent Reviewer and Environmental Auditor)

From: [], on behalf of the Crown in right of the State of Victoria (**State**)

1. Pursuant to clause 21.2(c)(i) of the project agreement entered into between the State and Project Co dated [##insert date] (**Agreement**), the State hereby requires the Independent Reviewer and Environmental Auditor to:
 - (a) identify the work remaining to be undertaken to achieve Close-Out; and
 - (b) determine the cost of performing such work.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of the State

Date

Part 44 Independent Reviewer and Environmental Auditor's Notice - Late Close-Out (Work remaining and cost)

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 21.2(c)(ii) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I advise that the work remaining to be undertaken to achieve Close-Out is listed in the attached Schedule A.
2. The cost of performing the work remaining to achieve Close-Out is set out in the attached Schedule B.
3. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date

Schedule A

[#List of work remaining to be undertaken to achieve Close-Out.]

Schedule B

[#Cost of performing works remaining to achieve Close-Out.]

Part 45 Independent Reviewer and Environmental Auditor's Notice - Non-compliance

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 23.2(b) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I hereby notify the State and Project Co of my opinion that:
 - (a) the obligations of Project Co under the State Project Documents in relation to the construction of the Works are not being complied with;
 - (b) subject to clause 23.2(k) of the Agreement, West Gate Tunnel Completion will not be achieved by the Date for West Gate Tunnel Completion;
 - (c) West Gate Tunnel Completion will not be achieved by the Sunset Date; or
 - (d) the D&C Program does not accurately reflect the actual progress of the Works in a manner which is false or misleading.

[delete as appropriate]
2. The reasons for my opinion are set out in the attached schedule.
3. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date

Schedule

[#Insert reasons for the Independent Reviewer and Environmental Auditor's opinion.]

Part 46 Project Co's Notice - Explanation and/or Remediation Plan

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Independent Reviewer and Environmental Auditor**)

From: [] (**Project Co**)

1. Pursuant to clause 23.2(c) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), Project Co hereby:
 - (a) [*notifies the State and the Independent Reviewer and Environmental Auditor that it disagrees with the opinion contained within the Independent Reviewer and Environmental Auditor's Notice - Non-compliance dated [#insert date] for the reasons set out in the attached Schedule A (**Explanation**); [and/or]*]
 - (b) [*to the extent that Project Co does not disagree with the Independent Reviewer and Environmental Auditor's opinion*] provides in the attached Schedule B a plan and program for:
 - (i) [the rectification of the non-compliance]; and/or
 - (ii) [overcoming the effects of the non-compliance] - *delete as inapplicable*specified in the Independent Reviewer and Environmental Auditor's Notice - Non-compliance dated [#insert date] (**Remediation Plan**),

for review in accordance with the Review Procedures.
2. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name and address of Project Co]

Date

[Schedule A]

[#Insert Project Co's Explanation, if applicable.]

[Schedule B]

[#Insert details of Project Co's Remediation Plan, if applicable.]

Part 47 Independent Reviewer and Environmental Auditor's Notice - Response to Explanation and/or Remediation Plan

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 23.2(d) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I hereby notify the State and Project Co of my opinion as to whether Project Co's [*Explanation and/or Remediation Plan - delete as inapplicable*] dated [#insert date] satisfactorily addresses the concerns raised in the Independent Reviewer and Environmental Auditor's Notice - Non-compliance dated [#insert date].
2. The details of and reasons for my opinion are set out in the attached schedule.
3. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date

Schedule

[#Insert details of and reasons for Independent Reviewer and Environmental Auditor's opinion as to adequacy of Project Co's Explanation and/or Remediation Plan.]

Part 48 Independent Reviewer and Environmental Auditor's Notice - Response to amended Explanation and/or Remediation Plan

West Gate Tunnel (Project)

To: [], on behalf of the Crown in right of the State of Victoria (**State**) and
[] (**Project Co**)

From: [] (**Independent Reviewer and Environmental Auditor**)

1. Pursuant to clause 23.2(h) of the project agreement entered into between the State and Project Co dated [#insert date] (**Agreement**), I hereby notify the State and Project Co of my opinion as to whether Project Co's amended [*Explanation and/or Remediation Plan - delete as inapplicable*] dated [#insert date] satisfactorily addresses the concerns raised in the Independent Reviewer and Environmental Auditor's Notice - Non-compliance dated [#insert date].
2. The details of and reasons for my opinion are set out in the attached schedule.
3. Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[#insert name of Independent Reviewer and Environmental Auditor]

Date

Schedule

[#Insert details of and reasons for Independent Reviewer and Environmental Auditor's opinion as to adequacy of Project Co's amended Explanation and/or Remediation Plan.]

Schedule 9 - Property Schedule

Refer to section 1 of Part J of the PSR.

West Gate Tunnel
Project Agreement
Schedule 10 - Utility Agreement

Schedule 10 - Utilities Schedule

Utility Agreement

West Gate Tunnel

[]
Project Proponent

[]
Utility

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Utility Agreement made on

Parties [] (Project Proponent)

[] (Utility)

Background

- A. The Project Proponent is the project authority under the Relevant Legislation, to facilitate the delivery of the West Gate Tunnel Works for and on behalf of the State of Victoria.
- B. The Utility is an entity which owns, operates or controls Relevant Utility Infrastructure which will be affected by the West Gate Tunnel Works.
- C. The Parties agree that their respective rights and obligations, in respect of Relevant Utility Infrastructure which is affected by the West Gate Tunnel Works, will be governed in accordance with the terms of this Agreement.

Operative provisions

1. Definitions and interpretations

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Agreement have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Agreement, unless the context otherwise requires:

Agreed Amount has the meaning given in clause 19(a).

Agreement means this agreement and includes all schedules, exhibits, attachments and annexures to it.

Claim includes any claim, action, demand or proceeding whether for the payment of money (including damages) or any other relief or remedy:

- (a) under, arising out of, or in connection with, this Agreement; or
- (b) arising out of, or in connection with, the West Gate Tunnel Works or Utility Infrastructure Works or any party's conduct prior to the date of this Agreement; or
- (c) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

Commencement Date means the date determined in accordance with clause 3(a).

Consequential Loss means:

- (a) pure economic loss;
- (b) loss of profit;
- (c) loss of revenue;
- (d) loss of opportunity;
- (e) loss of anticipated savings; and
- (f) change to goodwill or reputation,

and excludes loss arising from:

- (g) personal injury, nervous shock or death;
- (h) property damage;
- (i) third party liability claims in respect of property damage, personal injury, nervous shock or death; and
- (j) criminal acts or fraud,

and excludes all costs of the type described in sections 233(8) and 234(7) of the Relevant Legislation incurred by the Project Proponent or Project Co as a result of a delay in carrying out the Utility Infrastructure Works.

Cost has the meaning given in clause 19(e).

Deed of Accession means the document set out in Annexure A.

Expiry Date means the date 6 years from the Commencement Date.

Insolvency Event means any of the following events:

- (a) in relation to a corporation:
 - (i) **(liquidator, administrator or receiver appointed)**: a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of the corporation or any asset of the corporation;
 - (ii) **(distress or execution)**: a distress, attachment or other execution is levied or enforced upon or against any assets of the corporation and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days;
 - (iii) **(winding up)**: an order is made for the administration, dissolution or winding up of the corporation, or an application to the courts is made (and not stayed or dismissed within 20 Business Days after being made) or a resolution is passed for the administration or winding up of the corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Project Proponent;
 - (iv) **(cessation of business)**: the corporation 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 Project Proponent;

- (v) **(arrangement or compensation)**: the corporation 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 Project Proponent;
 - (vi) **(inspector)**: an inspector is appointed under any companies legislation to investigate all or any part of the affairs of the corporation in relation to a possible contravention by the corporation of that legislation and the appointment:
 - A. is not withdrawn within 10 Business Days; and
 - B. in the reasonable opinion of the Project Proponent, may have a material adverse effect;
 - (vii) **(insolvency)**: the corporation is unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable Law (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute); or
 - (viii) **(deregistration)**: for a registered corporation under the Corporations Act, a step taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration; or
- (b) in relation to a trust:
- (i) **(application to court)**: an application or order is sought or made (and is not stayed or dismissed within 20 Business Days after being sought or made) in any court for the property of the trust to be brought into court or administered by the court or brought under its control; or
 - (ii) **(assets insufficient)**: the assets of the trust are not sufficient to satisfy the trustee's debts as and when they become due and payable in respect of which it has a right to be indemnified out of the assets of the trust.

Party means either the Utility, the Project Proponent or any other person who has executed the Deed of Accession and **Parties** means each of them.

Project Agreement means the document entitled "Project Agreement West Gate Tunnel" between the State and Project Co dated [#insert date].

Project Co means the entity appointed under the Project Agreement as Project Co.

Public Disclosure Obligations has the meaning given in clause 18.1(a).

Recipient has the meaning given in clause 19(b)(i).

Renewed Term means a period of 2 years, commencing on the Expiry Date.

Representatives has the meaning given in clause 15.2.

Revenue has the meaning given in clause 19(d).

Supplier has the meaning given in clause 19(b).

Term means the period referred to under clause 4.1 or as otherwise extended in accordance with clause 4.2.

Unnotified Utility Infrastructure has the meaning given to it in section 209 of the Relevant Legislation.

Utility Infrastructure Works means the physical things and works which the Project Proponent or Utility (as applicable) must design, supply, construct, install, produce, commission or complete in connection with the construction, modification or relocation of Relevant Utility Infrastructure in accordance with the Utility Infrastructure Works Order and this Agreement.

Utility Infrastructure Works Objectives means minimising the:

- (a) impact of the Utility Infrastructure Works on the design, construction, commissioning, carrying out and completion of the West Gate Tunnel Works;
- (b) scope, cost and duration of any Utility Infrastructure Works to be carried out by the Utility; and
- (c) disruption to services provided by the Relevant Utility Infrastructure.

Utility Infrastructure Works Order means a document in the form of Schedule 4.

Utility Infrastructure Works Proposal means a document in the form of Schedule 2.

Utility Infrastructure Works Response means a document in the form of Schedule 3.

West Gate Tunnel Works means the physical things and works which Project Co must design, construct, commission or complete in accordance with the Project Agreement.

1.3 Interpretation

In this Agreement:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(Agreement and Schedule references)**: a reference to:
 - (i) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Agreement; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(Agreement as amended)**: a reference to this Agreement or to any other deed, agreement, document or instrument includes a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
- (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(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;
- (p) **("may")**: the term "may", when used in the context of a power, right or remedy exercisable by the Project Proponent or the State, means that the Project Proponent or the State can exercise that power, right or remedy in its absolute and unfettered discretion and the Project Proponent or the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy or cure)**: the use of the words "remedy" or "cure" or any form of such words in this Agreement means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Agreement or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

2. Acknowledgment

The Parties acknowledge that this Agreement is a utility agreement for the purposes of section 210 of the Relevant Legislation.

3. Conditions Precedent

- (a) **(Commencement Date)**: Subject to clause 3(b), this Agreement will commence on the later of:
- (i) the date of this Agreement; and
 - (ii) the date of Financial Close.
- (b) **(Commencement of clauses)**: If the date of this Agreement is before the date of Financial Close, clause 3 and clauses 1.1, 1.2, 1.3, 15, 16, 18, 20 and 21 will commence on the date of this Agreement with the remainder of the provisions commencing on Financial Close.
- (c) **(Notification)**: Upon becoming aware that Financial Close has occurred, the Project Proponent must notify the Utility in writing.

4. Term

4.1 Term of Agreement

This Agreement commences on the Commencement Date and, subject to clause 4.2, will terminate on the Expiry Date.

4.2 Renewal option

If the Project Proponent:

- (a) **(renewal)**: wishes to renew this Agreement for the Renewed Term to commence immediately after the Expiry Date; and
- (b) **(written notice)**: gives notice to the Utility not less than 1 month before the Expiry Date,

this Agreement will be extended for the Renewed Term on the same terms, except that this clause 4.2 will not apply.

5. Role of the Parties

The Parties acknowledge and agree that:

- (a) **(Project Co responsibility)**: under the Project Agreement, Project Co will be responsible for:

- (i) the design, construction, commissioning and completion of the West Gate Tunnel Works, in accordance with the Project Agreement; and
 - (ii) making all arrangements in respect of the carrying out of the Utility Infrastructure Works in accordance with the Project Agreement;
- (b) **(Deed of Accession)**: if requested by either the State or the Project Proponent under clause 13.5(e)(vii) of the Project Agreement, Project Co must execute the Deed of Accession within 10 Business Days of being requested to do so;
- (c) **(Deed of Accession)**: if requested by either the State or the Project Proponent, the Utility must execute the Deed of Accession within 10 Business Days of being requested to do so, and do all things necessary to give effect to the Deed of Accession; and
- (d) **(Project Co to assume obligations and liabilities)**: upon execution of the Deed of Accession:
 - (i) this Agreement will be deemed to be read as if, subject to clauses 3.2 to 3.5 of the Deed of Accession:
 - A. a reference to the Project Proponent is followed by a reference to "or Project Co"; and
 - B. a reference to a Party or the Parties in the context of the Project Proponent means the Project Proponent or Project Co; and
 - (ii) subject to clause 13.5 of the Project Agreement, the obligations and liabilities assumed by and the rights conferred on the Project Proponent and Project Co will bind and benefit them jointly and severally.

6. Utility Infrastructure Works

6.1 Utility Infrastructure Works Proposal

Unless otherwise agreed by the Parties in writing and subject to clauses 6.4(b) and 6.6, prior to commencing any Utility Infrastructure Works, the Project Proponent must issue the Utility with a Utility Infrastructure Works Proposal, which must set out:

- (a) **(details of affected Relevant Utility Infrastructure)**: details of the Relevant Utility Infrastructure which is (or is likely to be) affected by the West Gate Tunnel Works;
- (b) **(nature of Utility Infrastructure Works)**: the nature of any Utility Infrastructure Works required to be carried out as a result of the West Gate Tunnel Works;
- (c) **(timing)**: the proposed timing of the Utility Infrastructure Works;
- (d) **(standards)**: the proposed standards to which the Utility Infrastructure Works are to be carried out;
- (e) **(method)**: the proposed method for carrying out (including the entity which will carry out) the Utility Infrastructure Works;
- (f) **(estimate of costs)**: if the Utility is to carry out all or part of the Utility Infrastructure Works, the proposed estimate of costs for the Utility Infrastructure Works to be carried out by the Utility;

- (g) **(minimise disruption)**: the means by which disruption to services provided by the Relevant Utility Infrastructure will be minimised; and
- (h) **(method of certifying)**: the proposed method for certification of the Utility Infrastructure Works,

having regard to the Utility Infrastructure Works Objectives.

6.2 Response to Utility Infrastructure Works Proposal

Within 10 Business Days of the receipt of a Utility Infrastructure Works Proposal, the Utility must issue the Project Proponent with the Utility Infrastructure Works Response, which must:

- (a) **(agreement)**: confirm those aspects of the Utility Infrastructure Works Proposal with which it agrees (acting reasonably);
- (b) **(alternative proposal)**: in respect of each aspect of the Utility Infrastructure Works Proposal with which the Utility does not agree, set out an alternative proposal, which must set out in detail:
 - (i) the reasons why the Utility does not so agree; and
 - (ii) the reasons why its alternative proposal is preferable,having regard to the Utility Infrastructure Works Objectives; and
- (c) **(additional information)**: without limiting clauses 6.2(a) or 6.2(b), set out:
 - (i) the extent to which the Utility proposes to have a role in carrying out the Utility Infrastructure Works;
 - (ii) the proposed reasonable cost of any Utility Infrastructure Works to be carried out by the Utility; and
 - (iii) the method of payment of the proposed reasonable cost referred to in clause 6.2(c)(ii).

6.3 Alternative proposals

If:

- (a) **(negotiate in good faith)**: the Utility submits an alternative proposal in accordance with clause 6.2(b), the Project Proponent and the Utility must undertake genuine good faith negotiations to agree and document each of the matters set out in the Utility's alternative proposal within 10 Business Days of the receipt of the alternative proposal, having regard to the Utility Infrastructure Works Objectives; and
- (b) **(dispute resolution)**: the Project Proponent and the Utility are unable to agree each of the matters set out in the Utility's alternative proposal within 10 Business Days of the receipt of the alternative proposal, then a Party may refer the matter for resolution in accordance with clause 15.

6.4 Utility Infrastructure Works Order

If:

- (a) **(agreement)**: the Project Proponent and the Utility are able to agree "with" or "on" the matters set out in the:

- (i) Utility Infrastructure Works Proposal; or
- (ii) Utility's alternative proposal in its Utility Infrastructure Works Response;
- (b) **(no Utility Infrastructure Works Proposal)**: the Utility Infrastructure Works need to be carried out but the Project Proponent and the Utility have agreed that the Project Proponent does not need to issue a Utility Infrastructure Works Proposal, in accordance with clause 6.1; or
- (c) **(unable to agree)**: the Project Proponent and the Utility are unable to agree the matters referred to in clause 6.4(a) in accordance with clause 6.3, but the matters are determined in accordance with clause 15,

then the Parties must promptly (and in any event, within 10 Business Days of the agreement or determination) prepare and each sign the Utility Infrastructure Works Order recording the terms on which the Utility Infrastructure Works will be carried out, as agreed or determined.

6.5 Performance of and payment for Utility Infrastructure Works

- (a) **(Utility Infrastructure Works Order)**: After the Utility Infrastructure Works Order has been signed under clause 6.4:
 - (i) the Project Proponent and the Utility must carry out the Utility Infrastructure Works in accordance with the Utility Infrastructure Works Order and this Agreement; and
 - (ii) if applicable, the Utility will be paid for carrying out the Utility Infrastructure Works in accordance with the Utility Infrastructure Works Order and clause 6.7 of this Agreement.
- (b) **(obligations)**: The Project Proponent and the Utility must, in carrying out the Utility Infrastructure Works:
 - (i) ensure that the Utility Infrastructure Works are carried out in a sound and workmanlike manner with due care and skill;
 - (ii) comply with all authorisations necessary in order to undertake the Utility Infrastructure Works;
 - (iii) undertake the Utility Infrastructure Works in a manner consistent with the manner in which the Utility Infrastructure Works would be undertaken by a prudent, efficient and experienced utility provider and infrastructure manager;
 - (iv) ensure that the Utility Infrastructure Works are undertaken with due expedition and without unreasonable or unnecessary delay;
 - (v) comply with all regulatory and mandatory standards imposed by Law, together with all standards which a prudent, efficient and experienced utility infrastructure manager, construction manager or project manager (as the case may be) exercising due care, skill and diligence would comply with, having regard to the nature of the Utility Infrastructure Works; and
 - (vi) ensure that the Utility Infrastructure Works are fit for their intended purpose as identified in or reasonably inferred from the Utility Infrastructure Works Order.

6.6 Unnotified Utility Infrastructure

- (a) **(Unnotified Utility Infrastructure notice):** Upon becoming aware of any Unnotified Utility Infrastructure, the Project Proponent must issue the Utility with a notice, which must:
- (i) identify and describe; and
 - (ii) specify the location of,
the Unnotified Utility Infrastructure;
 - (iii) state that:
 - A. the Project Proponent intends to remove, relocate or protect the Unnotified Utility Infrastructure (as the case may be); and
 - B. the Utility has 5 Business Days within which to either:
 - 1) agree to the Project Proponent carrying out the Utility Infrastructure Works required to remove, relocate or protect the Unnotified Utility Infrastructure; or
 - 2) carry out the Utility Infrastructure Works required to remove, relocate or protect the Unnotified Utility Infrastructure itself; and
 - (iv) set out details of the proposed:
 - A. estimate of costs for any Utility Infrastructure Works required to remove, relocate or protect the Unnotified Utility Infrastructure, which are to be carried out by the Utility; and
 - B. method for certification of the Utility Infrastructure Works required to remove, relocate or protect the Unnotified Utility Infrastructure.
- (b) **(Unnotified Utility Infrastructure Works response):** Within 5 Business Days of the receipt of the notice under clause 6.6(a), the Utility must issue the Project Proponent with a notice, which sets out whether the Utility:
- (i) agrees to allow the Project Proponent to carry out the Utility Infrastructure Works; or
 - (ii) proposes to carry out the Utility Infrastructure Works itself and the date by which it expects to complete the Utility Infrastructure Works,
required to remove, relocate or protect the Unnotified Utility Infrastructure.
- (c) **(Performance of the Utility Infrastructure Works):** If the Utility:
- (i) agrees to allow the Project Proponent to carry out the Utility Infrastructure Works, then the Project Proponent may immediately commence carrying out the Utility Infrastructure Works;

- (ii) agrees, in its notice given under clause 6.6(b) to itself carry out the Utility Infrastructure Works required to remove, relocate or protect the Unnotified Utility Infrastructure, then it:
 - A. must immediately carry out and complete the Utility Infrastructure Works as soon as reasonably practicable; and
 - B. will be paid for carrying out the Utility Infrastructure Works in accordance with clause 6.7; or
- (iii) fails to:
 - A. respond to the notice given by the Project Proponent under clause 6.6(a) within 5 Business Days;
 - B. carry out the Utility Infrastructure Works in accordance with its notice given under clause 6.6(b) within 5 Business Days; or
 - C. agree as to the Utility Infrastructure Works to be carried out to remove, relocate or protect the Unnotified Utility Infrastructure within 5 Business Days,then:
 - D. the Project Proponent may carry out the Utility Infrastructure Works required to remove, relocate or protect the Unnotified Utility Infrastructure; and
 - E. the Utility indemnifies and will keep the Project Proponent indemnified against any action, suit, claim, demand, Liability, cost or expense arising out of or in connection with the exercise by the Project Proponent of its rights under this clause 6.6(c)(iii).

6.7 Cost of Utility Infrastructure Works to be carried out by the Utility

Where the Utility carries out Utility Infrastructure Works in accordance with this clause 6, it will be entitled to be paid:

- (a) **(arm's length)**: a reasonable, competitive, arm's length market price for doing so, which will comprise all of its reasonable direct and overhead costs and will be calculated on a fully open book basis under which the Utility provides the Project Proponent with all such information and documents as the Project Proponent may reasonably require to ensure that those costs represent a reasonable, competitive, arm's length market price for the Utility Infrastructure Works; and
- (b) **(margin)**: a margin of [not disclosed]%.

6.8 Insurances

Each Party who carries out Utility Infrastructure Works in connection with this Agreement must effect and maintain (or cause to be effected and maintained) at all times during which it carries out those works, the D&C Phase Insurances specified in the Insurance Schedule and such other insurances that a prudent and experienced contractor would obtain and maintain for works similar to the Utility Infrastructure Works.

7. Access to the Project Area

7.1 Grant of licence

Subject to clauses 7.2 and 8.2 and agreeing the relevant Utility Infrastructure Works Order, the Project Proponent grants to the Utility, including its employees, agents, contractors and nominated representatives, a licence to access, occupy and use the Project Area (at no charge) for the purposes of carrying out the Utility Infrastructure Works.

7.2 Non-exclusive access

Subject to clause 7.3, the grant of the licence to the Utility under this clause 7:

- (a) **(access for the Project Proponent and Associates)**: does not prevent the Project Proponent or any of its Associates and nominated representatives from accessing and using the Project Area for any other purpose; and
- (b) **(licence)**: is subject to the licences granted to Project Co to access, occupy and use the Project Area for the purposes of the West Gate Tunnel Works.

7.3 Non-interference

- (a) **(written authorisation)**: The Project Proponent must not, and must ensure that its employees, agents, contractors and nominated representatives do not, under any circumstances, interfere with, disrupt or damage the Relevant Utility Infrastructure without authorisation from the Utility, except in the event of an emergency which in the reasonable opinion of the Project Proponent:
 - (i) poses an imminent threat to public or environmental safety; or
 - (ii) subject to the terms of this Agreement, is likely to result in interference, disruption or damage to the:
 - A. Relevant Utility Infrastructure; or
 - B. West Gate Tunnel Works.
- (b) **(obligations)**: The Utility must, in carrying out any Utility Infrastructure Works:
 - (i) not cause any damage to the Project Area, the West Gate Tunnel Works or any other infrastructure, plant, equipment, machinery, services, fixtures or other items on the Project Area, except to the extent necessary to remove, relocate or protect Utility Infrastructure in accordance with this Agreement;
 - (ii) only access and use the Project Area for the purpose of carrying out the Utility Infrastructure Works;
 - (iii) without limiting any of its obligations under this Agreement, at all times comply with all reasonable site access and safety protocols made known to the Utility by the Project Proponent from time to time;
 - (iv) minimise nuisance and prevent unreasonable noise, dust, vibration and disturbance; and
 - (v) remove all rubbish and debris from the Project Area caused or created by it carrying out the Utility Infrastructure Works.

8. Personnel

8.1 Qualified persons

The Project Proponent and the Utility must ensure that its personnel (including its employees, agents, contractors and nominated representatives) who carry out Utility Infrastructure Works under this Agreement:

- (a) **(personnel to be properly trained and qualified)**: are properly trained and qualified and appropriately experienced to perform the duties allocated to them, and exhibit a high standard of work and conduct; and
- (b) **(regular training)**: are provided with regular training to ensure that their skills and qualifications are maintained to the then current industry standards applicable to the provision of the Utility Infrastructure Works.

8.2 Access to the Project Area

Whenever the Utility's personnel (including its employees, agents, contractors and nominated representatives) access the Project Area under clause 7.1, the Utility will ensure that those personnel:

- (a) **(training and induction)**: attend any training or induction program required by the Project Proponent;
- (b) **(compliance with health and safety obligations)**: are acquainted with and comply with the OHS Legislation, all OHS Regulations and any other relevant health and safety legislation;
- (c) **(standards)**: are made aware of the importance that the Project Proponent places on establishing and maintaining high standards in relation to workplace health and safety and protection of the environment;
- (d) **(compliance)**: comply with reasonable directions, procedures and policies made known to the Utility (including those of the "principal contractor" under the OHS Legislation, OHS Regulations and any other relevant health and safety legislation);
- (e) **(responsible and businesslike manner)**: act in a responsible and businesslike manner on and around the Project Area;
- (f) **(avoid interference)**: carry out the Utility Infrastructure Works so as to avoid interfering with, disrupting, damaging or delaying the West Gate Tunnel Works; and
- (g) **(emergency response plan)**: give the Project Proponent a copy of the emergency response plan in relation to any Relevant Utility Infrastructure erected or installed on the Project Area during any access to the Project Area by the Utility.

9. Payment

- (a) **(Invoicing)**: When providing an invoice under this Agreement, the Utility or the Project Proponent (the **Payee**) must invoice the other Party (the **Payer**) for the carrying out of the Utility Infrastructure Works in accordance with the terms of payment agreed in the relevant Utility Infrastructure Works Order under clause 6.4.
- (b) **(Payment)**: The Payer must pay a correctly rendered invoice within 20 Business Days of receipt of that invoice, except when it disputes all or part of that invoice in which case it will pay the undisputed portion of the invoice. The Payee will

immediately credit the portion of the invoice in dispute and the matter must be referred for resolution in accordance with clause 15.

10. Records, access and audits

10.1 Records

The Utility must keep full, true, auditable and up to date books of account, records and documentation relating:

- (a) **(carrying out of Utility Infrastructure Work)**: to the Utility Infrastructure Works carried out in accordance with this Agreement; and
- (b) **(amounts payable)**: to amounts payable by the Project Proponent in respect of the carrying out of Utility Infrastructure Works by the Utility, including complete and accurate records of and supporting documentation for all invoices submitted to the Project Proponent and all payments made by the Project Proponent under this Agreement, including the amount and manner of calculation of any amounts proposed by the Utility under clause 6.7 or agreed or determined to be payable under clause 6.4.

10.2 Audit

The Project Proponent may conduct an audit of the Utility for the purpose of auditing the Utility's compliance with its obligations under this Agreement, including the amount and manner of calculation of any amounts payable by the Project Proponent in respect of the carrying out of Utility Infrastructure Works.

10.3 Incorrect invoicing

Without limiting or otherwise affecting the Project Proponent's rights, where any invoice rendered by the Utility under clause 9 is found to have been incorrect after payment has been made by the Project Proponent, the overpayment will be recovered from the Utility by payment to the Project Proponent or offset against a subsequent invoice.

10.4 Documentation to be provided following completion of Utility Infrastructure Works

Where the Project Proponent or the Utility undertakes any Utility Infrastructure Works, it must, as soon as reasonably practicable, but in any event no later than 10 Business Days after receipt of payment in respect of the Utility Infrastructure Works, provide the Project Proponent or the Utility with all data, drawings, information, records, plans and other material relating to those Utility Infrastructure Works.

11. Step-In

11.1 Step-In

If the Utility:

- (a) **(default by Utility)**: is in default of a material term of this Agreement and fails to remedy that default within 10 Business Days after its receipt of a notice of default from the Project Proponent (or such other period the Parties may agree in writing); or
- (b) **(Utility subject to Insolvency Event)**: commits, suffers or is the subject of an Insolvency Event,

then the Project Proponent may by further notice to the Utility, elect to:

- (c) **(management and control by the Project Proponent of Utility)**: temporarily or permanently assume total or partial management and control of the whole or part of the Utility Infrastructure Works; and
- (d) **(take steps to carry out Utility Infrastructure Works)**: take such other steps as are necessary in the reasonable opinion of the Project Proponent to carry out the Utility Infrastructure Works.

11.2 No Claim

The Utility will have no Claim, action, demand or entitlement to institute any proceedings against the Project Proponent, whether for the payment of money or any other relief or remedy, arising out of or in connection with the exercise by the Project Proponent of its step-in rights under clause 11.1.

11.3 Indemnity

The Utility indemnifies and will keep the Project Proponent indemnified against any action, suit, Claim, demand, Liability, cost or expense arising out of or in connection with the exercise by the Project Proponent of its step-in rights under clause 11.1.

11.4 Utilities to assist the Project Proponent

The Utility must provide the Project Proponent with all necessary assistance in a timely manner to enable it to exercise its step-in rights under clause 11.1 effectively and expeditiously.

12. Force Majeure Events

12.1 Non-performance excused

Non-performance by the Project Proponent or the Utility of any obligation or condition required by this Agreement to be performed will be excused during the time and to the extent that such performance is prevented, wholly or in part, by a Force Majeure Event.

12.2 Notification and diligence

- (a) **(Force Majeure Event)**: Where the Project Proponent or the Utility is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this Agreement to be performed, it must:
 - (i) notify the other Party, as soon as practical after becoming aware of the Force Majeure Event, of:
 - A. reasonably full particulars of the event or circumstance of the Force Majeure Event;
 - B. where possible, an estimate of the period of time required to enable it to resume full performance of its obligations; and
 - C. where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
 - (ii) use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as expeditiously as possible; and

- (iii) notify the other Party when the Force Majeure Event has terminated or abated to an extent which permits resumption of performance to occur.
- (b) **(Effect):** No Party will, by virtue of this clause 12, be required against its will to:
 - (i) adjust or settle any strike, lockout, ban or other industrial disturbance; or
 - (ii) make payment of, or otherwise provide compensation in response to, or as a consequence or in settlement of, any native title or cultural heritage claim by or on behalf of indigenous peoples.
- (c) **(Lack of funds):** No Party may claim lack of funds as a Force Majeure Event in accordance with this clause 12 or withhold moneys due and payable whether or not a Force Majeure Event exists.

13. Effect of Force Majeure

Where the Utility carries out Utility Infrastructure Works in accordance with clause 6, the period of time during which the Utility's performance of any obligation or condition is prevented by a Force Majeure Event will not be added to the time provided in this Agreement for the performance of that obligation or condition nor to the time required for the performance by the Utility of any act dependent thereon.

14. Limitation of liability and indemnities

14.1 Liability and indemnities

- (a) **(Indemnity):** Subject to clause 14.1(b), each of the Project Proponent and the Utility indemnifies and will keep each other indemnified against any action, suit, Claim, demand, Liability, cost or expense arising out of or in connection with any failure by the Project Proponent or the Utility (as the case may be) to comply with:
 - (i) any applicable Law; or
 - (ii) the terms of this Agreement.
- (b) **(Proportionate liability):** The liability of the Project Proponent or the Utility (as the case may be) will be reduced proportionately to the extent to which the liability is caused or contributed to by the Utility or the Project Proponent (respectively).

14.2 Limitation of liability

Notwithstanding any other provision in this Agreement, the Project Proponent and the Utility will not be liable to each other for any Consequential Loss.

14.3 Survival of indemnities

Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Parties and survives termination of this Agreement.

14.4 Release

- (a) **(Utility Infrastructure Works carried out by the Project Proponent):** Upon certification of Utility Infrastructure Works which have been carried out by the Project Proponent, the Utility releases the Project Proponent from any action, suit, claim, demand, Liability, cost or expense in respect of any fact, matter or thing

arising out of, or in any way in connection with, the Relevant Utility Infrastructure or the Utility Infrastructure Works.

- (b) **(Utility Infrastructure Works carried out by the Utility):** Upon receipt of payment in respect of Utility Infrastructure Works which have been carried out by the Utility, the Utility releases the Project Proponent from any action, suit, claim, demand, Liability, cost or expense in respect of any fact, matter or thing arising out of, or in any way in connection with, the Relevant Utility Infrastructure or the Utility Infrastructure Works, except for any claim included in the invoice under clause 9 to which the Utility Infrastructure Works relates, which is given to the Project Proponent within the time required by, and in accordance with the terms of, clause 9.

15. Dispute Resolution

15.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute between the Parties arising under this Agreement must be resolved in accordance with this clause 15.
- (b) **(Dispute resolution procedure):** The procedure that is to be followed to resolve a dispute is as follows:
- (i) firstly, the dispute must be the subject of negotiation as required by clause 15.2;
 - (ii) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i) the Parties may agree that the dispute must be referred to an expert for determination in accordance with clauses 15.4 to 15.8 (inclusive) or to arbitration in accordance clause 16; and
 - (iii) thirdly, if:
 - A. the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i) and irrespective of whether the Parties failed to meet as required by that clause or whether having so met the Parties fail to agree whether the dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 15.2(c)(i);
 - B. the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - C. the dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 15.6(a),

then the dispute must be referred to arbitration in accordance with clause 16.

15.2 Negotiation

- (a) **(Notification):** If a dispute arises then a Party may give notice to the other Party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of both Parties (**Representatives**).

- (b) **(Contents of Notice):** A notice under clause 15.2(a) must:
 - (i) state that it is a notice under this clause 15; and
 - (ii) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve dispute):** If a dispute is referred for resolution by negotiation under clause 15.2(a), then:
 - (i) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 15.2(a) is received (or such later date as the Parties may agree); and
 - (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Party and will be contractually binding on the Parties.

15.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives):** a dispute which has been referred to the Representatives for negotiation in accordance with to clause 15.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i); and
- (b) **(referral to expert):** the Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 15.2(c)(i), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 15.4 to 15.8. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Parties.

15.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts):** Within 7 Business Days after the date on which the Parties agree to refer a dispute to an expert for determination under clause 15.3, the Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 15.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person that appears on both lists under clause 15.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 15.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on both lists, the party which gave the notice under clause 15.2(a) must procure:
 - (i) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Parties under clause 15.4(a); or

- (ii) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or such governing body advises that it will not nominate an expert, 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 15.4(a).
- (d) **(Appropriate skills):** It is the intention of the Parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** Neither Party will be entitled to challenge the appointment of an expert under this clause 15.4 on the basis that the expert does not satisfy the requirements of clause 15.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Agreement will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011 (Vic)*.
- (g) **(Agreement):** Once an expert is appointed, the Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

15.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

15.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Parties unless, within 10 Business Days of receipt of the determination, a Party gives notice to the other Party of its dissatisfaction and intention to refer the matter to arbitration under clause 16.
- (b) **(Amendment to determination):** Upon submission by any Party, the expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.

15.7 Liability of expert

- (a) **(Liability of expert):** The Parties agree:
 - (i) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (ii) to indemnify the expert against any Claims or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is a party to the dispute.

- (b) **(Engagement):** The Parties will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

15.8 Costs

The Parties must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

16. Arbitration

16.1 Reference to Arbitration

- (a) **(Dispute):** If:
 - (i) a dispute:
 - A. which has been referred to the Parties' Representatives for negotiation in accordance with clause 15.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i); and
 - B. the Parties do not agree to refer the dispute to an expert for determination; or
 - (ii) in the case of a dispute which the Parties agree to refer to expert determination under clause 15.3:
 - A. a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - B. a notice of dissatisfaction is given in accordance with clause 15.6,

then either Party may notify the other that it requires the dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by the other Party of a notice under clause 16.1(a)(ii)B, the dispute will be referred to arbitration.

16.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 16 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 16.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

16.3 Appointment of arbitrator

The Parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 16.1(b), the arbitrator or arbitrators will be appointed by the Australian Centre for International Commercial Arbitration.

16.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Parties agree that:
- (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) any arbitration conducted in accordance with this clause 16 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 16.4(a)(i) and 16.4(a)(ii).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
- (i) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 16.4(a) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the Parties must be split equally between the Parties so that each Party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the Parties;
 - (v) not less than 28 days prior to the date fixed for oral hearing each Party must give notice of those witnesses (both factual and expert) of the other Party that it wishes to attend the hearing for cross examination;
 - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 16.4(d)(ii);

- (vii) a Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
- (viii) each Party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing Party or, where 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 witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Party may only rely upon one expert witness in connection with any recognised area of specialisation.

16.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 16.5, have applied to any dispute referred to arbitration in accordance with this clause 16.

16.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
 - (i) a dispute between the Parties to this Agreement is referred to arbitration in accordance with this clause 16; and
 - (ii) there is some other dispute also between the Parties to and in accordance with this Agreement (whenever occurring),the arbitrator may, upon application being made to the arbitrator by one or both of the Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 16.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

16.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 16.7(b), any award will be final and binding on the Parties.
- (b) **(Appeal):** Each Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 16.

16.8 Continue to perform

Notwithstanding the existence of a dispute, each Party must continue to carry out its obligations in accordance with this Agreement.

16.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

16.10 Interlocutory relief

This clause 16 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.

17. Assignment

17.1 No assignment

- (a) **(No assignment):** Subject to clause 17.2, the Project Proponent and the Utility must not assign or otherwise deal with this Agreement or any right or obligation under this Agreement except in accordance with a security interest granted in favour of a financier or with the prior consent of the other Party, which consent will not be unreasonably withheld or delayed provided that:
- (i) the assignee has agreed in writing to be bound by the terms of this Agreement by an appropriate deed of assignment in a form reasonably acceptable to the other Party; and
 - (ii) the Project Proponent or the Utility (as the case may be) has demonstrated to the reasonable satisfaction of the other Party that the assignee is reputable, of good financial standing and is capable of fulfilling all the obligations of the Project Proponent or the Utility (as the case may be) under this Agreement for the Term.
- (b) **(Consent):** Consent to an assignment will not prejudice or in any way reduce any right that the Project Proponent and the Utility may have as against the other Party (whether positive or negative) which had accrued to their benefit prior to the date of the assignment.

17.2 Assignment by Project Proponent

The Project Proponent may assign, transfer or otherwise dispose of its rights and obligations under this Agreement where:

- (a) **(details of transferee):** it has provided details of the proposed transferee and the terms and conditions of the proposed transferee to the Utility;
- (b) **(nature of the transferee):** the proposed transferee is an agent of, or the obligations of which are supported by the Crown in the right of the State of Victoria; and
- (c) **(agreement to be bound):** the proposed transferee has agreed to be bound by this Agreement.

18. Confidential Information and disclosure

18.1 Confidential Information and disclosure by Project Proponent

- (a) **(Public Disclosure Obligations):** The Project Proponent may disclose any information in connection with the Project (including any Confidential Information) in accordance with its Public Disclosure Obligations and the Utility must use all reasonable endeavours to assist the Project Proponent in meeting its Public Disclosure Obligations.

- (b) **(Other purposes):** The Project Proponent may disclose any information in connection with the Project (including any Confidential Information) in connection with the requirements of the State Project Documents (including any tender process required to be conducted under the Termination Payments Schedule or the Change Compensation Principles).
- (c) **(Project Proponent's rights):** Subject to clause 18.1(d), in meeting its Public Disclosure Obligations, the Project Proponent may publish, disclose or make generally available this Agreement on a Victorian Government website.
- (d) **(Commercially sensitive information):** The Project Proponent will not publish, disclose or otherwise make generally available the information which is specified in the Confidential Information Schedule, except if required to do so to comply with the Public Disclosure Obligations in accordance with clauses 18.1(b).

18.2 Confidential Information and disclosure by the Utility

- (a) **(Confidentiality obligation):** Subject to clause 18.2(b), the Utility must treat as secret and confidential all Confidential Information (including Confidential Information of the State and of Project Co).
- (b) **(Disclosure of Confidential Information):** Without limiting the Utility's obligation under clause 18.2(a) and subject to clause 18.2(c), the Utility may disclose Confidential Information to its Associates to the extent necessary for the purpose of its obligations in accordance with this Agreement.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Utility must ensure that the person to whom the information is disclosed enters into a confidentiality deed with the Utility on terms reasonably acceptable to the Project Proponent.

18.3 Disclosure by the Utility

- (a) **(Utility's disclosure obligations):** Subject to clause 18.3(b), the Utility must:
 - (i) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project without the State's and Project Co's prior consent;
 - (ii) comply with any terms and conditions the State or Project Co imposes and must use all reasonable endeavours to agree with the State and Project Co the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
 - (iii) as soon as practicable, give to the Project Proponent a copy of any public disclosure, announcement or statement agreed to or approved by the Project Proponent in accordance with this clause 18.3(a) or for which the Project Proponent's consent or approval was not required in accordance with clause 18.3(b).
- (b) **(Permitted disclosure):** For the purposes of clause 18.3(a), the Utility will not be required to obtain the Project Proponent's consent or approval to the extent that any disclosure, announcement or statement is:
 - (i) required by Law, provided that it:

- A. notifies the Project Proponent of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
- (ii) required to obtain legal or other advice from its advisers;
 - (iii) required to be made to a court in the course of proceedings to which the Utility is a party; or
 - (iv) required by a relevant stock exchange, subject to:
 - A. such disclosure, announcement or statement not referring to the State's or any of its Associates' involvement in the Project; and
 - B. the Utility having used all reasonable endeavours to obtain the Project Proponent's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

19. GST General

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated to include GST, any amounts payable for a taxable supply that are referred to in any other provision of this Agreement are exclusive of any GST (**Agreed Amount**).
- (b) **(GST payable by Supplier):** If GST becomes payable on any taxable supply made by a party (**Supplier**) under or in connection with this Agreement:
 - (i) unless the Agreed Amount is expressly stated to include GST, an additional amount will be payable by the party which is the recipient of the taxable supply (**Recipient**), equal to the amount of GST payable by the Supplier on that taxable supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (ii) the Supplier will provide a tax invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Agreement or no later than the time at which the Agreed Amount for that taxable supply is to be provided in accordance with this Agreement. The Recipient is not obliged to pay any amount in accordance with this clause 19 unless and until a tax invoice is received by the Recipient in connection with the taxable supply except where the Recipient is required to issue the tax invoice.
- (c) **(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 Agreement (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 19(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:

- (i) the Supplier will issue an adjustment note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (ii) no additional amount will be payable by the Recipient unless and until an adjustment note is received by the Recipient.
- (d) **(Revenue net of GST):** Any reference in this Agreement to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (e) **(Cost net of GST):** Any reference in this Agreement to cost, expense, liability or other similar amount (**Cost**) of a party, including in the context of an entitlement to recovery, reimbursement or compensation for any Costs of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (f) **(GST Groups):** For the purposes of this Agreement, a reference to GST payable on a taxable supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.
- (g) **(Definitions):** In this clause 19, unless otherwise defined in this Agreement, terms used have the meanings given to them in the GST Law.
- (h) **(Non-monetary consideration):** Where two parties in accordance with this Agreement exchange non-monetary consideration:
 - (i) notwithstanding clause 19(b), the additional amount payable on any taxable supply by the Recipient to the Supplier shall be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate; and
 - (ii) the parties agree to value the non-monetary consideration on an equal and GST-inclusive basis and swap tax invoices accordingly.

20. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Agreement:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as set out below (or as otherwise notified by that Party to the other Party from time to time);

Utility:

Attention: [#]
Name: [#]
Address: [#]
Email: [#]

Project Proponent:

Attention: [#]
Name: [#]
Address: [#]
Email: [#]

- (c) **(signed)**: must be signed by the Party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that Party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid express post to the address, or emailed (in the form agreed by both Parties) to the email address of the addressee set out in clause 20(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 20(b):
- (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

21. Miscellaneous

21.1 Governing Law and jurisdiction

- (a) **(Governing Law)**: This Agreement is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction)**: Without limiting clauses 15 to 16, each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings that may be brought in connection with this Agreement.

21.2 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Agreement:

- (a) **(entire understanding)**: embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) **(prior agreements)**: supersedes any prior Agreement between the Parties.

21.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Agreement.

21.4 Survival of certain provisions

- (a) **(Surviving clauses)**: All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Agreement will survive the rescission, termination or expiration of this Agreement, including any provision in connection with:
 - (i) the Project Proponent's rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to the Project Proponent;
 - (v) any indemnity or financial security given in accordance with this Agreement; or
 - (vi) any right or obligation arising on termination of this Agreement.
- (b) **(Interpretation)**: No provision of this Agreement which is expressed to survive the termination of this Agreement will prevent any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.
- (c) **(Survival of rights and obligations)**: No right or obligation of any party will merge on completion of any transaction in accordance with this Agreement. All rights and obligations in accordance with this Agreement survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Agreement.

21.5 Waiver

- (a) **(No waiver)**: Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of a right provided by law or under this Agreement by the Project Proponent or the Utility 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 Agreement.
- (b) **(Writing)**: A waiver or consent given by the Project Proponent or the Utility under this Agreement is only effective and binding if it is given or confirmed in writing by the Project Proponent or the Utility.

- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

21.6 Consents, approvals and directions

- (a) **(Project Proponent)**: A consent or approval required in accordance with this Agreement from the Project Proponent may be given or withheld, or may be given subject to any conditions, as the Project Proponent thinks fit, unless this Agreement expressly provides otherwise.
- (b) **(Utility)**: A consent or approval required in accordance with this Agreement from Utility may not be unreasonably withheld or delayed, unless this Agreement expressly provides otherwise.

21.7 Amendments

Except as otherwise expressly provided in this Agreement and subject to clause 13.5(f)(i)l. of the Project Agreement, this Agreement may only be varied by a deed executed by or on behalf of each party.

21.8 Expenses

Except as otherwise expressly provided in this Agreement or (as between the State and Project Co) the Project Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

21.9 Severance

If, at any time, a provision of this Agreement becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Agreement; or
- (b) that provision under the Law of any other jurisdiction.

21.10 Counterparts

This Agreement may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Agreement.

21.11 Moratorium legislation

Without limiting clause 5.4 of the Project Agreement, to the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of the Utility any obligation under this Agreement, or to prejudicially affect the exercise by the Project Proponent of any right, power or remedy under this Agreement, are expressly waived.

21.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act)**: The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either Party under this Agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

- (b) **(Rights, obligations and liabilities):** Without limiting clause 21.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Agreement and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

West Gate Tunnel
Project Agreement
Schedule 10 - Utility Agreement

Schedule 1 – Relevant Utility Infrastructure

[Note: To be inserted.]

Schedule 2 - Utility Infrastructure Works Proposal

UTILITY INFRASTRUCTURE WORKS PROPOSAL

To: *[#insert name of Utility]* (Utility)

This is a Utility Infrastructure Works Proposal issued under clause 6.1 of the Utility Agreement between the Project Proponent, *[#insert name of other parties]* dated *[#insert date]* (Utility Agreement). Unless otherwise expressly defined, expressions used in this Utility Infrastructure Works Proposal have the meanings given to them in or for the purposes of the Utility Agreement.

[The Project Proponent/Project Co] note the following, in respect of Relevant Utility Infrastructure that has been (or is likely to be) affected by the West Gate Tunnel Works:

1. Description of the Relevant Utility Infrastructure which is (or is likely to be) affected by the West Gate Tunnel Works:

[#insert]
2. Description of the nature of any Utility Infrastructure Works required to be carried out as a result of the West Gate Tunnel Works:

[#insert]
3. Proposed timing of the Utility Infrastructure Works:

[#insert]
4. Proposed standards to which the Utility Infrastructure Works are to be carried out:

[#insert]
5. Proposed method for carrying out (including the entity which will carry out) the Utility Infrastructure Works:

[#insert]
6. If the Utility is to carry out all or part of the Utility Infrastructure Works, the proposed budget for the Utility Infrastructure Works to be carried out by the Utility:

[#insert]
7. Description of the means by which disruption to services provided by the Relevant Utility Infrastructure will be minimised by the Utility:

[#insert]
8. Proposed method for final certification of the Utility Infrastructure Works:

[#insert]

Signed: _____

Date: _____

[PROJECT PROPONENT/PROJECT CO]

Schedule 3 - Utility Infrastructure Works Response

UTILITY INFRASTRUCTURE WORKS RESPONSE

To: [the Project Proponent/Project Co] (**Project Proponent/Project Co**)

This is a Utility Infrastructure Works Response issued under clause 6.2 of the Utility Agreement between the Project Proponent, [insert name of other parties] dated [insert date] (**Utility Agreement**). Unless otherwise expressly defined, expressions used in this Utility Infrastructure Works Response have the meanings given to them in or for the purposes of the Utility Agreement.

[insert name of Utility] (**Utility**) notes the following, in respect of the Utility Infrastructure Works Proposal issued under clause 6.1 of the Utility Agreement:

1. Description of those aspects of the Utility Infrastructure Works Proposal with which the Utility agrees:

[insert]
2. In respect of all aspects of the Utility Infrastructure Works Proposal with which the Utility does not agree, a description (having regard to the Utility Infrastructure Works Objectives) of the Utility's alternative proposal, including the reasons why the Utility does not so agree and the reasons why its alternative proposal is preferable:

[insert]
3. If the Utility has submitted an alternative proposal, the extent to which the Utility proposes to have a role in carrying out the Utility Infrastructure Works and, if it is intended that the Utility will carry out part or all of the Utility Infrastructure Works, the proposed reasonable cost of any Utility Infrastructure Works to be carried out by the Utility and the proposed method of payment of that proposed reasonable cost:

[insert]

Signed: _____ Date: _____

Utility

Schedule 4 - Utility Infrastructure Works Order

UTILITY INFRASTRUCTURE WORKS ORDER

This is a Utility Infrastructure Works Order issued under clause 6.4 of the Utility Agreement between the Project Proponent, *[#insert name of other parties]* dated *[#insert date]* (**Utility Agreement**). Unless otherwise expressly defined, expressions used in this Utility Infrastructure Works Order have the meanings given to them in or for the purposes of the Utility Agreement.

The Parties have agreed the following (or alternatively, it has been determined by an expert in accordance with clause 15 of the Utility Agreement), in respect of Relevant Utility Infrastructure that has been (or is likely to be) affected by the West Gate Tunnel Works:

1. Description of the Relevant Utility Infrastructure which is (or is likely to be) affected by the West Gate Tunnel Works:

[#insert]
2. Description of the nature of any Utility Infrastructure Works required to be carried out as a result of the West Gate Tunnel Works:

[#insert]
3. Proposed timing of the Utility Infrastructure Works:

[#insert]
4. Proposed standards to which the Utility Infrastructure Works are to be carried out:

[#insert]
5. Proposed method for carrying out (including the entity which will carry out) the Utility Infrastructure Works:

[#insert]
6. To the extent that the Utility will carry out all or part of the Utility Infrastructure Works, the amount payable to the Utility in respect of the carrying out of the Utility Infrastructure Works:

[#insert]
7. Description of the means by which disruption to services provided by the Relevant Utility Infrastructure will be minimised by the Utility:

[#insert]
8. Proposed method for final certification of the Utility Infrastructure Works:

[#insert]

Signed: _____ Date: _____
 Utility

Signed: _____ Date: _____

[PROJECT PROPONENT/PROJECT CO]

West Gate Tunnel
Project Agreement
Schedule 10 - Utility Agreement

Annexure A - Deed of Accession

West Gate Tunnel
Project Agreement
Schedule 10 - Utility Agreement

Signed as an Agreement.

[Execution blocks to be inserted]

West Gate Tunnel
Project Agreement
Annexure A to Schedule 10 - Deed of Accession

Annexure A to Schedule 10 - Deed of Accession

Deed of Accession

West Gate Tunnel

[]
Project Proponent

[]
Project Co

[]
Utility

Deed of Accession made on

Parties [] (**Project Proponent**)
[] (**Project Co**)
[] (**Utility**)

Background

- A. The Project Proponent has entered into the Utility Agreement with the Utility.
- B. Under the Project Agreement, Project Co has agreed to, upon request, execute this Deed and implement the Utility Infrastructure Works in accordance with its obligations under the Project Agreement and the Utility Agreement.

Operative provisions

1. Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Deed, unless the context otherwise requires:

Deed means this deed and includes all schedules, exhibits, attachments and annexures to it.

Effective Date means the date of this Deed.

Party means any of the Project Proponent, Project Co or the Utility and **Parties** means each of them.

Project Agreement means the document entitled "Project Agreement West Gate Tunnel" between the State and Project Co dated [*#insert date*].

Utility Agreement means [*#insert details of Utility Agreement*].

1.3 Interpretation

In this Deed:

- (a) (**headings**): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) (**count and gender**): a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) (**Deed and Schedule references**): a reference to:
 - (i) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Deed; and

- (ii) a section is a reference to a section of a Schedule;
- (d) **(Deed as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
- (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, duty, obligation, Liability, interest, entitlement, title, discretion, authority or power;
- (o) **(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;
- (p) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (q) **(remedy or cure)**: the use of the words "remedy" or "cure" or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome; and

- (r) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

2. Precedence of Project Agreement

Each of the Parties acknowledge and agree that to the extent of any inconsistency, ambiguity or discrepancy between its obligations under this Deed, and the Project Agreement, the terms of the Project Agreement will prevail.

3. Covenant

3.1 Project Co covenants

- (a) **(covenants)**: Project Co:
- (i) confirms that it has been supplied with a copy of the Utility Agreement; and
 - (ii) with effect from the Effective Date but subject to clauses 3.2, 3.4, 3.5 and 3.5, agrees to be bound by the Utility Agreement and to perform all of the obligations required to be performed by the Project Proponent under the Utility Agreement:
 - A. as if Project Co was named in the Utility Agreement as the Project Proponent; and
 - B. in accordance with clause 5(d) of the Utility Agreement.
- (b) **(utility covenant)**: The Utility covenants with Project Co, with effect from the Effective Date, to comply with the provisions of, and to perform all its obligations under the Utility Agreement so far as they may remain to be observed and performed.

3.2 Access to the Project Area

The Project Proponent and the Utility acknowledge and agree that, with effect from the Effective Date, clause 7.1 of the Utility Agreement will not apply to Project Co.

3.3 Assignment by Project Co

The Project Proponent and the Utility acknowledge and agree that, with effect from the Effective Date, clause 17 of the Utility Agreement will not apply to Project Co.

3.4 Disclosure of Confidential Information by Project Co

The Project Proponent and the Utility acknowledge and agree that, with effect from the Effective Date, clause 18.1 of the Utility Agreement will not apply to Project Co and the Utility Agreement will be deemed to include the following new clause 18.4:

“Clause 18.4 Disclosure of Confidential Information by Project Co

- (a) **(Disclosure of Confidential Information)**: Subject to clause 18.4(b), Project Co may disclose Confidential Information of the Utility to:
- (i) its Associates to the extent necessary for the purpose of undertaking the Project;

- (ii) Funding Co or any prospective financier or equity investor of the Project, subject to the Utility having been provided necessary information in respect of the proposed parties; or
 - (iii) to obtain legal or other professional advice from its advisers who are subject to a duty to keep the information confidential.
- (b) **(Confidentiality deed):** Before disclosing any Confidential Information of the Utility in reliance on clause 18.4(a)(i) or clause 18.4(a)(ii), Project Co must ensure that the person to whom the information is disclosed enters into a confidentiality deed with Project Co on terms reasonably acceptable to the Utility.
- (c) **(Disclosure required by Law):** Project Co may disclose any Confidential Information of the Utility to the extent that the disclosure is:
 - (i) required by Law, provided that it:
 - A. notifies the Utility of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on the basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to be made to a court in the course of proceedings to which Project Co is a party; or
 - (iii) required by a relevant stock exchange, subject to:
 - A. such disclosure, announcement or statement not referring to the Utility's involvement in the Project; and
 - B. Project Co having used all reasonable endeavours to obtain the Utility's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange."

3.5 Notices

The Project Proponent and the Utility acknowledge and agree that, with effect from the Effective Date, clause 20(b) of the Utility Agreement will be deemed to include the following notice details for Project Co:

"Project Co:

Attention: [#]
Name: [#]
Address: [#]
Email: [#]"

4. Miscellaneous

4.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.

- (b) **(Jurisdiction)**: Without limiting clauses 15 to 16 of the Utility Agreement, each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

4.2 Entire Agreement

To the extent permitted by Law and in relation to their subject matter, this Deed and the Utility Agreement:

- (a) **(entire understanding)**: embody the entire understanding of the Parties and constitute the entire terms agreed by the Parties; and
- (b) **(prior agreements)**: supersede any prior agreement of the Parties.

4.3 Further acts and documents

Each Party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both Parties) required by Law or reasonably requested by another Party to give effect to this Deed.

4.4 Waiver

- (a) **(Writing)**: A waiver given by a Party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that Party.
- (b) **(No waiver)**: A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

4.5 Consents, approvals and directions

- (a) **(Project Proponent)**: A consent or approval required in accordance with this Deed from the Project Proponent may be given or withheld, or may be given subject to any conditions, as the Project Proponent thinks fit, unless this Deed expressly provides otherwise.
- (b) **(Project Co)**: A consent or approval required in accordance with this Deed from Project Co may not be unreasonably withheld or delayed, unless otherwise expressly provided in this Deed.
- (c) **(Utility)**: A consent or approval required in accordance with this Deed from the Utility may not be unreasonably withheld or delayed, unless otherwise expressly provided in this Deed.

4.6 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each Party.

4.7 Expenses

Except as otherwise expressly provided in this Deed or (as between the State and Project Co) the Project Agreement, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

4.8 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

4.9 Counterparts

This Deed may be executed in any number of counterparts and by the Parties in separate counterparts. Each counterpart constitutes the deed of each Party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

4.10 Moratorium legislation

Without limiting clause 5.4 of the Project Agreement, to the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a Party other than the Project Proponent any obligation under this Deed, or prejudicially affect the exercise by the Project Proponent of any right, power or remedy under this Deed or otherwise, are expressly waived.

4.11 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of a Party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 4.11(a), the rights, obligations and liabilities of the Parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

West Gate Tunnel
Project Agreement
Annexure A to Schedule 10 - Deed of Accession

Executed as a deed

[Note: Execution blocks to be inserted]

West Gate Tunnel
Project Agreement
Schedule 11 - Low Impact Lane Closure Schedule

Schedule 11 – Low Impact Lane Closure Schedule

[not disclosed]

Schedule 12 - Insurances

There are two parts to this Schedule 12:

- Part A — Insurances applicable to the D&C Phase; and
- Part B — Insurances during the O&M Phase.

Part A — Insurance applicable to the D&C Phase

Project Co must procure, or cause to be procured, and thereafter maintained, each of the Insurances with respect to the Project specified in this Part A for the applicable period of insurance. Each such Insurance must be procured and maintained upon the minimum terms specified in this Part A and clause 40 of this Agreement.

Summary of D&C Phase Insurances required:

- (a) Contract Works Insurance (Material Damage);
- (b) Contract Works Insurance (Public and Products Liability);
- (c) Contractors' Pollution Liability;
- (d) Contract Works Insurance (Delay in Start-Up);
- (e) Plant and Equipment;
- (f) Marine Transit and Marine Transit (Delay in Start-Up);
- (g) Design and Construct Professional Indemnity Insurance;
- (h) Workers' Compensation Insurance; and
- (i) Motor Vehicle Insurance.

(a) Contract Works Insurance (Material Damage)

| Insurance element | Minimum Requirement |
|-------------------|--|
| Insured | <p>Each of:</p> <ul style="list-style-type: none"> • Project Co; • the State; • Project Co's Associates and State's Associates to the extent that these parties have an insurable interest or are required to be insured under any Project Document relating to the Works and the D&C Activities, each to the extent of their respective rights and interests; • the D&C Subcontractor; and • all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Works and the D&C Activities. |
| Sum insured | <p>Tunnelling - the full cost of reinstatement and replacement with a sub-limit of not less than \$[not disclosed].</p> <p>The full cost of reinstatement and replacement of the Works.</p> |
| Scope of cover | <p>Physical loss, destruction or damage to the Works.</p> <p>Insurance to include coverage at a minimum for the following, such insurance to carry appropriate sub-limits:</p> <ul style="list-style-type: none"> • principal owned materials; • continuation of cover for any part of the Works which is handed over and put into use at any time prior to the Date of West Gate Tunnel Completion; • specific tunnelling conditions as applicable; • offsite fabrication; • professional fees; • removal of debris; • expediting expenses; • temporary protection and / or loss mitigation expenses; • [not disclosed]% contract price escalation; • inland transit and off-site storage; • subsidence / earth movement; • commissioning and testing of the Works; • Key Plant and Equipment; • Works on the Agreed Locations (Pre-Cast Yards) (as defined in the D&C Subcontract); • fixtures on the Agreed Locations (Pre-Cast Yards) (as defined in the D&C Subcontract); and • cover for loss of or damage to and the cost to rectify, replace or repair property which is free of defective materials, workmanship, design, plan, or specification but is damaged in consequence of other property which has defective materials, workmanship, design, plan or specification. |

West Gate Tunnel
 Project Agreement
 Schedule 12 - Insurances

| Insurance element | Minimum Requirement |
|-------------------------|--|
| Situation of risk | Anywhere in the Commonwealth of Australia, including whilst in transit (other than ocean marine transit) between any places therein. |
| Maximum Deductibles | \$[not disclosed] in respect of each claim. \$[not disclosed] in respect of tunnelling Works claims. |
| Additional requirements | Project Co to identify any such plant insured under this policy (including values) and any specific conditions which are likely to apply as a result. The policy must be procured and maintained on a project specific basis. |
| Period of insurance | At all times during the D&C Phase. |

(b) **Contract Works Insurance (Public and Products Liability)**

| Insurance element | Minimum Requirement |
|-------------------------|---|
| Insured | <p>Each of:</p> <ul style="list-style-type: none"> • Project Co; • the State; • Project Co's Associates and State's Associates to the extent that these parties have an insurable interest or are required to be insured under any Project Document relating to the Works and the D&C Activities, each to the extent of their respective rights and interests; • the D&C Subcontractor; and • all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Works and the D&C Activities. |
| Minimum sum insured | <p>[\$[not disclosed] for any one occurrence or series of occurrences arising out of the same source or original cause in connection with the Works and D&C Activities. Unlimited in the aggregate during the period of insurance but in the aggregate for all occurrences in any one period of insurance with respect to products and completed operations liability.</p> |
| Scope of cover | <p>Legal liability (including to counterparties) to pay compensation for personal injury and / or property damage caused by an occurrence during the period of insurance, where such occurrence:</p> <ul style="list-style-type: none"> • arises out of the Works and D&C Activities; and • arises out of the occupation by any Insured of any part of the Works handed over and put into use at any time prior to the Date of West Gate Tunnel Completion, but only to the extent the liability arises out of the Works and D&C Activities. |
| Geographical Limits | <p>Worldwide excluding USA and Canada.</p> |
| Maximum Deductibles | <p>[\$[not disclosed] any one occurrence.</p> |
| Additional requirements | <ul style="list-style-type: none"> • cross liability clause; • severability and non-imputation clauses; • worker to worker liability; • pollution liability but only if caused by a sudden, accidental, unexpected and unintended occurrence; • on hook liability; • bodily injury and / or property damage arising from an error or omission in design or specification or breach of professional duty; • liability arising from the use of mobile plant and equipment not required to be registered / used as a tool of trade; and • cover for existing or other property (including any existing buildings) in the Insured's care, custody or control, but this may exclude the smallest component of property in the Insured's care custody or control being worked on. |

West Gate Tunnel
Project Agreement
Schedule 12 - Insurances

| Insurance element | Minimum Requirement |
|--------------------------|------------------------------------|
| Period of insurance | At all times during the D&C Phase. |

(c) **Contractors' Pollution Liability**

| Insurance element | Minimum Requirement |
|-------------------------|---|
| Insured | Each of: <ul style="list-style-type: none"> • Project Co; • the State; • Project Co's Associates and State's Associates to the extent that these parties have an insurable interest or are required to be insured under any Project Document relating to the Works and the D&C Activities, each to the extent of their respective rights and interests; • the D&C Subcontractor; and • all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Works and the D&C Activities. |
| Sum insured | <ul style="list-style-type: none"> • \$[not disclosed] per pollution condition; and • \$[not disclosed] in the aggregate during the period of insurance. |
| Scope of cover | For legal liability (including to counterparties) to pay compensation for death, personal injury, loss of or damage to third party property and clean-up costs as a result of: <ol style="list-style-type: none"> a) pollution conditions caused by the Works and D&C Activities; and b) disturbance, exacerbation or interference by Project Co or any of its Associates of or with any contamination conditions existing prior to the Works and D&C Activities commencing. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Retroactive date | N/A. |
| Maximum Deductibles | \$[not disclosed]. |
| Additional requirements | <ul style="list-style-type: none"> • occurrence wording; • completed operations extension (for a minimum of 6 years), to cover liability to pay compensation for personal injury or property damage which occurs at any time arising out of or in connection with the Works and D&C Activities; • third party property damage for the assets of the State or any State Associate; • the policy must be procured and maintained on a project specific basis; • the policy must specifically cover: <ul style="list-style-type: none"> • sudden, accidental and gradual Pollution; • remediation costs; • liability connected with asbestos (including, liability for soil and groundwater pollution); • legal defence costs; |

West Gate Tunnel
 Project Agreement
 Schedule 12 - Insurances

| Insurance element | Minimum Requirement |
|---------------------|---|
| | <ul style="list-style-type: none"> • biodiversity and natural resource damages; and • exacerbation of existing pollutants and fines/penalties from regulators, to the extent permitted by Law; • cross liability clause; and • severability and non-imputation clauses. |
| Period of insurance | At all times during the D&C Phase. |

(d) **Contract Works Insurance (Delay in Start-Up)**

| Insurance element | Minimum Requirement |
|--------------------------|---|
| Insured | Project Co. |
| Level of cover | Loss of tolling revenue (loss of revenue and increased cost of working) over a 24 month indemnity period, following the Date of Tolling Completion. |
| Scope of cover | Contract Works Insurance (Delay in Start-Up) with respect to the delay to the Date of Tolling Completion following events insured under the Contract Works Insurance (Material Damage). |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Maximum Deductibles | 120 days in the aggregate. |
| Additional requirements | <ul style="list-style-type: none"> • nominated suppliers' premises extension (if applicable) - with a minimum sub-limit of \$[not disclosed]; • public utilities extension - with a minimum sub-limit of \$[not disclosed]; • prevention of access - with a minimum sub-limit of \$[not disclosed]; and • cover for additional increased costs of working - with a minimum sub-limit of \$[not disclosed]. <p>The policy must be procured and maintained on a project specific basis.</p> |
| Period of insurance | From the date of this Agreement until Date of Tolling Completion. |

(e) **Plant and Equipment Insurance**

| Insurance element | Minimum Requirement |
|-------------------------|---|
| Insured | Each of: <ul style="list-style-type: none"> • Project Co; • the D&C Subcontractor; and • all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Works and the D&C Activities. |
| Level of cover | Indemnity value of the respective plant or equipment used in connection with the Works. |
| Scope of cover | Damage or destruction for an indemnity value of the respective plant and equipment whether owned or hired by Project Co or the D&C Subcontractor used for the purposes of undertaking the Works (to the extent not insured under Contract Works Insurance (Material Damage)). |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Maximum deductibles | \${not disclosed}. |
| Additional requirements | N/A. |
| Period of insurance | At all times during the D&C Phase. |

(f) **Marine Transit and Marine Transit (Delay in Start-Up)**

| Insurance element | Minimum Requirement |
|---------------------|---|
| Insured | <p>Marine Transit:</p> <p>Each of:</p> <ul style="list-style-type: none"> • Project Co; • State's Associates and Project Co's Associates to the extent that these parties have an insurable interest or are required to be insured under any Project Document relating to the Works and the D&C Activities, each to the extent of their respective rights and interests; • the State; • the D&C Subcontractor; and • all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Works and the D&C Activities. <p>Marine Transit (Delay in Start-Up):</p> <p>Project Co.</p> |
| Level of cover | <p>Marine Transit:</p> <p>Sum insured is a limit of indemnity equivalent to not less than the maximum total value of the Works or other property to be transferred in any one shipment, plus a provision for the costs of freight, insurance, taxes and duties as may be applicable.</p> <p>Marine Transit (Delay in Start-Up):</p> <p>Sum insured representing the maximum delay to West Gate Tunnel Completion following loss or damage to the property insured under the Marine Transit policy, with a minimum indemnity period of 12 months.</p> |
| Scope of cover | <p>Unless covered under the Contract Works Insurance (Material Damage) in respect of the Works, a policy of Marine Transit Insurance open in respect to the shipment or carriage of the relevant items of imported property intended to be incorporated or used in connection with the Works or D&C Activities.</p> |
| Situation of risk | <p>Worldwide.</p> |
| Maximum deductibles | <p>90 days in the aggregate.</p> <p>[not disclosed]% of maximum limit of indemnity for any one shipment or \$[not disclosed] whichever is the lesser.</p> |
| Period of insurance | <p>Marine Transit:</p> <p>From the time of leaving the manufacturer or other place of original order in the country of origin until arrival at the Construction Areas.</p> <p>Marine Transit (Delay in Start-Up):</p> <p>From the time of leaving the manufacturer or other place of original order in the country of origin until the Date of Tolling Completion.</p> |

(g) **Design and Construct Professional Indemnity Insurance**

| Insurance element | Minimum Requirement |
|--------------------------|--|
| Insured | The D&C Subcontractor and their professional consultants and Project Co's professional consultants. |
| Sum insured | Minimum coverage of \$[not disclosed] for any one claim and in the aggregate for all claims during the period of insurance. |
| Scope of cover | Covering legal liability arising from an act, error or omission of the Insured in relation to the performance of each Insured's professional activities and duties in connection with the Works and D&C Activities. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Retroactive date | [not disclosed]. |
| Maximum Deductibles | [\$[not disclosed] any one claim. |
| Additional Requirements | <ul style="list-style-type: none"> • indemnity to Project Co as principal for its vicarious liability arising out of acts, errors and omissions of its Associates; • include cover for construction defects as a result of error in design or specification; • severability and non-imputation clauses; and • mitigation cover to be included. |
| Period of insurance | From Financial Close to 6 years after the Date of West Gate Tunnel Completion. |

(h) **Workers' Compensation Insurance**

| Insurance element | Minimum Requirement |
|--------------------------|--|
| Insured | Each party is required to procure its own Workers' Compensation and Employer's Liability policy, in respect of its statutory obligations and otherwise as required by Law and commercial prudence. |
| Level of cover | As required by Law. |
| Risks covered | As required by Law. |
| Deductibles | As required by Law. |
| Additional requirements | N/A. |
| Period of cover | At all times during the D&C Phase. |

(i) **Motor Vehicle Insurance**

| Insurance element | Minimum Requirement |
|-------------------------|--|
| Insured | D&C Subcontractor to effect insurance which covers: <ul style="list-style-type: none"> • Project Co; • Project Co's Associates to the extent that these parties have an insurable interest or are required to be insured under any Project Document relating to the Works and the D&C Activities, each to the extent of their respective rights and interests; and • State. |
| Level of cover | Minimum coverage of \$[not disclosed] per occurrence in respect of third party property damage. |
| Risks covered | Third party property damage in respect of all vehicles used in connection with the Works or D&C Activities. |
| Deductibles | As tendered. |
| Additional requirements | <ul style="list-style-type: none"> • All motor vehicles must be registered currently for compulsory third party insurance as required by Law, if for use on public roads. • Policy must cover unregistered vehicles or vehicles used as a tool of trade unless covered under the Contract Works (Public and Products Liability) Insurance Policy. |
| Period of cover | At all times during the D&C Phase. |

Part B — Insurance during the O&M Phase

Project Co must procure, or cause to be procured, and thereafter maintained, each of the Insurances with respect to the Project specified in this Part B for the applicable period of insurance. Each such Insurance must be procured and maintained upon the minimum terms specified in this Part B and clause 40 of this Agreement.

Summary of O&M Phase Insurances required:

- (a) Industrial Special Risks / Business Interruption Insurance;
- (b) Public and Products Liability Insurance;
- (c) O&M Phase Professional Indemnity Insurance;
- (d) Workers' Compensation Insurance;
- (e) Motor Vehicle Insurance;
- (f) Minor Works Insurance (Public Liability); and
- (g) Minor Construction Works Insurance.

(a) **Industrial Special Risks/Business Interruption Insurance**

| Insurance element | Minimum Requirement |
|-------------------|--|
| Insured | Each of: <ul style="list-style-type: none"> • Project Co; • the State; • Project Co's Associates and State's Associates to the extent that these parties have an insurable interest or are required to be insured under any Project Document relating to the O&M Activities, each to the extent of their respective rights and interests; and • OpCo. |
| Sum insured | Reflecting a minimum limit based on a maximum foreseeable loss analysis determined by an independent third party appointed by Project Co who is approved by the State (such approval not to be unreasonably withheld) covering: <p>Material Damage: The costs of reinstatement and replacement of the West Gate Tunnel.</p> <p>Business Interruption: for an indemnity period of 48 months in respect of loss of anticipated tolling revenue and additional expense arising out of:</p> <ul style="list-style-type: none"> • physical loss of or damage to the West Gate Tunnel; and • prevention of access or egress arising out of loss or damage to freeways and major roads leading to or from the West Gate Tunnel but only to the extent such risk of loss or damage is a risk covered under the ISR policy. |
| Scope of Cover | <p>Section 1 Material Loss or Damage</p> <p>Coverage for physical loss, destruction of or damage to the West Gate Tunnel and other property belonging to the Insured for which any Insured is responsible or has assumed responsibility to insure prior to damage occurring and in which an Insured acquires an insurable interest during the period of insurance, for its reinstatement and / or replacement value.</p> <p>Cover to include:</p> <ul style="list-style-type: none"> • removal of debris; • professional fees; • accidental damage; • expediting expenses; • property in transit within or between situations occupied by Project Co, Project Co's Associates or OpCo (within Australia); • machinery breakdown; • boiler and pressure vessel explosion - Replacement cost of boiler and pressure vessel (this item applies to damage to the boiler only and not to resultant damage); and • electronic data processing equipment breakdown. <p>Property covered:</p> |

| Insurance element | Minimum Requirement |
|-------------------------|--|
| | <p>All property of every kind and description forming part of the Relevant Infrastructure or as otherwise agreed between the State and Project Co.</p> <p>Perils covered to include at a minimum:</p> <ul style="list-style-type: none"> • earthquake; • flood; • tsunami; • storm / tempest / cyclone; • hail / lightning strike; • landslip / earth movement; • fire / explosion; • impact; • burglary / theft; • malicious damage; and • riots / strikes / civil commotion. <p>Section 2 Business Interruption</p> <p>Coverage for Business Interruption in respect of loss of tolling revenue and increase in cost of working, arising out of physical loss, destruction of or damage to the West Gate Tunnel, including provisions for:</p> <ul style="list-style-type: none"> • additional increased cost of working; • utilities memorandum; • prevention of access; • customer and suppliers; • human infectious disease; and • professional fees / claims preparation costs. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Maximum Deductibles | <p>[\$[not disclosed] for material damage; and</p> <p>[\$[not disclosed] for business interruption.</p> |
| Additional requirements | <ul style="list-style-type: none"> • cover for sue and labour expenses; • additional extra costs of reinstatement; • Marine Transit cover within Australia; and • co-insurance provisions not to apply. |
| Period of cover | Commencing on the Date of West Gate Tunnel Completion, to be renewed annually until the Expiry Date. |

(b) **Public and Products Liability Insurance**

| Insurance element | Minimum Requirement |
|-------------------------|---|
| Insured | Each of: <ul style="list-style-type: none"> • Project Co; • the State; • Project Co's Associates and State's Associates to the extent that these parties have an insurable interest or are required to be insured under any Project Document relating to the O&M Activities, each to the extent of their respective rights and interests; and • OpCo. |
| Sum insured | A minimum of: <ul style="list-style-type: none"> • \$[not disclosed] for any one occurrence with regards to Public Liability; and • \$[not disclosed] for any one occurrence and in the annual aggregate for Products Liability. |
| Scope of cover: | To cover legal liability for: <ul style="list-style-type: none"> • third party property damage (including property in the care, custody and control of the Insured for which the Insured is responsible and which is not otherwise already insured for the Insured's benefit), including the resulting loss of use; and • personal injury (including libel and slander), disease or death of any person, arising in connection with its products, the provision of the O&M Activities and this Agreement during the O&M Phase. |
| Territorial Limits | Worldwide. |
| Maximum Deductibles | \$[not disclosed] any one occurrence but in the aggregate in respect of Products Liability. |
| Additional requirements | <ul style="list-style-type: none"> • care custody and control; • worker to worker liability; • liability arising out of personal injury to contract labour hire persons; • cover for bodily injury and property damage arising from the failure to render professional advice or services by the Insured; • sudden and accidental pollution; and • cover for mobile plant and equipment not required to be registered / used as a tool of trade or registered plant whilst used as a tool of trade (unless separate insurance is procured for this exposure). |
| Period of cover | Commencing on the Date of West Gate Tunnel Completion, to be renewed annually until the Expiry Date. |

(c) **O&M Phase Professional Indemnity Insurance**

| Insurance element | Minimum Requirement |
|--------------------------|--|
| Insured | Parties providing professional services to OpCo. |
| Minimum Sum insured | [\$not disclosed] or such larger sum as would be required by a reasonable and competent concessionaire having regard to the services to be provided under the relevant Subcontract, for any one claim and in the aggregate during the period of insurance. |
| Scope of cover | Covering legal liability arising from an act, error or omission of the Insured in relation to the performance of each Insured's professional activities and duties in connection with the Relevant Infrastructure or the O&M Activities. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Retroactive date | The date that the professional activities under a contract relating to the O&M Phase commences. |
| Maximum Deductibles | [\$not disclosed] each and every claim. |
| Additional Requirements | Severability and non-imputation clauses. |
| Period of insurance | As required under the relevant Subcontract. |

(d) **Workers' Compensation and Employer's Liability Insurance**

| Insurance element | Minimum Requirement |
|-------------------------|--|
| Insured | Each party is required to procure its own Workers' Compensation and Employer's Liability policy, in respect of its statutory obligations and otherwise as required by Law and commercial prudence. |
| Level of cover | As required by Law. |
| Risks covered | As required by Law. |
| Retroactive date | N/A. |
| Maximum Deductibles | As required by Law. |
| Additional requirements | N/A |
| Period of cover | At all times during the O&M Phase. |

(e) **Motor Vehicle Insurance**

| Insurance element | Minimum Requirement |
|---|---|
| Party responsible for procuring the insurance | <ul style="list-style-type: none"> • Project Co; and • OpCo. |
| Insured | Each party to procure its own insurance for vehicles to be used in connection with the West Gate Tunnel or the O&M Activities. |
| Level of cover | Minimum coverage of \$[not disclosed] per occurrence in respect of third party property damage. |
| Risks covered | Third party property damage in respect of all vehicles used in connection with the West Gate Tunnel or O&M Activities. |
| Retroactive date | N/A. |
| Maximum Deductibles | \$[not disclosed]. |
| Additional requirements | <ul style="list-style-type: none"> • all motor vehicles must be registered currently for compulsory third party insurance as required by Law if for use on public roads; and • cover for mobile plant and equipment not required to be registered or used as a tool of trade or registered plant whilst used as a tool of trade (unless separate insurance is procured for this exposure or covered under the Public and Products Liability Insurance). |
| Period of cover | At all times during the O&M Phase. |

(f) **Minor Works Insurance (Public Liability)**

| Insurance element | Minimum Requirement |
|-------------------------|---|
| Insured | Each of: <ul style="list-style-type: none"> • Project Co; • the State; • Project Co's Associates and State's Associates to the extent that these parties have an insurable interest or are required to be insured under any Project Document relating to the O&M Activities, each to the extent of their respective rights and interests; and • OpCo. |
| Sum insured | \$[not disclosed] for any one occurrence or series of occurrences arising out of the same event. Unlimited in the aggregate during the period of insurance but limited to \$[not disclosed] in the aggregate for all occurrences in any one period of insurance with respect to products liability and completed operations liability. |
| Scope of cover | Legal liability to pay compensation for personal injury and/or property damage in connection with the business of the Insured caused by an occurrence during the period of insurance, in connection with construction works undertaken during the O&M Phase. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Maximum Deductibles | \$[not disclosed] each and every occurrence for injury to workers on site. \$[not disclosed] each and every other occurrence. |
| Additional requirements | N/A. |
| Period of cover | At all times during the O&M Phase. |

(g) **Minor Construction Works Insurance**

| Insurance element | Minimum Requirement |
|-------------------------|--|
| Insured | Each of: <ul style="list-style-type: none"> • Project Co; • the State; • Project Co's Associates and State's Associates to the extent that these parties have an insurable interest or are required to be insured under any Project Document relating to the O&M Activities, each to the extent of their respective rights and interests; and • OpCo. |
| Sum insured | \$[not disclosed] any one occurrence. |
| Scope of cover | Physical loss, destruction of or damage to any works conducted during the O&M Phase. Insurance to include coverage for the following: <ul style="list-style-type: none"> • professional fees; • removal of debris; • inland transit; • temporary protection and/or government expenses; • expediting expenses; • temporary/off-site storage • temporary buildings; • loss prevention; • search and leak costs; • claims preparation costs; and • escalation allowance. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Maximum Deductibles | \$[not disclosed] each and every occurrence in relation to defects exclusion. \$[not disclosed] each and every occurrence in relation to all other losses. |
| Additional requirements | N/A. |
| Period of cover | At all times during the O&M Phase. |

West Gate Tunnel
Project Agreement
Schedule 13 - Subcontractor Direct Deed

Schedule 13 - Subcontractor Direct Deed

Subcontractor Direct Deed

West Gate Tunnel

Transurban WGT Co Pty Ltd (ACN 617 420 023)

Project Co

CPB Contractors Pty Limited (ACN 000 893 667) and John Holland Pty Ltd
(ABN 11 004 282 268)

D&C Subcontractor

[]

Subcontractor

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Subcontractor Direct Deed dated

Parties Transurban WGT Co Pty Ltd (ACN 617 420 023) (**Project Co**)
CPB Contractors Pty Limited (ACN 000 893 667) and John Holland Pty Ltd (ABN 11 004 282 268) (**D&C Subcontractor**)
[] (**Subcontractor**)

Background

- A. The background to the Project is set out in the D&C Subcontract.
- B. The D&C Subcontractor and the Subcontractor are or will become parties to the Subcontract.
- C. The Subcontractor has agreed to grant to Project Co certain rights in relation to the Subcontract.

Operative provisions

1. Defined terms and interpretation

1.1 D&C Subcontract definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the D&C Subcontract.

1.2 Definitions

In this Deed, unless the context otherwise requires:

Agreed Amount has the meaning given in clause 13(a).

Cost has the meaning given in clause 13(e).

D&C Subcontract means the deed to design and construct the Project, to be entered into between, amongst others, the State, Project Co and the D&C Subcontractor.

Deed means this deed and includes all schedules, exhibits, attachments and annexures to it.

Default Event means:

- (a) any breach by the D&C Subcontractor of any of its obligations under the Subcontract; or
- (b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of the Subcontractor's obligations under, the Subcontract.

Disputing Parties has the meaning given in clause 9.1(a).

Material Adverse Effect means a material adverse effect on:

- (a) the ability of each of the D&C Subcontractor or the Subcontractor to perform and observe their respective obligations under any D&C Project Document to which it is a party; or
- (b) the rights of Project Co under any D&C Project Document, or the ability or capacity of Project Co to exercise its rights or perform its obligations under a D&C Project Document.

Novation Notice has the meaning given in clause 8.1(a).

Novation Notice Date means the date of the Novation Notice.

Project Agreement means the agreement to design, construct, operate, maintain and toll the Project, to be entered into between the State and Project Co.

Project Co Cure Notice has the meaning given in clause 6.2(a).

Recipient has the meaning given in clause 13(b).

Representatives has the meaning given in clause 9.2(a).

Revenue has the meaning given in clause 13(d).

Step-In Period has the meaning given in clause 7.1(b).

Step-In Right has the meaning given in clause 7.1(a).

Subcontract means *[insert description of relevant subcontract]*.

Subcontractor Associate means any:

- (a) Subcontractor Relevant Person (excluding the D&C Subcontractor Representative); and
- (b) subcontractor, officer, agent, adviser, consultant, contractor or employee of the Subcontractor.

Subcontractor Relevant Person means:

- (a) a director or secretary of the Subcontractor; or
- (b) any officer or employee, consultant, contractor or agent of the Subcontractor who:
 - (i) has the ability to exercise influence or control in relation to the Subcontractor, or in matters relating to the Project;
 - (ii) works in any role in connection with the D&C Activities, including undertaking any task for the purpose of the Subcontract or this Deed; or
 - (iii) has access to Confidential Information in connection with the Project or Users.

Subcontractor Statement has the meaning given in clause 6.4.

Supplier has the meaning given in clause 13(b).

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(agreement and schedule references)**: a reference to:
- (i) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, schedule, exhibit or annexure of or to this Deed; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(agreement as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
- (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(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;
- (p) **("may")**: the term "may", when used in the context of a power, right or remedy exercisable by Project Co, means that Project Co can exercise that power, right or

remedy in its absolute and unfettered discretion and Project Co has no obligation to do so;

- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy or cure)**: the use of the words "remedy" or "cure" or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Priority of documents

To the extent of any inconsistency, ambiguity or discrepancy between this Deed and the Subcontract, this Deed prevails.

1.5 Project Agreement and D&C Subcontract

The Subcontractor acknowledges that it has received a redacted copy of the Project Agreement and the D&C Subcontract.

1.6 Relationship of the parties

Unless otherwise expressly provided, this Deed does not:

- (a) **(no additional relationship)**: create a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith)**: impose any duty of good faith on Project Co.

1.7 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands must be given in writing.

1.8 State's rights and obligations

- (a) **(Acknowledgement)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.12 (*State's executive rights and duties*) of the Project Agreement.
- (b) **(No Claim)**: Subject to clause 1.8(c), the parties will not be entitled to make any Claim for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach)**: Clauses 1.8(a) and 1.8(b) do not limit any Liability which the State would have had to Project Co, the D&C Subcontractor or the Subcontractor

under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

1.9 Reasonable endeavours of State

The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 (*Reasonable endeavours of State*) of the Project Agreement.

1.10 Joint and several liability

Without limiting clause 1.3(o), any obligation or Liability assumed by:

- (a) the D&C Subcontractor; or
- (b) if the Subcontractor comprises two or more entities, the Subcontractor,

under this Deed and the D&C Subcontract is joint and several and each person constituting the D&C Subcontractor or Subcontractor (as the case may be) acknowledges and agrees that it will be responsible for the acts and omissions (including breaches of this Deed or the D&C Subcontract (as relevant)) of the others comprising the D&C Subcontractor or Subcontractor (as relevant) as if those acts or omissions were its own.

2. Conditions precedent

The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 (*Conditions Precedent*) of the D&C Subcontract, is a condition precedent to the coming into operation of this Deed (other than this clause 2 and clauses 1.1 to 1.3, 1.6, 1.8, 1.9, 4, 9, 10, 12, 14, 15 and 17).

3. Acknowledgments

3.1 Not Used

3.2 By the Subcontractor concerning the State's and Project Co's rights

- (a) **(State's rights):** The Subcontractor acknowledges the State's rights under clauses 6.12 (*State's licence*), 16 (*Building Code*), 22.1 (*Defects*), 25.7 (*Incidents*), 37 (*Step-in by the State*), 41 (*Events of Default*), 42 (*Termination*) and 59.2 (*Probity Investigation*) of the Project Agreement and the other relevant clauses listed in clause 10.3(c) (*Requirements for Subcontracting*) of the Project Agreement.
- (b) **(Project Co's rights):** The Subcontractor acknowledges:
 - (i) Project Co's rights under clauses 16 (*Building Code*), 22.1 (*Defects*), 25.7 (*Incidents*), 37 (*Step-in by Project Co*), 41 (*Events of Default*), 42 (*Termination*) and 59.2 (*Probity Investigation*) of the D&C Subcontract and the other relevant clauses listed in clause 10.3(c) (*Requirements for Subcontracting*) of the D&C Subcontract; and
 - (ii) Project Co's obligations to the State in respect of Subcontractors (as defined under the Project Agreement) under the Project Agreement.
- (c) **(Facilitation of rights and obligations):** The Subcontractor must exercise its rights under the Subcontract in a way that facilitates the effective exercise by the State of the rights referred to in clause 3.2(a) and the effective exercise by Project Co of the rights and obligations referred to in clause 3.2(b) and will on reasonable notice permit the State or a State Associate and Project Co or a Project Co Associate to have access to, and take copies of, the records, reports, documents

and other papers to which the State and Project Co is entitled to have access in accordance with the State's rights referred to in clause 3.2(a) and Project Co's rights and obligations referred to in clause 3.2(b).

- (d) [Not used]
- (e) **(Continued performance – Project Co):** During the period in which Project Co is exercising a right referred to in clause 3.2(b), Project Co may, in accordance with the D&C Subcontract and the Subcontract, require the suspension or the continuation of performance by the Subcontractor of its obligations under the Subcontract, and if it does so, the Subcontractor will also comply with this requirement and with all reasonable directions of Project Co in relation to the performance of the Subcontract by the Subcontractor during such period.
- (f) [Not used]
- (g) **(Project Co not liable):** The requirement of Project Co that the Subcontractor suspend or continue to perform its obligations under the Subcontract and the giving of any direction under clause 3.2(e) by Project Co will not be construed as an assumption by Project Co of any obligations of the Subcontractor under the Subcontract.
- (h) **(Subcontracting):** The Subcontractor will not subcontract any of its obligations under the Subcontract without the prior consent of Project Co, where so required in accordance with clause 10 (*Subcontracting and third party arrangements*) of the D&C Subcontract.
- (i) **(Probity Investigations):** Without limiting clauses 3.2(a) to (h), the Subcontractor acknowledges and agrees that:
 - (i) in accordance with clauses 10 (*Subcontracting and third party arrangements*) and 59.2 (*Probity Investigation*) of the Project Agreement, the State may from time to time, or may require Project Co to, conduct Probity Investigations of the Subcontractor and Relevant Persons, or other persons in relation to any further subcontracting by the Subcontractor of any of its obligations under the Subcontract;
 - (ii) it will procure the consent to any Probity Investigation and, to the extent that the State is entitled to do so under the Project Agreement, such other probity and security investigations that the State may require of each Relevant Person in relation to the Subcontractor in respect of whom the State advises the Subcontractor that it requires a Probity Investigation; and
 - (iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Subcontractor Relevant Person in relation to the management or performance of the Subcontract by the Subcontractor unless the State or Project Co has given approval, including following a Probity Investigation and other such investigations that the State may require under clauses 10 (*Subcontracting and third party arrangements*) and 59.2 (*Probity Investigation*) of the Project Agreement.

3.3 By the D&C Subcontractor

The D&C Subcontractor is bound by, and must cooperate in the implementation of, this Deed. It acknowledges that this Deed is intended to benefit only Project Co and the Subcontractor (except for the receipt of notices and the opportunity to remedy Defaults under clause 6) and does not in any way affect any obligation of the D&C Subcontractor under the Subcontract or under any D&C Project Document except as expressly set out herein.

3.4 Information

The Subcontractor acknowledges and agrees that:

- (a) **(information purpose):** any information, data and documents provided by the State or Project Co:
 - (i) are provided for information purposes only and all of the State and its Associates' Intellectual Property Rights therein remain the property of the State or its Associates (as the case may be) and all of Project Co and its Associates' Intellectual Property Rights therein remain the property of Project Co or its Associates (as the case may be); and
 - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State, Project Co or any of their Associates; and
- (b) **(no Liability):** to the extent permitted by Law, neither the State nor any of its Associates and neither Project Co nor any of its Associates will have any Liability to the Subcontractor or any Subcontractor Associate, nor will the Subcontractor or any Subcontractor Associate be entitled to make any Claim against the State or Project Co, or seek, pursue or obtain an indemnity against or contribution to Liability from the State, Project Co or any of their Associates arising in connection with:
 - (i) the provision of, or purported reliance upon, or use of, any information, data and documents referred to in clause 3.4(a) by the Subcontractor or any other person to whom such information is disclosed by the Subcontractor, the Subcontractor Associates, or any person on the Subcontractor or any Subcontractor Associate's behalf;
 - (ii) any reference to the State or Project Co in the Subcontract; or
 - (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of the Subcontract by the State or Project Co.

3.5 Subcontract not to affect Project Co's rights

The D&C Subcontractor and the Subcontractor each acknowledge and agree that:

- (a) **(rights not affected):** where the Subcontractor is expressed in the Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the D&C Subcontractor or an equivalent or similar right of the D&C Subcontractor:
 - (i) this does not of itself expand the D&C Subcontractor's rights, or Project Co's Liability, under the D&C Subcontract to include the compensation or relief to which the Subcontractor is or may become entitled under the Subcontract; and
 - (ii) the D&C Subcontractor's rights, and Project Co's Liability, under the D&C Subcontract will be determined solely in accordance with the terms of the D&C Subcontract;
- (b) **(risk of discrepancy):** as between Project Co (on the one hand) and the D&C Subcontractor and the Subcontractor (on the other hand), the D&C Subcontractor and the Subcontractor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Subcontract and the D&C Subcontract; and

- (c) **(dealing directly with Project Co)**: notwithstanding anything to the contrary in the Subcontract, the Subcontractor has no right to deal directly with Project Co or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (i) expressly provided to the contrary in the D&C Subcontract or this Deed; or
 - (ii) Project Co consents.

4. Representations and warranties by the Subcontractor

The Subcontractor represents and warrants for the benefit of Project Co that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed, the Subcontract and each other D&C Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(legality)**: the execution, delivery and performance of this Deed, the Subcontract and each other D&C Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(validity)**: this Deed, the Subcontract and each other D&C Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) **(registration)**: it is duly registered, properly constituted and remains in existence;
- (e) **(no trust relationship)**: except as stated in this Deed, it is not the trustee or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
- (f) **(information true and correct)**: as at the date of this Deed, all information provided by it to Project Co is true and correct and the Subcontractor is not aware of any material facts or circumstances that have not been disclosed to Project Co and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or to consent to the entry into the Subcontract;
- (g) **(litigation)**: as at the date of this Deed, no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed, the Subcontract or any other D&C Project Document to which it is a party;
- (h) **(Insolvency Event)**: as at the date of this Deed, no Insolvency Event has occurred in respect of it;
- (i) **(accounts)**:
 - (i) its most recent consolidated audited (if the requirement for auditing is applicable) accounts as at the date of this Deed, give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - (ii) there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and

- (iii) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia (or, if the Subcontractor is incorporated outside Australia or is an entity validly existing under the laws of another country, the accounting standards, principles and practices generally accepted in the place in which the Subcontractor is incorporated or is existing) consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (j) **(no default)**: as at the date of this Deed:
 - (i) it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - (ii) nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement,

and which would have a Material Adverse Effect;
- (k) **(no immunity)**: neither it nor any of its assets enjoys any immunity from set off, suit or execution; and
- (l) **(own investigations)**: in entering into this Deed, the Subcontract and any other D&C Project Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, Project Co, the D&C Subcontractor or any other person unless in respect of Project Co, the D&C Subcontractor or any other person, other than the State or any of its Associates, it is expressly permitted to do so in accordance with a D&C Project Document to which it is a party.

5. Undertakings of the Subcontractor

The Subcontractor undertakes to Project Co as follows:

- (a) **(notification of Default Event)**: it will notify Project Co of any Default Event promptly after it gives notice of that Default Event in accordance with clause *[#insert]* (*[Notice of Major Default (D&C)]*) of the Subcontract;
- (b) **(documents in relation to Default Event)**: it will promptly give Project Co a copy of all documents issued by the Subcontractor to the D&C Subcontractor in relation to a Default Event;
- (c) **(no amendment without consent)**: it will not, without first obtaining the consent of Project Co (not to be unreasonably withheld or delayed):
 - (i) make or permit any amendment or replacement of or addition to;
 - (ii) subject to clause 6.2, terminate, surrender, rescind or accept repudiation of;
 - (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed; or
 - (iv) allow any express waiver of its material rights and obligations under,

the Subcontract, provided that Project Co will not withhold its consent to an amendment which is an amendment to which it has consented in accordance with the D&C Subcontract;

- (d) **(deed of accession)**: it will not novate, assign or substitute any of its rights, obligations or interest in the Subcontract without first procuring that the proposed novatee, assignee or substitute executes a deed in favour of Project Co (in form and substance approved by Project Co) pursuant to which the novatee, assignee or substitute agrees to accept and be bound by this Deed as if it were the Subcontractor (as the case may be);
- (e) **(attend meetings and inspections)**: it will (when reasonably requested by Project Co):
- (i) attend, where reasonable and appropriate, meetings with Project Co or the State or any of their respective Associates;
 - (ii) provide Project Co, the State, any of their respective Associates and authorised personnel with:
 - A. full access to the Construction Site to the extent provided in the D&C Subcontract and to the extent that the Subcontractor is granted access under the Subcontract; and
 - B. any other information, records or documents that Project Co, the State or any of their respective Associates (acting reasonably) requires in relation to the performance of the Subcontractor's obligations under the Subcontract or compliance with the Subcontract or any information required by the State to comply with requests from the Victorian Auditor-General; and
 - (iii) to the extent provided in the D&C Subcontract, permit Project Co and the State or any of their respective Associates to attend all tests and inspections on the Construction Site to be carried out in connection with the Project in accordance with the terms of the Subcontract;
 - (iv) permit Project Co and the State or any of their respective Associates to attend all tests and inspections away from the Construction Site to be carried out in connection with the Project in accordance with the terms of the Subcontract; and
- (f) **(access to records)**: at the request of the State or Project Co, the Subcontractor will:
- (i) permit the State, Project Co or any of their Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Subcontractor in relation to the Subcontractor's obligations under the Subcontract and in relation to the Project; and
 - (ii) supply the State, Project Co or any of their Associates with a copy of any such report or document which they may require from time to time.

6. Right to cure before termination of the Subcontract

6.1 Project Co's cure rights

- (a) **(Provide Project Co with notices)**: The Subcontractor must give Project Co Cure Notices to Project Co as required by clause 6.2.
- (b) **(Project Co Cure Notice)**: On receiving a Project Co Cure Notice, Project Co may (but is not obliged to) take steps to:

- (i) remedy, or procure the remedy of, that Default Event; or
- (ii) if the Default Event is not capable of remedy, commence and continue to perform the obligations of the D&C Subcontractor under the Subcontract.

6.2 Termination or suspension with cause

The Subcontractor may only exercise a right to terminate, rescind, accept the repudiation of, or (subject to clause 6.3) suspend the performance of any or all of its obligations under the Subcontract if:

- (a) **(prior notice)**: the Subcontractor has given to Project Co (with a simultaneous copy to the D&C Subcontractor) prior notice setting out details of the Default Event giving rise to that proposed exercise in accordance with clause 6.4 **(Project Co Cure Notice)**; and
- (b) **(Default Event remedy)**: where:
 - (i) the Default Event is capable of remedy within 20 Business Days after the date on which Project Co received the Project Co Cure Notice, the Default Event has not been remedied within that 20 Business Day period;
 - (ii) the Default Event is not capable of remedy within 20 Business Days after the date on which Project Co and the D&C Subcontractor received the Project Co Cure Notice but is nevertheless capable of remedy, Project Co or the D&C Subcontractor (or another person on behalf of either of them) has not commenced remedying the Default Event within that 20 Business Day period and has not continued to diligently pursue that remedy;
 - (iii) the Default Event is not capable of remedy and the Project Co Cure Notice contains a Claim for reasonable compensation for the Default Event, Project Co or the D&C Subcontractor (or another person on behalf of either of them) has not paid or otherwise provided that compensation to the Subcontractor:
 - A. to the extent that the relevant amount of compensation has been referred to expert determination under clause 9, within 20 Business Days after that dispute is resolved; or
 - B. otherwise within 20 Business Days after the date on which Project Co received the Project Co Cure Notice;
 - (iv) the Default Event is not capable of remedy and the Project Co Cure Notice does not contain a Claim for reasonable compensation for the Default Event, Project Co does not commence and continue to perform the D&C Subcontractor's obligations under the Subcontract within 20 Business Days after the date on which Project Co received the Project Co Cure Notice; or
 - (v) Project Co notifies the Subcontractor, within 20 Business Days after the date on which Project Co received the Project Co Cure Notice, that it elects not to remedy, or procure the remedy of, the Default Event.

6.3 Early suspension of Subcontractor's obligations

If:

- (a) **(right to suspend)**: the Subcontractor, but for the operation of clause 6.2, would have a right to suspend performance of its obligations under the Subcontract;
 - (b) **(Project Co Cure Notice)**: the Subcontractor has issued a Project Co Cure Notice to Project Co (with a simultaneous copy to the D&C Subcontractor) with respect to that Default Event;
 - (c) **(dispute, non-payment or expired period)**: either:
 - (i) Project Co or the D&C Subcontractor (or another person on behalf of them) has not undertaken to pay to the Subcontractor the amounts payable under the Subcontract within 20 Business Days from the date of receipt of the Project Co Cure Notice or, if Project Co or the D&C Subcontractor refers the amounts in the Project Co Cure Notice to dispute, within 20 Business Days of the dispute being determined; or
 - (ii) Project Co has undertaken to pay the Subcontractor such amounts for a stated period and that period has expired without being extended by Project Co (acting reasonably); and
 - (d) **(not remedied)**: the Default Event has not otherwise been remedied,
- then the Subcontractor may suspend performance of its obligations under the Subcontract.

6.4 Subcontractor Statements

As part of any Project Co Cure Notice, the Subcontractor must include a statement of:

- (a) **(amounts due and payable)**: all amounts due and payable to the Subcontractor under the Subcontract on or before the date of the Project Co Cure Notice but remaining unpaid at such date;
- (b) **(monetary claim)**: the nature and, to the best of the Subcontractor's knowledge and belief, the amount of any monetary Claim asserted by the Subcontractor arising in connection with the Subcontract against the D&C Subcontractor; and
- (c) **(intention to terminate)**: where the Subcontractor intends to terminate the Subcontract due to a default or breach of condition of a non-financial nature or intends to claim damages or to seek some other form of relief:
 - (i) the provisions of the Subcontract alleged to have been breached or not fulfilled;
 - (ii) sufficient information to enable Project Co to identify the material facts;
 - (iii) the steps reasonably required to remedy the Default Event (if reasonably capable of remedy);
 - (iv) the time within which the specified steps can reasonably be expected to be taken;
 - (v) if applicable, the amount of damages claimed and the manner in which they have been calculated; and
 - (vi) if applicable, the other relief to be sought,

(being the **Subcontractor Statement**).

6.5 Warranty of accuracy and waiver

The Subcontractor:

- (a) **(warranty)**: warrants to Project Co and the D&C Subcontractor that each Subcontractor Statement will, subject to unintended error which the Subcontractor agrees to rectify, be a true, complete and accurate statement of the amounts or other relief to which the Subcontractor considers itself entitled; and
- (b) **(waiver)**: waives and abandons all Claims then known or which ought reasonably to have been known to the Subcontractor arising in connection with the Subcontract prior to the date of the Project Co Cure Notice other than the Claims disclosed in the Subcontractor Statement.

6.6 Verification of Subcontractor Statements

Project Co may appoint one or more independent chartered accountants, technical advisers or other appropriately qualified persons to verify (at the cost of Project Co, except to the extent the D&C Subcontractor is liable for such cost under the D&C Subcontract in which case at the cost of the D&C Subcontractor) a Subcontractor Statement, and the Subcontractor must, subject to such persons executing an appropriate confidentiality agreement as the Subcontractor may reasonably request, permit such persons to have access to and to make copies of all records, documents, data and accounting and other information not subject to legal (including solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such Subcontractor Statement.

6.7 Subcontractor Statements to be conclusive evidence

- (a) **(Reliance)**: Project Co is entitled to rely on a Subcontractor Statement for the purpose of determining the extent of the matters occurring prior to a Default Event which are required to be remedied and the requirements to effect the remedy of that Default Event by Project Co .
- (b) **(Conclusive evidence)**: A Subcontractor Statement will be conclusive evidence in favour of Project Co that the Subcontractor has waived and abandoned all Claims then known or which ought reasonably to have been known to the Subcontractor arising in connection with the Subcontract prior to the date of the Project Co Cure Notice other than the Claims disclosed in the Subcontractor Statement.
- (c) **(Claims against the D&C Subcontractor)**: Clauses 6.7(a) and 6.7(b) are without prejudice to the rights of the Subcontractor to pursue any Claims against the D&C Subcontractor following the end of the Step-In Period or termination of the Subcontract.
- (d) **(Disputes)**: For the avoidance of doubt, a Subcontractor Statement will not prevent Project Co or the D&C Subcontractor from disputing the amount of any Claim or other relief sought by the Subcontractor or the existence of any default by the Subcontractor under the Subcontract. In the case of any such dispute:
 - (i) the extent that Project Co or the D&C Subcontractor intends to respond to a Project Co Cure Notice, Project Co or the D&C Subcontractor (as relevant) must pay the amount or perform the obligations (if any) not in dispute in accordance with this Deed and the Subcontract;
 - (ii) the dispute must be referred to dispute resolution under clauses 9 to 10; and

- (iii) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the D&C Project Documents to which they are a party.

7. Step-In by Project Co

7.1 Step-In Right

- (a) **(Exercise):** If Project Co is entitled to exercise any of the rights referred to in clause 37.1(a) of the D&C Subcontract, Project Co may:
 - (i) not used;
 - (ii) not used;
 - (iii) take any action as it is permitted under the terms of the D&C Project Documents;
 - (iv) not used; or
 - (v) subject to the clause 37.6(b) of the D&C Subcontract, exercise all or any of its rights and carry out all or any of the obligations of the D&C Subcontractor in connection with the Subcontract, as if it were the D&C Subcontractor to the exclusion of the D&C Subcontractor,

(each a **Step-In Right**).
- (b) **(Step-In Period):** The period from the date on which the Subcontractor receives notice of the exercise of any Step-In Right to the earliest of:
 - (i) not used;
 - (ii) the date on which the Subcontractor terminates the Subcontract;
 - (iii) the date of any transfer under clause 8;
 - (iv) the date which Project Co has notified the Subcontractor that Project Co will cease to exercise its Step-In Rights; and
 - (v) any other date on which Project Co ceases to continue to exercise its Step-In Rights,

is the **Step-In Period**.
- (c) **(Acknowledgment):** The Subcontractor acknowledges that the exercise by Project Co of a Step-In Right will not of itself contravene the Subcontract, or constitute a Default Event under the Subcontract or entitle the Subcontractor to exercise any right (including termination) under the Subcontract.
- (d) **(No Liability):** The Subcontractor agrees that, subject to clauses 37.4(b) and 37.4(ba) (*Payments*) of the D&C Subcontract, neither Project Co nor any of its Associates will have any Liability, and the Subcontractor will not be entitled to make, continue or enforce any Claim against Project Co or any of its Associates arising in connection with the Subcontract or this Deed by reason only of Project Co or any of its Associates exercising any of the D&C Subcontractor's rights, or performing any of the D&C Subcontractor's obligations under the Subcontract other than, and then only to the extent of, Liability for reckless, unlawful, malicious acts or omissions of Project Co or any of its Associates.

7.2 Not used

7.3 Not used

7.4 Not used

8. Project Co's option to novate to Project Co

8.1 Option

- (a) **(Novation Notice):** Project Co may require a novation of the Subcontract to Project Co upon the termination of the D&C Subcontract, by giving a notice (**Novation Notice**) to the Subcontractor.
- (b) **(Effect of Novation Notice):** If Project Co issues a Novation Notice then, until the Novation Notice Date, the Subcontractor must continue to perform their respective obligations under the Subcontract.
- (c) **(Acknowledgement):** The Subcontractor acknowledges that the giving of a Novation Notice by Project Co will not of itself contravene, or constitute a Default Event under, the Subcontract or entitle the Subcontractor to a termination payment, or to exercise any power (including termination) under it.

8.2 Novation to Project Co

- (a) **(Effect of novation):** With effect from the Novation Notice Date:
 - (i) Project Co will assume:
 - A. any obligation of the D&C Subcontractor under the Subcontract arising before the Novation Notice Date insofar as it relates to the payment of an amount of money that:
 - 1) is due and payable under the terms of the Subcontract;
 - 2) is not the subject of a dispute under the Subcontract (or is the subject of a dispute under the Subcontract in which case Project Co will, on the determination of such dispute, assume such obligations in accordance with that determination); and
 - 3) does not relate to the performance of the Subcontractor's obligations under the Subcontract for which Project Co has paid the D&C Subcontractor under the D&C Subcontract; and
 - B. the obligations of the D&C Subcontractor under the Subcontract arising on and from the Novation Notice Date (including in relation to payment of amounts for any part of the Subcontractor's obligations under the Subcontract performed before the Novation Notice Date that become due and payable on or after the Novation Date notwithstanding that such amounts relate to work performed before the Novation Notice Date) subject to any amendments agreed to the Subcontract in accordance with clause 8.2(a)(vi);

- (ii) without prejudice to any then accrued rights against the D&C Subcontractor (other than termination), any Subcontractor's right that has been suspended by virtue of clause 6 will be of no further effect;
- (iii) Project Co will have all the rights of the D&C Subcontractor under the Subcontract (excluding any accrued rights of the D&C Subcontractor in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that those rights arose prior to the Novation Notice Date and are the subject of any dispute referred to in clause 8.2(a)(i)A.2));
- (iv) subject to clause 8.2(a)(iii) and any amendments agreed to the Subcontract in accordance with clause 8.2(a)(vi), the Subcontractor will be:
 - A. bound by and must comply with the provisions of the Subcontract binding on it for the benefit of Project Co as if Project Co were the D&C Subcontractor; and
 - B. entitled to any extensions of time which accrued to the Subcontractor prior to the Novation Notice Date;
- (v) the D&C Subcontractor is released from all of its obligations and Liabilities under the Subcontract, excluding any accrued obligations or Liabilities of the D&C Subcontractor to the extent that those accrued obligations or Liabilities:
 - A. arose in connection with events occurring prior to the Novation Notice Date; and
 - B. are not obligations and Liabilities assumed by Project Co under clause 8.2(a)(i); and
- (vi) the Subcontractor and Project Co will promptly negotiate in good faith, any amendments to the Subcontract that are necessary to reflect the termination of the D&C Subcontract.

For the avoidance of doubt, any caps on Liability in the Subcontract will continue to apply, but so that any Liability of the Subcontractor incurred to the D&C Subcontractor prior to the Novation Notice Date is taken into account in respect of any ongoing Liability of the Subcontractor to Project Co.

- (b) **(No set off):** The Subcontractor is not entitled to exercise any right of set off, deduction, abatement or counterclaim against Project Co if, and to the extent that, such right arose prior to the Novation Notice Date.
- (c) **(Novation Deed):** The D&C Subcontractor, the Subcontractor and Project Co must enter into a deed in the form and substance reasonably requested by Project Co reflecting the novation of the Subcontract as contemplated in clause 8.2(a) and take such other action as is required to vest in Project Co full legal and equitable title to any retention account, bank guarantee, performance bond, letter of credit or other security held by the D&C Subcontractor to secure the obligations of the Subcontractor under the Subcontract.
- (d) **(Attorney):** For valuable consideration, the D&C Subcontractor and the Subcontractor each irrevocably appoint Project Co, on its behalf and in its name or otherwise, as its attorney to do anything which the D&C Subcontractor or the Subcontractor is obliged to do (but has not done within 5 Business Days of request) under clause 8.2(c). Each of the D&C Subcontractor and the Subcontractor ratifies

and confirms and agrees to ratify and confirm whatever any such attorney lawfully does in the exercise of the power of attorney in this clause 8.2(d).

8.3 Not used

8.4 Accrued obligations and liabilities

Clause 8.2 does not operate to:

- (a) **(Project Co to assume obligations or Liabilities)**: require Project Co to assume any obligations or Liabilities arising from, or which are required to be performed in connection with, the Subcontract prior to the Novation Notice Date unless expressly required to do so in clause 8.2; or
- (b) **(release the D&C Subcontractor)**: release the D&C Subcontractor from such obligations or Liabilities unless expressly required to do so in clause 8.2.

9. Dispute Resolution

9.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved)**: Any dispute arising under this Deed must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with this clause 9.
- (b) **(Procedure)**: The procedure that is to be followed to resolve a dispute is as follows:
 - (i) firstly, the dispute must be the subject of negotiation as required by clause 9.2;
 - (ii) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(i), the Disputing Parties may agree that the dispute be referred to an expert for determination in accordance with clauses 9.4 to 9.8 or to arbitration under clause 10; and
 - (iii) thirdly, if:
 - A. the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(i) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the parties failed to agree whether the dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 9.2(c)(i);
 - B. the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment, or such later date as agreed between the Disputing Parties; or
 - C. the dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 9.6(a),

then the dispute must be referred to arbitration in accordance with clause 10.

9.2 Negotiation

- (a) **(Notification)**: If a dispute arises then a party may give notice to each other party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).
- (b) **(Contents of notice)**: A notice under clause 9.2(a) must:
 - (i) state that it is a notice under this clause 9; and
 - (ii) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve dispute)**: If a dispute is referred for resolution by negotiation under clause 9.2(a), then:
 - (i) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 9.2(a) is received (or such later date as the Disputing Parties may agree); and
 - (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

9.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives)**: a dispute which has been referred to the Representatives for negotiation in accordance with clause 9.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(i); and
- (b) **(referral to expert)**: the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 9.2(c)(i), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 9.4 to 9.8. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Disputing Parties.

9.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 9.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 9.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person who appears on the list of all of the Disputing Parties exchanged under clause 9.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on the list of all of the Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 9.3(a) will be appointed.
- (c) **(Appointment if no person appears on both lists)**: If no person appears on the list of all of the Disputing Parties and the Disputing Parties cannot otherwise agree an expert, the party which gave the notice under clause 9.3(a) must procure:

- (i) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 9.4(a); or
 - (ii) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or such governing body advises that it will not nominate an expert, the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 9.4(a).
- (d) **(Appropriate skills):** It is the intention of the Disputing Parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** No Disputing Party will be entitled to challenge the appointment of an expert under this clause 9.4 on the basis that the expert does not satisfy the requirements of clause 9.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement):** Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

9.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

9.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 10.
- (b) **(Amendment to determination):** Upon submission by any Disputing Party, the expert may amend the determination to correct:
- (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.

9.7 Liability of expert

- (a) **(Liability of expert):** The Disputing Parties agree:
- (i) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and

- (ii) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the dispute.
- (b) **(Engagement):** The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the costs of the expert.

9.8 Costs

The Disputing Parties must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

10. Arbitration

10.1 Reference to Arbitration

- (a) **(Dispute):** If:
 - (i) a dispute:
 - A. which has been referred to the Representatives for negotiation in accordance with clause 9.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(i); and
 - B. the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (ii) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 9.3:
 - A. a determination is not made within 30 days of the expert's acceptance of the appointment, or such later date as agreed between the Disputing Parties; or
 - B. a notice of dissatisfaction is given in accordance with clause 9.6(a),

then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by a Disputing Party of a notice under clause 10.1(a), the dispute will be referred to arbitration.

10.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 10 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 10.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

10.3 Appointment of arbitrator

The Disputing Parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 10.1(b), the arbitrator or arbitrators will be appointed by the Australian Centre for International Commercial Arbitration.

10.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:
- (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (ii) any arbitration conducted in accordance with this clause 10 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 10.4(a)(i) and 10.4(a)(ii).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
- (i) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 10.4(a) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 10.4(d)(ii);

- (vii) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (viii) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

10.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 10.5, have applied to any dispute referred to arbitration in accordance with this clause 10.

10.6 Extension of ambit of arbitration proceedings

- (a) **(Extending disputes):** Where:
- (i) a dispute between the Disputing Parties to this Deed is referred to arbitration in accordance with this clause 10; and
 - (ii) there is some other dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 10.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

10.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 10.7(b), any award will be final and binding on the Disputing Parties.
- (b) **(Appeal):** Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011 (Vic)* on a question of law arising in connection with an arbitral award made in accordance with this clause 10.

10.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Deed.

10.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

10.10 Interlocutory relief

This clause 10 does not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

10.11 Consolidation

The parties agree that section 27C of the *Commercial Arbitration Act 2011* (Vic) will apply.

11. Termination of this Deed

- (a) **(Satisfaction of obligations under the Subcontract):** This Deed will terminate upon the performance and satisfaction of all of the obligations under the Subcontract.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

12. Insurances

- (a) **(Insurances):** Notwithstanding anything else, the Subcontractor will:
 - (i) take out all insurances as are required to be taken out by it under the Subcontract; and
 - (ii) otherwise comply with all of its obligations in relation to insurance in the Subcontract.
- (b) **(Not to prejudice):** The D&C Subcontractor and the Subcontractor must each ensure that it does not do or omit to do anything or does not permit anything to be done or omitted to be done whereby any insurance policy required under the Subcontract may be prejudiced.
- (c) **(Void or voidable):** If any default is made by the Subcontractor in effecting or maintaining such insurance policy or if any such insurance policy becomes void or voidable, Project Co may (but is not obliged to) effect or maintain that insurance policy at the cost of the Subcontractor or, failing it, the D&C Subcontractor (but only to the extent the D&C Subcontractor is liable for such cost under the D&C Subcontract).
- (d) **(Project Co to be covered):** If required by the D&C Subcontract, on any insurance contract entered into by the Subcontractor in accordance with clause 12(a), the Subcontractor must ensure that Project Co and its Associates are specified as a person to whom the insurance cover provided by that contract extends.
- (e) **(All documents, evidence and information):** The D&C Subcontractor and the Subcontractor must do all things necessary and provide all documents, evidence and information necessary to enable Project Co to collect or recover any moneys due or to become due to Project Co in respect of any insurance policy required under the Subcontract at the cost of the Subcontractor or, failing it, the D&C Subcontractor (but only to the extent the D&C Subcontractor is liable for such cost under the D&C Subcontract).
- (f) **(Cancellation, lapse or material change):** Without prejudice to the above requirements, neither the D&C Subcontractor nor the Subcontractor will cause or take any steps to bring about the cancellation, lapse, material change, reduction or

any rescinding of any such insurance policy unless it has first obtained the consent of Project Co.

- (g) **(Notify Project Co)**: The D&C Subcontractor and the Subcontractor will immediately notify Project Co of any cancellation, lapse, material change, reduction, or any rescission of any such insurance policy, and of the occurrence of any event giving rise to any Claim under any such insurance policy in respect of the Project.
- (h) **(Several obligations)**: Notwithstanding clause 1.3(o), but subject to the obligations of the D&C Subcontractor under the terms of the D&C Subcontract, the obligations of the D&C Subcontractor and the Subcontractor in this clause 12 are several.

13. Goods and Services Tax (GST)

- (a) **(GST exclusive amounts)**: Unless otherwise expressly stated to include GST, any amounts payable for a taxable supply that are referred to in any other provision of this Deed are exclusive of any GST (**Agreed Amount**).
- (b) **(GST payable by Supplier)**: If GST becomes payable on any taxable supply made by a party (**Supplier**) under or in connection with this Deed:
 - (i) unless the Agreed Amount is expressly stated to include GST, an additional amount will be payable by the party which is the recipient of the taxable supply (**Recipient**), equal to the amount of GST payable by the Supplier on that taxable supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (ii) the Supplier will provide a tax invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that taxable supply is to be provided in accordance with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 13(b) unless and until a tax invoice is received by the Recipient in connection with the taxable supply except where the Recipient is required to issue the tax invoice.
- (c) **(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 13(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:
 - (i) the Supplier will issue an adjustment note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (ii) no additional amount will be payable by the Recipient unless and until an adjustment note is received by the Recipient.
- (d) **(Revenue net of GST)**: Any reference in this Deed to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (e) **(Cost net of GST)**: Any reference in this Deed to cost, expense, liability or other similar amount (**Cost**) of a party, including in the context of an entitlement to

recovery, reimbursement or compensation for any Costs of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.

- (f) **(GST Groups):** For the purposes of this Deed, a reference to GST payable on a taxable supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.
- (g) **(Definitions):** In this clause 13 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.
- (h) **(Non-monetary consideration):** Where two parties in accordance with this Deed exchange non-monetary consideration:
 - (i) notwithstanding clause 13(b), the additional amount payable on any taxable supply by the Recipient to the Supplier shall be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate; and
 - (ii) the parties agree to value the non-monetary consideration on an equal and GST-inclusive basis and swap tax invoices accordingly.

14. Notices

All communications (including approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

Project Co:

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

D&C Subcontractor:

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

Subcontractor:

Attention: [#]
Address: [#]
Email: [#]

- (c) **(signed):** must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;

- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid express post to the address or emailed (in the form agreed by both parties) via the Aconex platform to the email address of the addressee set out in clause 14(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 14(b):
- (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

15. Confidential Information and disclosure

15.1 Confidential Information and disclosure by the State

The parties acknowledge:

- (a) **(Public Disclosure Obligations)**: the State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in accordance with its Public Disclosure Obligations and the Subcontractor must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations;
- (b) **(Other purposes)**: the State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in connection with the requirements of the State Project Documents (including any tender process required to be conducted under the Termination Payments Schedule or Change Compensation Principles to the Project Agreement);
- (c) **(State's rights)**: subject to clause 15.1(d), in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State, the State may publish, disclose or make generally available each Project Document on a Victorian Government website; and

- (d) **(Commercially sensitive information):** the State will not publish, disclose or otherwise make generally available the information which is specified in the Confidential Information Schedule, except if required to do so to comply with the Public Disclosure Obligations or as required under clause 15.1(b).

15.2 Confidential Information and disclosure by the Subcontractor

- (a) **(Confidentiality obligation):** Subject to clause 15.2(b), the Subcontractor must treat as secret and confidential all Confidential Information.
- (b) **(Disclosure of Confidential Information):** Without limiting the Subcontractor's obligations under clause 15.2(a) and subject to clause 15.2(c), the Subcontractor may each disclose Confidential Information to its Associates to the extent necessary for the purpose of undertaking the Project.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Subcontractor must ensure that the person to whom the information is disclosed enters into a confidentiality deed with the Subcontractor on terms reasonably acceptable to Project Co.

15.3 Disclosure by the Subcontractor

- (a) **(The Subcontractor's disclosure obligations):** Subject to clause 15.3(b), the Subcontractor must:
 - (i) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' or Project Co's or any of Project Co's Associates involvement in the Project without the State's and Project Co's prior consent;
 - (ii) comply with any terms and conditions the State or Project Co imposes and must use all reasonable endeavours to agree with the State and Project Co the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' or Project Co's or any of Project Co's Associates involvement in the Project before the relevant disclosure, announcement or statement is made; and
 - (iii) as soon as practicable, give to the State and Project Co a copy of any public disclosure, announcement or statement agreed to or approved by the State and Project Co in accordance with this clause 15.3(a) or for which the State's and Project Co's consent or approval was not required in accordance with clause 15.3(b).
- (b) **(Permitted disclosure):** For the purposes of clause 15.3(a), the Subcontractor will not be required to obtain the State's nor Project Co's consent or approval to the extent that any disclosure, announcement or statement is:
 - (i) required by Law, provided that it:
 - A. notifies the State and Project Co of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal or other advice from its advisers;

- (iii) required to be made to a court in the course of proceedings to which the Subcontractor is a party; or
- (iv) required by a relevant stock exchange, subject to:
 - A. such disclosure, announcement or statement not referring to the State's or any of its Associates' or Project Co's or any of Project Co's Associates involvement in the Project; and
 - B. the Subcontractor having used all reasonable endeavours to obtain the State's and Project Co's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

16. Return of documents

The Subcontractor must return a copy of all plans, drawings, specifications and other documents which come into its possession for the purpose of the Subcontract or this Deed to Project Co at the expiration of the Subcontract.

17. Miscellaneous

17.1 Governing Law and jurisdiction

- (a) **(Governing Law)**: This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction)**: Without limiting clauses 9 to 10, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

17.2 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior agreement of the parties.

17.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Deed.

17.4 Survival of certain provisions

- (a) **(Surviving clauses)**: All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
 - (i) Project Co's rights to set-off and recover money;
 - (ii) confidentiality or privacy;

- (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to the State or Project Co;
 - (v) any indemnity or financial security given in accordance with this Deed; or
 - (vi) any right or obligation arising on termination of this Deed.
- (b) **(Interpretation):** No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

17.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

17.6 Consents, approvals and directions

A consent or approval required in accordance with this Deed from the State or Project Co may be given or withheld, or may be given subject to any conditions, as the State or Project Co thinks fit, unless this Deed expressly provides otherwise.

17.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

17.8 Expenses

Except as otherwise expressly provided in this Deed or (as between Project Co and the D&C Subcontractor) the D&C Subcontract, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

17.9 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

17.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

17.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than Project Co any obligation under this Deed, or to prejudicially affect the exercise by Project Co of any right, power or remedy under this Deed or otherwise, are expressly waived.

17.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 17.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

17.13 Indemnity held on trust

- (a) **(Benefit of indemnities):** Project Co holds on trust for its Associates the benefit of:
 - (i) each indemnity, promise and release given by the D&C Subcontractor or the Subcontractor under this Deed in favour of Project Co's Associates; and
 - (ii) each right in this Deed to the extent that such right is expressly stated to be for the benefit of Project Co's Associates.
- (b) **(D&C Subcontractor and Subcontractor acknowledgement):** The D&C Subcontractor and the Subcontractor acknowledge the existence of such trusts and consents to:
 - (i) Project Co exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (ii) Project Co's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.
- (c) **(Consent not required):** The parties agree that Project Co does not require the consent of its Associates to amend or waive any provision of any D&C Project Document.
- (d) **(Benefit of rights, acknowledgement and agreements):** Project Co holds on trust for the State and its Associates the benefit of:
 - (i) each acknowledgement and agreement given by the Subcontractor in favour of the State under this Deed; and

- (ii) each right in this Deed to the extent that such right is expressly stated to be for the benefit of the State.
- (e) **(D&C Subcontractor and Subcontractor acknowledgement):** The D&C Subcontractor and the Subcontractor acknowledge the existence of such trusts and consents to Project Co exercising rights on behalf of the State and its Associates as if they were a party to this Deed.

17.14 Assignment

Except as expressly contemplated by this Deed, neither the D&C Subcontractor nor the Subcontractor may assign or transfer any of its rights or obligations under this Deed or the Subcontract.

18. Limitations of liability

- (a) **(Subcontractor's liability):** Despite any other provision of the Subcontract or this Deed:
 - (i) the Subcontractor's aggregate liability to Project Co and the D&C Subcontractor whether in contract (including under an indemnity), tort (including negligence) or equity, under statute or otherwise, arising out or in connection with the subject matter of the Subcontract or this Deed and irrespective of how it arises will be no greater than the Subcontractor's aggregate liability to the D&C Subcontractor under the Subcontract; and
 - (ii) if there is a breach of the Subcontract by the Subcontractor, payment by it to the D&C Subcontractor or Project Co (as the case may be) of an amount in respect of its Liability for that breach will also satisfy any Claim by the D&C Subcontractor or Project Co (as the case may be) against the Subcontractor in respect of the same breach.
- (b) **(D&C Subcontractor's liability):** Despite any other provision of the D&C Subcontract or this Deed:
 - (i) the D&C Subcontractor's aggregate liability to the State and Project Co whether in contract (including under an indemnity), tort (including negligence) or equity, under statute or otherwise, arising out or in connection with the subject matter of the D&C Subcontract, the D&C Project Documents or this Deed and irrespective of how it arises will be no greater than the D&C Subcontractor's aggregate liability to Project Co and its respective Associates under the D&C Subcontract, subject to the same exceptions, exclusions, reductions and limitations as are specified in the D&C Subcontract; and
 - (ii) if there is a breach of the D&C Subcontract by the D&C Subcontractor, payment by it to Project Co or Project Co's Associates (as the case may be) of an amount in respect of its Liability for that breach will also satisfy any Claim by Project Co or its Associates (as the case may be) against the D&C Subcontractor in respect of the same breach.

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Schedule 13 - Subcontractor Direct Deed

Executed as a deed.

Executed by **TRANSURBAN WGT CO PTY LTD ACN 617 420 023** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Signed, sealed and delivered for and on behalf of **JOHN HOLLAND PTY LTD ABN 11 004 282 268** under power of attorney in the presence of:

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Signature of witness

Name

Name

Date of power of attorney

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Schedule 13 - Subcontractor Direct Deed

Signed, sealed and delivered for and on behalf of CPB Contractors Pty Limited ACN 000 893 667
as a deed under a Power of Attorney dated _____ (and the attorneys declare that they have not
received such a revocation of such Power of Attorney).

Attorney

Attorney

Full Name (please print)

Full Name (please print)

In the presence of:

Witness

Witness

Witness Name (please print)

Witness Name (please print)

Executed by [insert Subcontractor name]
ACN [insert] in accordance with section 127 of
the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

West Gate Tunnel
Project Agreement
Schedule 14 - Expert Determination Agreement

Schedule 14 - Expert Determination Agreement

Expert Determination Agreement

West Gate Tunnel

[]
[#insert party name]

[]
[#insert party name]

[]
Expert

Expert Determination Agreement made on

Parties *[#insert party name and address] (#insert party name)*

[#insert party name and address] (#insert party name)

[#insert name and address of Expert agreed between the Parties or appointed pursuant to [clause 43.4 of the Project Agreement or the equivalent clause in each Relevant Agreement]] (Expert)

Recitals

- A. The background to the Project is set out in the Project Agreement.
- B. On *[#insert]*, the Parties agreed that the Matter be determined by an expert appointed under clause *[#insert relevant clause reference]* of the Relevant Agreement.
- C. In accordance with clause *[#insert relevant clause reference]* of the Relevant Agreement, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

Operative provisions

1. Definitions

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Agreement have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this agreement and includes all schedules, exhibits, attachments and annexures to it.

Code of Conduct means the code of conduct set out in section 2 of Schedule 2.

Matter means a dispute under, arising out of, or in connection with the Relevant Agreement and referred to expert determination under clause *[#insert relevant clause reference]* of the Relevant Agreement, as more particularly described in Schedule 1.

Party means *[#insert party names; to the extent that there are more than two parties to the dispute, relevant amendments are required to be made throughout the document]*.

Project Agreement means the document entitled "Project Agreement West Gate Tunnel" between the State and Project Co dated *[#insert date]*.

Relevant Agreement means *[#insert the relevant Project Document under which the Matter arose.]*

Rules means the "Rules for Expert Determination Process" set out in Schedule 2.

Schedule of Fees and Disbursements is contained in Schedule 3.

1.3 Interpretation

In this Agreement:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(Agreement and Schedule references)**: a reference to:
- (i) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Agreement; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(Agreement as amended)**: a reference to this Agreement or to any other deed, agreement, document or instrument includes a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
- (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;

- (o) **(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;
- (p) **("may")**: the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy or cure)**: the use of the words "remedy" or "cure" or any form of such words in this Agreement means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Relationship of parties

Unless otherwise expressly provided, nothing in this Agreement creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties.

2. Appointment of Expert

- (a) **(Parties to appoint Expert)**: The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) **(Agreement of Conditions)**: The Parties agree that:
 - (i) the Expert will act as an expert and not as an arbitrator;
 - (ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
 - (iii) the rules of evidence do not apply to the determination; and
 - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules including the Code of Conduct.
- (c) **(Independence and bias)**: The Expert agrees to act honestly and independently in the performance of its obligations under this Agreement. If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or

impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

3. Confidentiality

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any person, except:

- (a) with the prior written consent of both Parties;
- (b) as may be required by Law;
- (c) for the purpose of subsequent court proceedings or arbitration; or
- (d) to the extent necessary to give effect to or enforce the Expert's determination.

4. Costs and fees

- (a) **(Parties joint and severally liable):** As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements.
- (b) **(Calculation of costs and fees):** The Parties agree, subject to the terms of the Relevant Agreement, as between themselves that:
 - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in the determination.

5. Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all Claims or Liability in connection with any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

6. Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

7. Governing Law and jurisdiction

- (a) **(Governing Law):** This Agreement is governed by, and must be construed according to, the Laws of Victoria, Australia.

- (b) **(Jurisdiction):** Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

8. Termination

- (a) **(Termination by Parties):** If the Parties agree, this Agreement may be terminated immediately on giving written notice to the Expert if:
- (i) the Expert is declared of unsound mind;
 - (ii) the Expert commits any proven act of fraud or dishonesty or, by wilful act or omission or by gross neglect, behaves in a manner clearly prejudicial to the interests of a Party;
 - (iii) the Expert fails to observe and fulfil any of the substantive terms of this Agreement;
 - (iv) the Expert fails to make his or her determination within the time required by section 6 of Schedule 2 of this Agreement; or
 - (v) the Matter is settled.
- (b) **(Termination by referral):** Notwithstanding clause 8(a), this Agreement will be immediately terminated if either party refers the Matter to arbitration in accordance with clause [insert relevant clause reference, eg. 44.1(a)(ii) of the Project Agreement] of the Relevant Agreement. The Expert will be entitled to payment for the work done to the time of termination.

9. Counterparts

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Agreement.

10. Survival of terms

All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Agreement will survive the rescission, termination or expiration of this Agreement, including:

- (a) **(Surviving clauses):** clauses 3, 4, 5 and 10, and any provision in connection with:
- (i) the parties' rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) any obligation to make any records available to the State;
 - (iv) any indemnity or financial security given in accordance with this Agreement; or
 - (v) any right or obligation arising on termination of this Agreement.

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Project Agreement
Schedule 14 - Expert Determination Agreement

- (b) **(Interpretation):** No provision of this Agreement which is expressed to survive the termination of this Agreement will prevent any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.

- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction in accordance with this Agreement. All rights and obligations in accordance with this Agreement survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Agreement.

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Schedule 14 - Expert Determination Agreement

Schedule 1
The Matter

[Note: Description of matter to be inserted.]

Schedule 2 Rules for Expert Determination Process

1. Commencement

The expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules including the Code of Conduct.

2. Code of Conduct

- (a) The function of the Expert is to make a determination of the Matter in accordance with the Relevant Agreement and the Expert Determination Agreement, including these Rules and the Code of Conduct.
 - (b) The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in these Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
 - (c) The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
 - (d) The Expert must disclose to both Parties all information and documents received.
 - (e) If a Party fails to make a written submission, the Expert may continue with the process.
 - (f) Subject to section 4 of these Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.
-

3. Written Submissions

- (a) Within 7 days after the date this expert determination process begins, the Party who gave notice under clause [*#insert clause*] of the Relevant Agreement (**Party A**) must give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.
 - (b) Within 7 days after the statement in section 3(a) is served, the other Party (**Party B**) must give Party A and the Expert a written response to Party A's submissions.
 - (c) If the Expert considers it appropriate, Party A may reply in writing to Party B's response in section 3(b) within the time allowed by the Expert.
 - (d) If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.
 - (e) The Expert must disclose to both Parties all information and documents received.
-

4. Conference

- (a) The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Melbourne, Australia.
- (b) At least 5 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.
- (c) The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under section 4(b), the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the expert determination process.
- (d) The Parties:
 - (i) may be accompanied at a conference by legal or other advisers; and
 - (ii) will be bound by any procedural directions given by the Expert in relation to the expert determination process.
- (e) The conference must be held in private.
- (f) If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

5. General

- (a) In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Relevant Agreement, this Agreement and these Rules.
- (b) Subject to section 4(c), meetings and discussions with the Expert must only take place in the presence of both Parties.
- (c) Without limiting section 2(c) of this Agreement, the Expert must:
 - (i) inform the Parties of:
 - A. any relationship or interest with the Parties or their respective Associates;
 - B. any interest the Expert has in the matters in dispute; and
 - C. any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially,immediately upon becoming aware of any such circumstances; and
 - (ii) upon making any disclosure under this section 5(c), unless and until the Parties agree otherwise, terminate the proceedings.

6. The Determination

- (a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than 30 days after the Expert's acceptance of appointment or such later date as agreed between the Parties, the Expert must:
- (i) determine the Matter between the Parties; and
 - (ii) notify the Parties of that determination.
- (b) The determination of the Expert must:
- (i) be in writing stating the Expert's determination and giving reasons;
 - (ii) be made on the basis of the submissions (if any) of the parties, the conference (if any) and the Expert's own expertise; and
 - (iii) meet the requirements of the Relevant Agreement.
- (c) To the extent permitted by Law, the Expert's determination will be final and binding on the Parties unless a notice of dissatisfaction is given in accordance with clause [#insert relevant clause reference] of the Relevant Agreement.
-

7. Costs

Security for costs of the Expert must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

8. Modification

These Rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

9. Proportional Liability

Notwithstanding anything else, to the extent permissible by Law, the Expert will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to expert determination pursuant to clause [#insert relevant clause reference] of the Relevant Agreement.

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Schedule 14 - Expert Determination Agreement

Schedule 3 - Schedule of Fees and Disbursements

[Note: Expert's fees and disbursements to be inserted.]

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Schedule 14 - Expert Determination Agreement

Signed as an agreement.

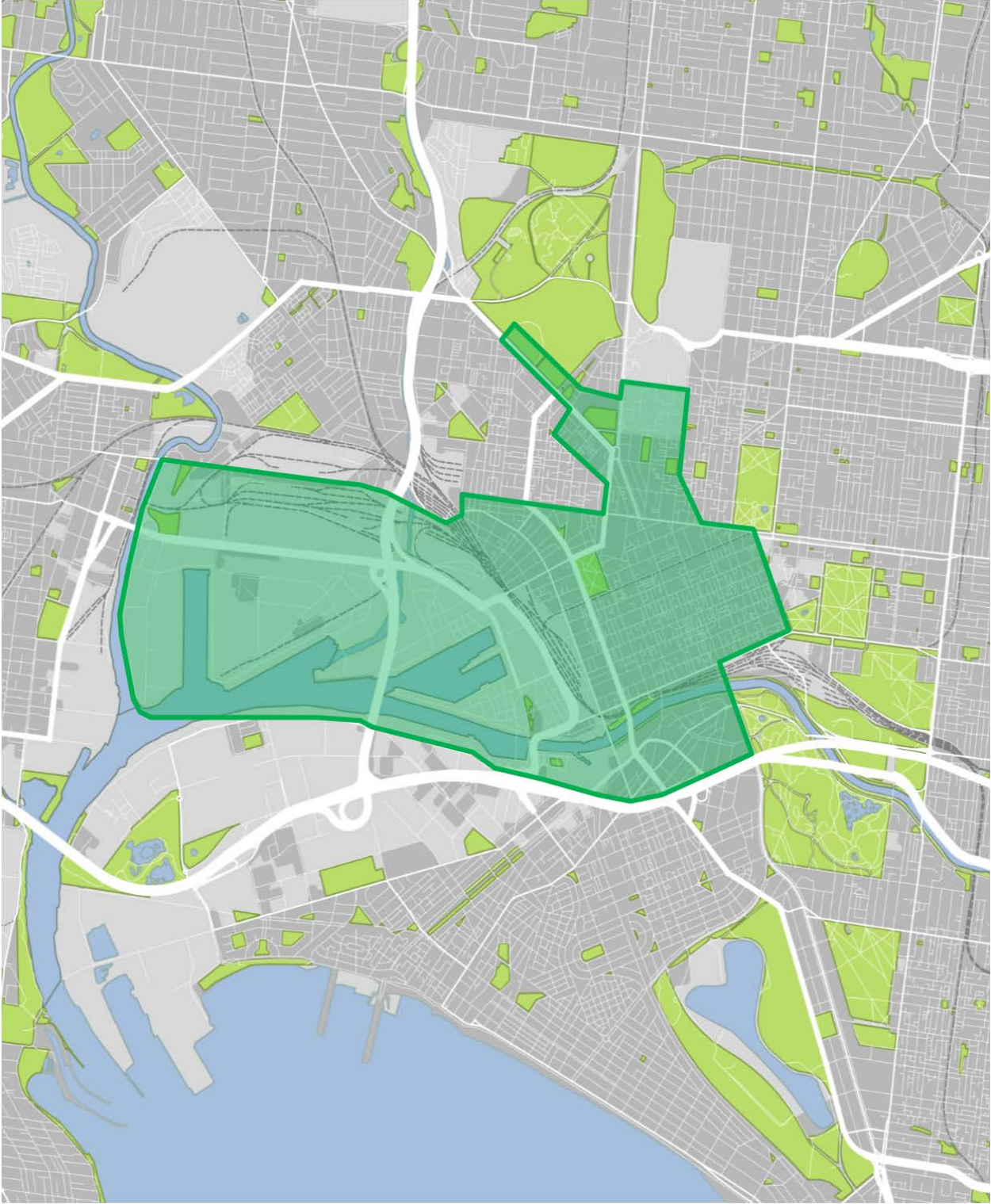
[Note: Execution Blocks to be inserted.]

West Gate Tunnel
Project Agreement
Schedule 15 - Confidential Information Schedule

Schedule 15 - Confidential Information Schedule

[not disclosed]

Schedule 16 – Cordon Price or Restriction Boundary



Schedule 17 -- Not used

Schedule 18 - Ownership Schedule

| Equity Investor | Proportion of total issued securities in Project Co |
|------------------------|--|
| Designated Investor | [not disclosed]% |
| Total | [not disclosed]% |

Schedule 19 - Permitted Share Capital Dealing Schedule

Permitted Share Capital Dealing means:

- (a) in respect of a Share Capital Dealing relating to Project Co, NewCo or OpCo, any sale, transfer or other disposal after Financial Close by an Initial Equity Investor (or a Related Body Corporate of an Initial Equity Investor) to an Equity Associate of that Initial Equity Investor of its interest (whether directly or indirectly, and including any shareholder loans or other loans in the nature of equity funding) in:
 - (i) Project Co, NewCo or OpCo (as applicable); or
 - (ii) any company that holds Securities in Project Co, NewCo or OpCo (as applicable);
- (b) a Share Capital Dealing which is expressly permitted under the terms of the State Project Documents;
- (c) a Share Capital Dealing of the type described in clause 49.2(a) that does not result in Transurban Holdings Limited ceasing to own all of the issued share capital of Project Co;
- (d) the issue of share capital or an equity loan note by Project Co to an Equity Investor that does not result in a change in the proportion of securities held by that Equity Investor;
- (e) provided that a Major Default is not subsisting, a Share Capital Dealing which occurs due to a corporate restructure or reorganisation which results in a relevant interest (as defined in section 608 of the Corporations Act but as though a reference in that section to "securities" were a reference to Securities as defined in this Agreement) in Securities that were held by a person being held by a Wholly Owned Group Member of that person, and in respect of which not less than 10 Business Days prior notice (including details of the restructure) has been given to the State (provided that such restructure does not result in:
 - (i) any sale, transfer or other disposal of Securities in Project Co; or
 - (ii) a Parent Guarantor of a Consortium Member ceasing to (directly or indirectly) Control and hold a majority interest in that Consortium Member);
- (f) the issue of any units or share capital in Project Co to an Equity Investor which will, in effect, replace existing units or share capital held by that Equity Investor in Project Co, and any corresponding redemption of existing units or share capital in Project Co; and
- (g) any Share Capital Dealing the performance of which is subject to the consent of the State.

Definitions:

Equity Associate means:

- (a) a Related Body Corporate or Subsidiary; or

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Schedule 19 - Permitted Share Capital Dealing Schedule

- (b) any general partner, nominee, custodian or trustee of any entity falling within paragraph (a) of this definition acting in such capacity.

Initial Equity Investor means those Equity Investors set out in the Ownership Schedule.

Schedule 20 – Indexes

1. Definitions

CPI means the All Groups Consumer Price Index Weighted Average of Eight Capital Cities (IECC) published quarterly by the Australian Bureau of Statistics or, if section 3 applies, the Index determined in accordance with section 3.

CPI Multiplier Annual (C) at any time means:

- (a) the most recently published March Quarter CPI at that time; divided by
- (b) the published CPI for the Quarter most recently ended prior to Financial Close.

WPI means the Wage Price Index Australia Total hourly rates of pay excluding bonuses for Australia, private and public, all industries (Series ID A2603609J) published quarterly by the Australian Bureau of Statistics, as long as there is no change in the coverage, periodicity or reference base from those applying at the date of this Agreement or, if section 3 applies, the Index determined in accordance with section 3.

WPI Multiplier Quarterly (C) at any time means:

- (a) the most recently published WPI at the end of the relevant Quarter; divided by
- (b) the published WPI for the Quarter most recently ended prior to Financial Close.

2. Indexes

In accordance with clause 2.16(a) of this Agreement, all amounts to be Indexed under this Agreement are indexed by multiplying the relevant number by:

- (a) the CPI Multiplier Annual (C), where either indexation by reference to CPI is specified or where no index is specified; or
- (b) the WPI Multiplier Quarterly (C), where specified in this Agreement.

3. Changes to Indexes

The following rules apply to all terms identified in section 2 as being referable to an Index published by the Australian Bureau of Statistics:

- (a) **(change in linked Index)**: if there is a change in the coverage of the Index from that applying at the date of this Agreement and the new index is linked to another Index, the defined term is to be referable to the new Index;
- (b) **(change in coverage or periodicity)**: if the Index is published and there is a change in its:
 - (i) coverage and it is not linked to another Index; or
 - (ii) periodicity,

the State must, within 20 Business Days of becoming aware of the change or being notified by Project Co, reasonably determine:

- (iii) whether the Index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and
- (iv) if it is not, what other Index should be used as a substitute Index for the purpose of the defined term's use in this Agreement,

and seek Project Co's agreement as to such Index;

- (c) **(change in reference base)**: if there is a change in the reference base of the Index from that applying at the date of this Agreement and the Australian Bureau of Statistics:

- (i) provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purpose of the defined term's use in this Agreement, in terms of the new reference base; or
- (ii) does not provide a conversion factor, the State must, within 20 Business Days of becoming aware of the change or being notified by Project Co, reasonably calculate a revised Index for the purposes of the defined term's use in this Agreement, and seek Project Co's agreement as to such revised Index;

- (d) **(Index ceases to be published)**: if the Index ceases to be published and the Australian Bureau of Statistics:

- (i) publishes another Index which is:
 - A. a replacement of that Index; and
 - B. linked to the Index,

the defined term must be re-calculated to the same reference base as the replacement Index; or

- (ii) does not publish another Index which is linked to or replaces the Index, the State must, within 20 Business Days of becoming aware of the change or being notified by Project Co, calculate or determine a revised Index and seek Project Co's agreement as to such revised Index;

- (e) **(Change in Mandatory Requirements)**: if a Change in Mandatory Requirements causes a material aberration in the Index, the Index must be adjusted to remove the impact of that material aberration in accordance with any such methodology published by a responsible Authority for adoption by business or, in the absence of such publication, within six months of the occurrence of the material aberration as agreed by the parties; and

- (f) **(expert determination)**: where the parties cannot reach agreement in accordance with:

- (i) sections 3(b) to 3(d), within 20 Business Days; or
- (ii) section 3(e), within six months of the occurrence of the material aberration,

the parties will, notwithstanding clause 43.3 of this Agreement, be deemed to have referred the dispute for determination by an expert in accordance with clause 43.3 of this Agreement and the parties must otherwise comply with clauses 43.4 to 43.8 of this Agreement.

Schedule 21 - VIPP Schedule

The parties agree and acknowledge that:

- references to 'CPBJH JV' and 'we' in this Schedule 21 are to be read as references to 'the D&C Subcontractor';
- references to 'West Gate Tunnel', 'the West Gate Tunnel project' and 'the project' are to be read as references to the 'project comprising the carrying out of the D&C Activities (other than the Tolling Works and D&C IRS Activities) during the D&C Phase';
- the obligations of Project Co under clause 56 of this Agreement are not affected or limited in any way by the references to CPBJH JV or the D&C Subcontractor in this Schedule 21; and
- the plans set out in this Schedule 21 have not been updated to ensure compliance with all of the requirements of this Agreement to the extent such requirements have changed from, or are additional to, the requirements set out in the Agreed Project Agreement (as defined in the WD Commitment Deed). This Schedule 21 will be updated in accordance with clause 11(e) of the Project Agreement.

Local Industry Development Plan West Gate Tunnel

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Acronyms and Definitions

| | |
|--|---|
| Acronyms | |
| ICN | Industry Capability Network (Victoria) Ltd |
| VIPP | Victorian Industry Participation Policy |
| LIDP | Local Industry Development Plan |
| | |
| Acronyms | |
| ANZ Value-added | Refers to the total cost of goods or services, which includes Victorian/Australian/New Zealand inputs, less the cost of the imported components. Note: ANZ refers to manufacturing or provision of services in Victorian/Australian/New Zealand. Items imported into New Zealand as part of New Zealand sourced goods and services are considered as imported components. |
| Contestable items | Refers to goods and services where there are both competitive international suppliers and competitive local suppliers. |
| Employment | Refers to the number of actual new or retained (including sub-contractors) annualised employee equivalent opportunities (jobs) to be created in Australia and New Zealand as a result of the contract. Note: AEE replaces Full Time Equivalence (FTE), and is calculated by dividing the total number of ordinary working hours that an employee worked and was paid over the reporting period (including paid leave) by the total number of fulltime working hours paid per annum (this is generally 38 hours per week for 52 weeks). |
| Lead Agency | Refers to inner and outer government agencies or contracting principal. |
| Local | Covers Victoria, Australia or New Zealand, so as to be in accord with the Australia-New Zealand Government Procurement Agreement. |
| Local Content | Includes both contestable and non-contestable items such as local labour, transport and logistics or local components that are sourced for larger elements. |
| Locally Milled Steel | Refers to steel that is smelted locally from coking coal and iron ore (known as virgin steel) or scrap steel that is recycled, smelted locally and turned into steel billets or slabs. |
| Local steel products made from locally milled steel | Refers to steel products that are manufactured, fabricated or created at any point in the supply chain in Australia or New Zealand, from locally milled steel. |
| Non-contestable items | Means those items that are considered as only being available through the international market or through local suppliers. That is, it is considered that there is no current competition between international and local suppliers to deliver the particular good or service. |
| Regional Victoria | The area within the municipal districts of the councils – excluding Metropolitan Melbourne councils – established under the <i>Regional Growth Fund Act 2011</i> . |
| Small to Medium Size Enterprise (SME) | An SME refers to a businesses with an Australian Business Number (ABN) and with less than 200 employees |
| Value for money | Refers to the acquisition of the appropriate quantity and quality of goods or services at the optimum combination of quality, quantity, risk, timeliness and cost for government on a whole-of-life basis. |
| Work Breakdown Structure (WBS) | Work breakdown structure is used to define and group a project's discrete work elements in a way that helps organise and define the total work scope of the project. |

1. BACKGROUND

1.1. Industry categories

Identify and select from the following list of industry sectors the one most relevant to the contract.

| | |
|---|--|
| <input type="checkbox"/> Agriculture, forestry | <input type="checkbox"/> Transport |
| <input type="checkbox"/> Agriculture, forestry | <input type="checkbox"/> Communications |
| <input type="checkbox"/> Environment | <input type="checkbox"/> Finance |
| <input type="checkbox"/> Mining | <input type="checkbox"/> Property |
| <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Education |
| <input type="checkbox"/> Utilities | <input type="checkbox"/> Health |
| <input checked="" type="checkbox"/> Construction/Infrastructure | <input type="checkbox"/> Events and Tourism |
| <input type="checkbox"/> Wholesale Trade | <input type="checkbox"/> Other [Please specify (if selected)] |
| <input type="checkbox"/> Retail Trade | |
| <input type="checkbox"/> Research/Innovation/Design | |

1.2. Project Overview

The West Gate Tunnel is a solution to the congestion on the M1 and the West Gate Bridge along with other network improvements to support Victoria's growth.

A new 6.3 kilometre link that ends Melbourne's over reliance on the West Gate Bridge is at the heart of the project, along with direct freeway links to the Port of Melbourne and inner city and removing 6,000 trucks off local roads.

The Victorian Government, through the Western Distributor Authority (WDA), is partnering with Transurban (TU) to build the West Gate Tunnel Project, consisting of various works including an upgrade of the West Gate Freeway and the construction of a new road and tunnel connecting the West Gate Freeway with the Port of Melbourne, CityLink and the CBD.

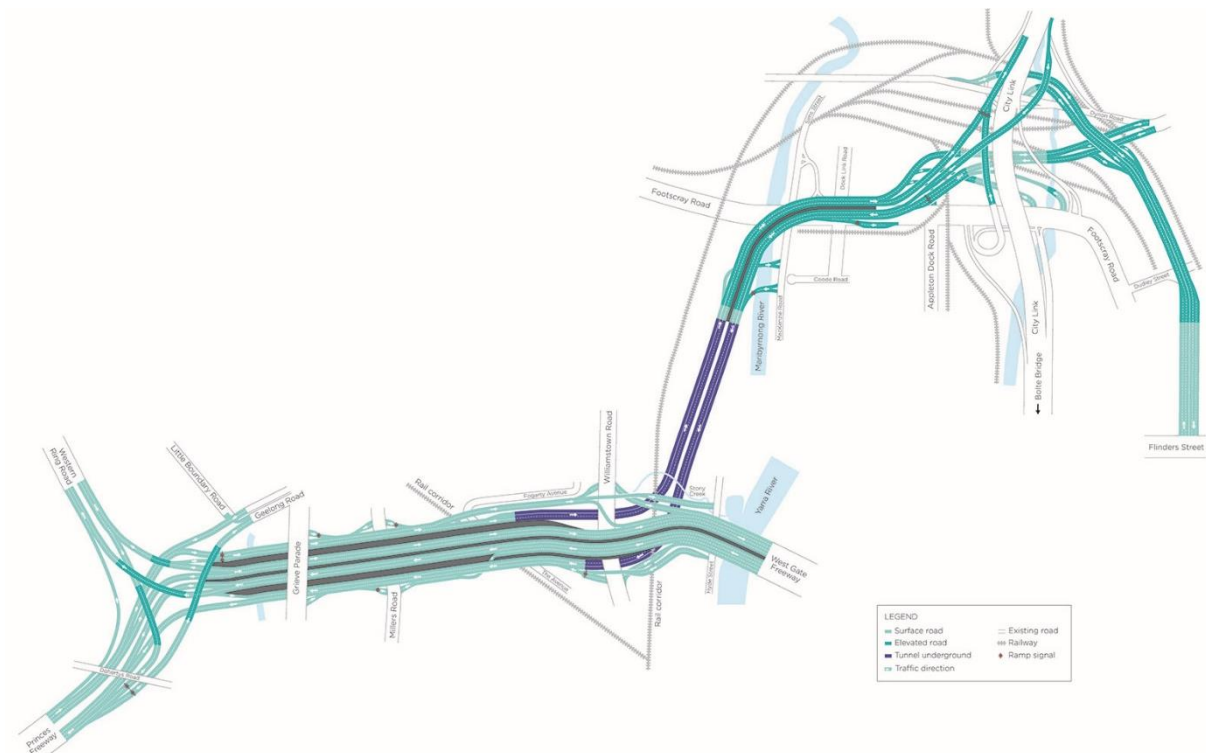


FIGURE 1-1: WEST GATE TUNNEL

The upgraded West Gate Freeway and new road and tunnel, including the new CBD connections, will form the ongoing West Gate Tunnel Concession to be operated and maintained by Transurban.

The West Gate Tunnel will also include construction of a new city bypass between Dynon Road and Flinders Street, incorporating a widening of Wurundjeri Way. It will also include major new cycling and walking paths, modern urban design treatments and environmental protection works.

The project is planned to start in November 2017 and be completed by the end of 2022.

The scope of works for the West Gate Tunnel is summarised in Table 1-1.

TABLE 1-1: SCOPE OF THE WEST GATE TUNNEL

| Project Element | Requirements |
|--|--|
| West Gate Freeway | <ul style="list-style-type: none"> ▪ Additional traffic lanes inbound and outbound from Williamstown Road to the M80 ▪ Separation of traffic lanes (inbound and outbound) into channels, comprising a collector distributor and express lanes ▪ All adjustments, reinstatements and improvements necessary to connect the West Gate Bridge, the New Freeway, Princes Freeway West and M80 to the West Gate Freeway ▪ Bridge widening and strengthening of existing structures ▪ New pavements on existing carriageways ▪ A new west facing connection from the West Gate Freeway to Hyde Street for vehicles carrying hazardous goods and over dimensional vehicles that cannot use the West Gate Tunnel tunnel. |
| Tunnel Freeway | <ul style="list-style-type: none"> ▪ The new freeway connecting the West Gate Freeway with the Port of Melbourne, CityLink and the CBD ▪ All adjustments, reinstatements and improvements necessary to connect the West Gate Freeway and CityLink to the New Freeway ▪ Tunnels with capacity for three lanes (initially to be operated for two lanes), running under Yarraville and all additional infrastructure, plant and equipment necessary to operate the tunnels safely and efficiently ▪ Southern tunnel portal that connects to the West Gate Freeway ▪ Northern tunnel portal located west of the Maribyrnong River ▪ A crossing of the Maribyrnong River joining an elevated freeway above Footscray Road ▪ An elevated road above Footscray Road to CityLink ▪ New ramp connections providing direct access to west and east Swanson Dock via Mackenzie Road and Appleton Dock Road. |
| City Access and Bypass | <ul style="list-style-type: none"> ▪ A new arterial road from Dynon Road to Dudley Street (Wurundjeri Way Extension) and the widening of Wurundjeri Way ▪ Connections from the New Freeway to: <ul style="list-style-type: none"> - Footscray Road east of CityLink - Dynon Road - Wurundjeri Way Extension |
| Managed Motorway Technology and Infrastructure | <ul style="list-style-type: none"> ▪ Freeway control centre and alternative traffic control room ▪ Operation management and control system (OMCS), including freeway management, tunnel management and incident response management systems ▪ Roadside toll collection systems ▪ ITS roadside equipment ▪ Integration from OMCS to VicRoads Freeway Management System. |

1.3. Not used

2. INTRODUCTION

2.1. Overview

The State Government's Victorian Industry Participation Policy (VIPP) was enacted on 1 January 2009. It required Victorian Government departments and agencies to consider opportunities for competitive local suppliers when awarding contracts. The VIPP seeks to maximise opportunities for Australian, New Zealand and Victorian suppliers to compete for government business on the basis of best value for money over the life of the goods or services. The main objectives of the VIPP are:

- Promoting employment and business growth by expanding market opportunities for local industry.
- Providing contractors with increased access to, and raise awareness of local industry capability.
- Exposing local industry to world's best practice in workplace innovation, e-commerce and use of new technologies and materials.

- Developing local industry's international competitiveness and flexibility in responding to changing global markets by giving local industry a fair opportunity to compete against foreign suppliers.

Using local industry boosts the economic and commercial potential for the Australian industry as a whole and aids smaller businesses within localised regions which may otherwise not be recognised as potential suppliers. The policy is administered by the Industry Capability Network (ICN) Victoria on behalf of the Victorian Government.

CPBJH JV has completed this Local Industry Development Plan (LIDP) and obtained ICN Victoria certification. This Local Industry Development Plan includes:

- The level of local content expected within the procurement activity
- Expected employment levels (new and retrained jobs)
- Expected training, skills development and technology transfer
- How the plan will be implemented.

2.2. Purpose of this plan

This Local Industry Development Plan outlines how the Project intends to achieve the goals detailed in the Victorian Industry Participation Policy as part of the West Gate Tunnel Project. CPBJH JV considers the project as an opportunity to set a new benchmark for local industry participation on major Victorian infrastructure projects. Our Local Industry Development Plan:

- Engages with local employment and training organisation, along with representatives of the local industry, to create a flagship employment program that provides employment and training throughout the life of the project
- Includes a strategic partnership with Victoria University's TAFE division, Victoria Polytechnic for workforce training aligned to the Project and in support of the future infrastructure industry
- Supports the Government's objective 'Building and Education State'
- Promotes knowledge transfer and learning opportunities through our Social Procurement Partnership program
- Uses a procurement policy and procedures which have been specifically developed to promote local industry participation
- Provides an effective tool for project managers in assessing the benefits of local industry capacity and capability
- Demonstrates our efforts to meet the local content targets (i.e. 89% for the design and construction of the tunnel, road works and elevated structures, 82% for the supply and installation of Lane Use Management Systems, whilst maximising the use of locally milled steel fabricated products where possible.

2.3. Our approach

CPBJH JV is committed to providing local industry with a significant opportunity to be involved in this project, while boosting employment for Indigenous people, trainees and apprentices, those looking to up-skill and local unemployed, retrenched workers and other disadvantaged people, and promoting and attracting diversity into the infrastructure industry. These commitments are reflected in our vision:

TABLE 2-1: LOCAL INDUSTRY AND EMPLOYMENT VALUES AND APPROACH

| Values | Our approach |
|---|---|
| Fulfil our social responsibilities through procurement initiatives and meaningful employment opportunities for local young, disadvantaged or low skill workers facing barriers to employment. | <ul style="list-style-type: none"> ▪ We will partner with Victoria University to provide dedicated and relevant vocational learning and development for the project and future infrastructure construction industry. ▪ Through our Service Provider Network we will provide specialist employment and training services to Victorians, with specific capabilities to support people with disability, migrants, Indigenous and those who are disadvantaged. |
| Provide a legacy for the residential and commercial community that instils a strong and positive foundation for continued diversity and growth. | <ul style="list-style-type: none"> ▪ We will deliver meaningful and sustainable initiatives that continue to add value to the community beyond the life of the project, which promote social and economic wellbeing through the urban renewal and commercial uplift delivered by the project. ▪ We will contribute to the establishment and development of a new generation of industry capable resources through our project training initiatives and industry partnerships that will benefit Victorian projects and commerce into the future. |

2.4. Relationships with other management plans

The Local Industry Development Plan is one of an integrated suite of management plans developed for the project. The overarching Project Management Plan will summarise the content and purpose of each plan.

2.5. Plan Review

This plan will be monitored every month during the course of the project.

3. VIPP COMMITMENTS

Table 3-1 below provides a summary of our key commitments to achieve the VIPP objectives and targets during the delivery of the West Gate Tunnel Project.

TABLE 3-1: SUMMARY OF CPBJH JV COMMITMENT TO ACHIEVE THE VIPP OBJECTIVES

| Key VIPP Criteria | Description | Commitment |
|---|--|---|
| ANZ value-added activity | Level of ANZ (Victorian, Australian and New Zealand) value-added local content, expressed as a percentage of the overall bid price. | <p>Requirement:</p> <ul style="list-style-type: none"> Deliver a minimum of 89% for the design and construction of the tunnel, road works and elevated structures. Deliver a minimum of 82% for the supply and installation of the Lane Use Management System. Maximise then use of locally milled steel products where possible. <p>Commitment:</p> <ul style="list-style-type: none"> We will achieve 93.00% for the design and construction of the tunnel, road works and elevated structures. We will achieve 86.15% for the supply and installation of the Lane Use Management System. We will achieve 92.06% in steel commitments. |
| Employment created or retained | Provide details of the number of jobs that will be created or retained in Australia and New Zealand over the life of the Project. | <p>Commitment:</p> <ul style="list-style-type: none"> We will create new employment opportunities for 1946 (AEE). We will retain existing employment for 974 (AEE). |
| Training, skills development and technology transfer outcomes | Identify opportunities for increasing the training and development of Victorians, Australians and New Zealanders and any technology transfer outcomes. | <p>Commitment:</p> <ul style="list-style-type: none"> CPBJH JV in partnership with Victoria University will expand the current TAFE vocational learning program to provide extensive training opportunities for up-skilling current workforce and training new employees for the project. This investment will provide a lasting return through an increased well-trained resource pool to support future infrastructure needs. CPBJH JV through our West Gate Tunnel Employment Centre and Service Provider Network will focus on providing employment and development opportunities for those who are young, disadvantaged, culturally or linguistically diverse, Indigenous, or highly skilled asylum seekers. |
| | Provide details of the number of apprentice/trainee positions that will be created in Australia and New Zealand and existing apprentices/trainees utilised | <p>Commitment:</p> <ul style="list-style-type: none"> We will recruit 391 (AEE) apprentices. We will recruit 70 (AEE) trainees WE will engage 62 (AEE) cadets. |

3.1. Value-added activity

We understand that 'Australia and New Zealand (ANZ) value-added' refers to the cost of Victorian, Australian and New Zealand goods and services used on the Project, less the cost of the imported components.

The State has specified three local content commitments, including for the use of local steel products made from locally milled steel, which include:

- Deliver a minimum of 89% for the design and construction of the tunnel, road works and elevated structures (refer to Table 3-2)
- Deliver a minimum of 82% for the supply and installation of the Lane Use Management System (Refer to Table 3-3)

- Maximise then use of locally milled steel products where possible (Refer to Table 3-4)

TABLE 3-2: CPBJH JV'S ANZ VALUE-ADDED ACTIVITY – TUNNEL, ROAD WORKS AND ELEVATED STRUCTURES

| Cost of Victorian/Australia/New Zealand Goods or Services | Represented as a Percentage of our overall bid price |
|---|--|
| \$4,470 million | 89.4% |

Further details of contestable items are provided in Attachment-C

TABLE 3-3: CPBJH JV'S ANZ VALUE-ADDED ACTIVITY – LANE USE MANAGEMENT SYSTEMS

| Cost of Victorian/Australia/New Zealand Goods or Services | Represented as a Percentage of our overall bid price |
|---|--|
| \$136 million | 2.74% |

Further details of contestable items are provided in Attachment-D

TABLE 3-4: CPBJH JV'S ANZ VALUE-ADDED ACTIVITY – LOCALLY MILLED STEEL FABRICATED PRODUCTS

| Cost of Victorian/Australia/New Zealand Goods or Services | Represented as a Percentage of our overall bid price |
|---|--|
| \$380 million | 7.7% |

Further details of contestable items are provided in Attachment-B

3.2. Employment created or retained

The West Gate Tunnel will be an important driver of the Victorian economy, generating over 2,200 direct full-time jobs during design and construction. The project also provides an important opportunity to develop local jobs, both in the construction sector and in related support sectors.

CPBJH JV recognises the project's role in addressing recent job losses in the manufacturing sector, particularly the automotive sector, as well as the need for indigenous, youth employment and social employment and social procurement enterprise outcomes.

3.2.1. Jobs created or retained in Australia and New Zealand

CPBJH JV has analysed the requirement for labour (both staff and wages) over the project's Delivery Phase to determine the skills and disciplines required on the West Gate Tunnel. The peak construction workforce is anticipated to be around 620 Staff, 2,000 workforce, and a further 300 design staff employed on the project. Of this workforce, we will employ 391 apprentices and 70 trainees, which surpasses the project requirements for our workforce participating in nationally accredited training. In addition, our proposed regional precast facilities in regional Victoria will have over 400 new employees.

In addition to direct workforce, material procurement will deliver a significant increase to employment within the broader industry. Industries such as steel fabrication and reinforcement, concrete, precast elements, and power and electrical will be in demand to produce materials for the project.

The type of roles available are:

- D&C Contractor – Engineers, supervisors, commercial, community and stakeholder engagement professionals, environment, planning, safety, quality, human resources and administration
- Design – Urban designers, landscape designers and drafting resources
- Legal and accounting consultants
- Workforce (Civil) – Drafters, plant operators, labourers, traffic controllers, truck drivers, concreters, formworkers, steelfixers, landscapers, electricians and fitters
- Workforce (Tunnel) – TBM operators and support crews, mechanical and electrical trades
- Workforce (precast) – Plant operators, labourers, truck drivers, concreters, formworkers and steelfixers

Table 3-5 shows the details of employment created and retained.

TABLE 3-5: DETAILS OF EMPLOYMENT CREATED AND RETAINED

| Site Description | Jobs | | Apprentices | | Trainees (incl. Cadets) | |
|-------------------------|---------|----------|-------------|----------|-------------------------|----------|
| | Created | Retained | Created | Retained | Created | Retained |
| West Gate Tunnel | 1946 | 974 | 391 | 50 | 70 | 8 |
| Total employment (AEE): | 2920 | | | | | |
| Total employment | 8115 | | | | | |

| Site Description | Jobs | Apprentices | Trainees (incl. Cadets) |
|--|------|-------------|-------------------------|
| (FTE): | | | |
| Note: Jobs created/retained (AEE) and (FTE) should include apprentice and trainee related employment | | | |
| Note: Total positions created estimated at 5000 over construction period | | | |

3.2.2. Steel-related jobs created or retained in Australia and New Zealand

CPBJH JV will ensure the project creates and retains a substantial number of steel-related jobs in Australia and New Zealand, as shown in Table 3-6.

TABLE 3-6: DETAILS OF STEEL-RELATED EMPLOYMENT CREATED AND RETAINED

| Site Description | Jobs | | Apprentices | | Trainees | |
|--|---------|----------|-------------|----------|----------|----------|
| | Created | Retained | Created | Retained | Created | Retained |
| West Gate Tunnel | 192 | 182 | 10 | 10 | 12 | 6 |
| Total employment: | 374 | | | | | |
| Note: Jobs created/retained (AEE) should include apprentice and trainee related employment | | | | | | |

3.3. Training, skills and technology transfer

As one of the largest road projects ever delivered in Australia, the West Gate Tunnel provides a fantastic opportunity to provide employment, training and skills to disadvantaged people as well as up-skilling current construction workers.

We have developed an effective strategy to meet the requirement of 20% of our workforce participating in nationally recognised accredited training. We estimate that 1000-1200 people will complete accredited training while engaged on the West Gate Tunnel.

During the Delivery Phase we will support subcontractors to set targets for apprenticeships, traineeships, and employing socially disadvantaged and Indigenous people. In addition, all employers will be required to use their 'best endeavours' to provide opportunities for workers to be up-skilled while working on the Project.

During the development of our Service Provider Network (SPN), we established strong relationships with Registered Training Organisations (RTOs) and Group Training Organisations (GTOs) in Melbourne's west. We looked for obvious synergies to ensure our training budget left a legacy for the communities of Melbourne's west.

Our proposal is to establish dedicated regional capability to support the project's precast manufacturing requirements. We plan to train retrenched automotive workers in new manufacturing technologies.

3.3.1. Partnership with Victoria Polytechnic

One of CPBJH JV's major initiatives has been to form an in principle agreement with Victoria Polytechnic, the TAFE division of Victoria University, for them to be our preferred training provider for direct hire workers on the West Gate Tunnel.

Victoria Polytechnic delivers high-quality accredited courses, apprenticeships, traineeships and customised training programs that link closely with industry. Students learn in state-of-the-art facilities and are trained to work to the highest industry standards.

During our discussions with Victoria Polytechnic we agreed there was an opportunity for the West Gate Tunnel to act as a catalyst to help the college transition into the delivery of construction industry training. Although construction industry training is not currently on their training scope, the project lead time will provide enough time for the college to ensure its trainers are appropriately skilled, qualified and experienced in construction industry practices.

The following accredited courses will be offered to our workforce through our preferred training provider Victoria Polytechnic, our Group Training Organisation providers or other accredited training organisations.

TABLE 3-7: ACCREDITED COURSES OFFERED TO OUR WORKFORCE

| Personnel and materials hoist | Work-zone traffic management | Vehicle loading crane |
|--|--|---|
| Non-slewing Mobile Crane | Conduct Civil Construction Wheeled Front End Loader Operations | Provide Advanced First Aid |
| Crane | Conduct Roller Operations | Conduct Civil Construction Skid Steer Loader Operations |
| Conduct Civil Construction Grader Operations | Handle and Use Dogging Tools and Equipment | Conduct Civil Construction Excavator Operations |
| Forklift Licensing | Conduct Backhoe/Loader Operations | Elevating Work Platform |
| Workplace Spotting for Service Assets | Power Tool – safe handling | Conduct Civil Construction Scraper Operations |
| Concrete | Apply Occupational Health and Safety Regulations, Codes and Practices in the Workplace | Test and Tag Training |
| Conduct Civil Construction Wheeled Front End Loader Operations | Conduct Civil Construction Water Cart Operations | Handle Construction Materials |
| Use Construction Tools and Equipment | Work Effectively and Sustainably in the Construction Industry | Carry Out Measurement and Calculations |
| Asbestos Awareness | Erect and Dismantle Basic Scaffolding | Erect and Dismantle Advanced Scaffolding |

| Personnel and materials hoist | Work-zone traffic management | Vehicle loading crane |
|---|---|--|
| Erect and Dismantle Height Restricted Scaffolding | Follow OHS Requirements, Policies and Procedures in the Construction Industry | Work Safely in the Construction Industry |
| Rail safety awareness | Working at Heights | |

3.3.2. Training our precast workforce

Our precast yard in regional Victoria, which will produce around 500,000 tonnes of structural precast segments, will have a heavy training focus with around 325 workers and 30 staff who will receive accredited training related to their roles. Our tunnel segment facility in regional Victoria will employ around 35 workers and 10 staff.

We have established an agreement with a regional TAFE for our precast workforce in regional Victoria to receive facility-specific training at Certificate II, III, and IV level.

All workers will complete Certificate II Manufactured Mineral Products (Concrete), with 40% of the workforce expected to complete Certificate III and 10% of the workforce expected to complete Certificate IV.

3.3.3. Identifying opportunities to increase the skills of our employees

CPBJH JV will develop a workforce planning strategy to identify and respond to internal and external capability requirements and organisational constraints that may inhibit the successful delivery of the project.

Our approach to maintaining a highly skilled workforce will be to ensure current and future skill needs are mapped across the project duration. As part of this mapping process our Training Manager will map the current skills and competencies of each member of our workforce and identify training and skills that could build competencies in time to meet our program.

This mapping process will reveal the requirement to recruit additional people who may be more experienced or have specialised skills that cannot be developed in the available timeframe. We will analyse, identify, address and monitor the capability requirements of each employee by completing a pre-training review prior to commencing work on the project.

The existing workforce would be classified as specialist, multi-skilled or generalist in order to facilitate their training needs analysis across the range of occupations engaged in the project. If it is determined there are language, literacy or numeracy skills gaps these will be recorded on workforce members pre-training review documents and individual Education and Training Plans.

3.3.4. Engagement of cadets, apprenticeships and traineeships

CPBJH JV will implement targeted strategies to engage apprentices, trainees and cadets by:

- Targeting the approach for training at various levels – D&C contractor, self-performed workforce and subcontracted workforce
- Providing opportunities on the project for existing apprentices and trainees engaged by the joint venture companies CPB Contractors and John Holland
- Working collaboratively with subcontractors to educate and support them to achieve their apprentice, trainee and cadet targets, particularly through our partnerships with Group Training Organisations
- Employing a dedicated Major Projects Skills Guarantee Senior Advisor to work closely with the Health Safety and Environment General Manager and the Construction Director.

3.3.5. Potential to undertake future innovation and/or research project

CPBJH JV will work with appropriate tertiary institutions, such as Victoria University, Monash, RMIT and the University of Melbourne, to identify opportunities for students to undertake projects that will assist in the development of innovative solutions for the West Gate Tunnel as well as research and development for future construction projects. Opportunities include:

- Internship research project of final year projects in engineering, environment, science, and safety
- Embed a program into the course structure
- Any technology transfer that occurs as a result of imported technology.

CPBJH JV will require imported technology for the tunnelling component of the West Gate Tunnel and potentially for the elevated structure sections of the project. Our Subcontracting and Procurement Plan will outline strategies to ensure that a technology transfer on imported technology is undertaken.

3.3.6. Not used

4. IDENTIFYING LOCAL PRODUCTS AND CAPABILITIES TO MEET CONTRACT REQUIREMENTS

4.1. Opportunities for local companies

4.1.1. Consultation with subcontractors

CPBJH JV will work closely with subcontractors to ensure they are committed to this Local Industry Development Plan. CPBJH JV will set Key Performance Indicators (KPIs) for major subcontractors to encourage them to:

- Offer employment opportunities to the local community and appoint suitable recruits wherever possible
- Source materials and equipment from local suppliers.

The procurement of materials and subcontractors will not be based solely on their subcontractors' capacity and ability to meet the project's technical requirements, but also on the location of the supplier, their ability to provide value for money and whether the item has been identified as being contestable under the VIPP Local Industry Development Plan Guide.

The benefits of this approach are:

- Driving mutually-beneficial outcomes for subcontractors and the local community.
- Subcontractors can use trained and skilled local people for future projects in the region.
- Boosting local employment and economy.

4.1.2. Working with industry associations

CPBJH JV will adopt various methods for promoting the concept of local industry participation with consultants, subcontractors and others involved in the Project. We will liaise with local industry groups to promote employment from within the local area. This network will also be used to promote the project to local industry.

4.1.3. Liaising with government organisations and agencies

CPBJH JV proposes to engage ICN, government organisations, ANZ industry and other groups to further assist in the identification of ANZ products and services to meet the project's requirements.

We aim to continue the productive engagement we have enjoyed with ICN in the RFT Phase post-project award. This collaboration will establish:

- The amalgamation of the CPBJH JV's product and capability lists with those of the ICN
- Which products and capabilities are not available locally
- The extent of the need to modify the proposed design to allow local suppliers to provide greater component or cover what would otherwise need to be imported
- If imports can be replaced through technology transfer or other means.

4.1.4. ANZ industry and other groups

CPBJH JV understands the nature of the local industry through our combined knowledge and experience on major projects, as well as through the peer relationships possessed by our locally based project managers. This combination of broad project experience and local knowledge includes which subcontractors – and which particular individuals within those organisations – are able to offer the most competitive prices while still possessing the organisational capacity to perform to the project's time, cost, quality and compliance objectives.

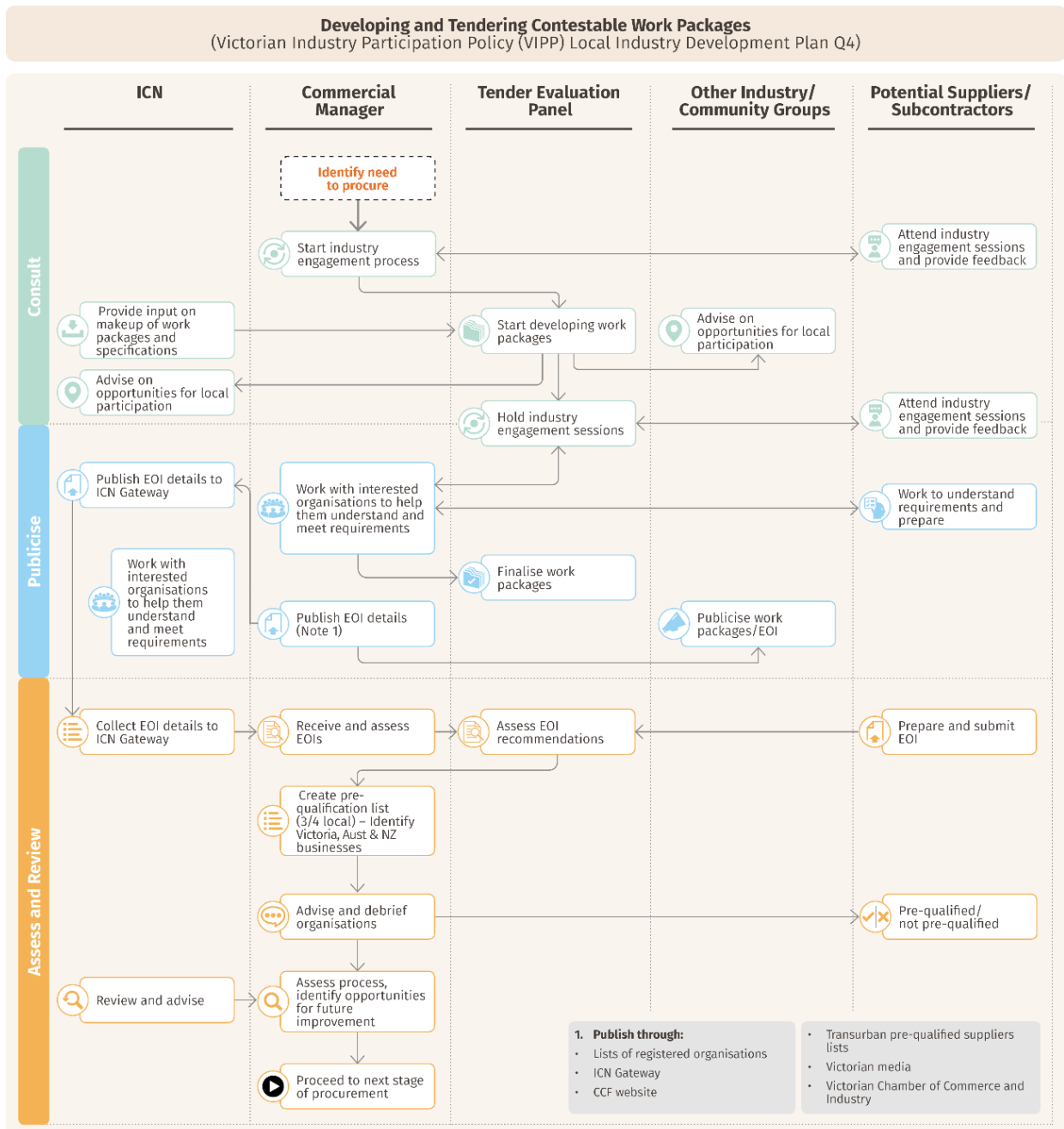


FIGURE 4-1: DEVELOPING AND TENDERING CONTESTABLE WORK PACKAGES

4.2. Alerting local industry

Contestable work packages will be advertised on the ICN Gateway and through multiple outlets. To maximise local content, CPBJH JV is aware of the need to alert local industry and service providers of upcoming tenders.

Our methods to alert local industry include:

- Using our existing systems and databases of local subcontractors and suppliers to directly communicate upcoming tenders
- Using the ICN provided list of subcontractors and suppliers
- Maintaining a database of local subcontractors and suppliers who directly contact the project office
- Advertising in local newspapers
- Posting announcements on our website

- Using industry databases and websites such as ICN, Civil Contractors Federation (CCF), Victorian Chamber of Commerce and Industry (VCCI), Federation of Victorian Traditional Owners Corp (FVTOC), Small Business Victoria and Social Traders.

CPBJH JV is aware that many technologies and materials for this project will be available locally. We are committed to maximising local content to enhance and build the capacity of local industry and create and sustain local employment.

CPBJH JV has received a relevant supplier list from ICN Victoria for the tender phase and, where required during project delivery, we will work with other industry bodies such as Civil Contractors Federation (CCF), Victorian Chamber of Commerce and Industry (VCCI), Federation of Victorian Traditional Owners Corp (FVTOC), Small Business Victoria and Social Traders to identify local suppliers.

Our procurement process also includes a checkpoint process to evaluate how the design, construction methodology and packaging scope could be changed or upskilling could be undertaken to minimise the need to source materials or technologies from overseas. Refer to Figure 4-2.

By carefully investigating the capacity of the local supply chain and ensuring we maximise local content, CPBJH JV will reduce the need to source products overseas. We will also undertake an education and compliance process with our potential subcontractors to ensure they fully understand our detailed commitments and targets. Refer to Figure 4-3.

4.3. Promoting local industry capabilities

CPBJH JV will adopt various methods (i.e. encourage local content in contracts, using local products in the overall design, etc.) for promoting the concept of local industry participation with consultants, subcontractors and others involved in the West Gate Tunnel through the procurement process.

Both JV partners, CPB Contractors and John Holland are also members of various industry and professional organisations such as the Australian Constructors Association, Supply Nation, ITS Australia, Roads Australia and the Civil Contractors Federation.

Our contacts within these organisations will be used to further promote local capabilities and participation. We will continue to liaise with the numerous local industries we have engaged with throughout the RFT period. We will also make use of our links at ICN to further promote local industry, making use of their expertise in this area.

Our subcontractor tender documentation will highlight our local industry participation requirements (i.e. 89% for D&C tunnel, 82% for LUMs and maximised milled steel fabricated products). It is proposed that subcontractors will be obliged to use all reasonable endeavours to meet the participation targets, and make a Statement of Participation detailing how they will meet these commitments to local employment. Likewise, the subcontractor will be expected to put in place strategies to engage local suppliers in its supply chain, and to provide written evidence of these strategies.

In addition to contacting stakeholders and subcontractors, CPBJH JV will promote the VIPP concept through broader industry channels. This process will include bi-monthly e-newsletter updates to an industry database of association members such as ICN Vic, CCF, VCCI, Engineering Australia, Engineering Victoria and Small Business Australia

Information outlined in this e-newsletter would include:

- Work packages released
- Work packages awarded to ANZ companies
- % ANZ value activity
- % SMEs in the supply chain
- Trainee, apprentice and cadet numbers
- Good news stories.

4.4. Liaising with international suppliers

Due to the highly technical and specialised nature of tunnel construction, a significant amount of plant and materials within the tunnels may need to be procured internationally.

However CPBJH JV will follow the process outlined in Figure 4-2 to ensure that international suppliers are only used when local suppliers cannot meet the project requirements. Our approach to international procurement will ensure time is allowed for components to be made locally wherever possible.

We will ensure all available alternatives are thoroughly investigated prior to procuring from international suppliers by:

- Redesigning the option
- Changing the construction methodology
- Changing the packaging scope
- Developing a strategy to upskill the local workforce.

Strategies to upskill the local workforce could include options such as manufacturing under overseas licensing arrangements, technology transfer, training programs and partnering agreements.

4.5. Establishing procedures and policies

CPBJH JV has established subcontracting and purchasing procedures that are based on CPB Contractors' Procurement Policy, which meets the Victorian Government's best practice procurement requirements.

The main purpose of this policy is to ensure that selected subcontractors, suppliers and consultants are capable of meeting specified requirements and delivering work and materials within the nominated time constraints. It also seeks to ensure that the selection, preparation, review, approval and issue of subcontracts, supply agreements and consultant service agreements are adequately controlled.

This policy states that when preparing subcontracts or supply documents the client's Project Requirements must be met, with the requirements included in the executed agreement. For the West Gate Tunnel, this policy will be further refined, with site specific quality and project management plans to reference VIPP requirements, including those regarding local content and contestable items, allowing CPBJH JV to make an informed assessment on ANZ industry participation.

4.6. Identifying potential for import replacement

The West Gate Tunnel's project scope has been divided into a number of works packages, the majority which will go out to market as tenders.

CPBJH JV will identify work packages and items with the potential for import replacement by local products or services, and include import replacement as a requirement in subcontractors' tender conditions. CPBJH JV will consult with the potential subcontractors and suppliers to investigate any opportunities to further replace imported goods with local options.

Decisions will be based on value for money and the proportion of the project value. This will occur:

- During design documentation for those items known to be potential import items.
- During the tender list compilation process.

To ensure local opportunities are pursued at every opportunity, CPBJH JV will prepare tender lists for all components to be procured for the works. These tender lists will be subject to Commercial & Finance General Manager and Project Director approval, in consultation with ICN where appropriate.

Specific requirements for the procurement process are:

- The tender list shall include at least three prospective tenderers:
 - If three prospective tenderers cannot be found locally, upon approval by the Construction Director, non-local tenderers may be included on the list unless the Commercial & Finance General Manager directs that less than three tenderers are acceptable for the procurement in question
- Preparation of the tender list shall have due regard for:
 - The perceived capability to undertake the works in accordance with the safety, environment, quality and other requirements dictated by the project.
 - The value for money objectives of Transurban and the State

Our process for identifying the potential for important replacement is shown in Figure 4-2.

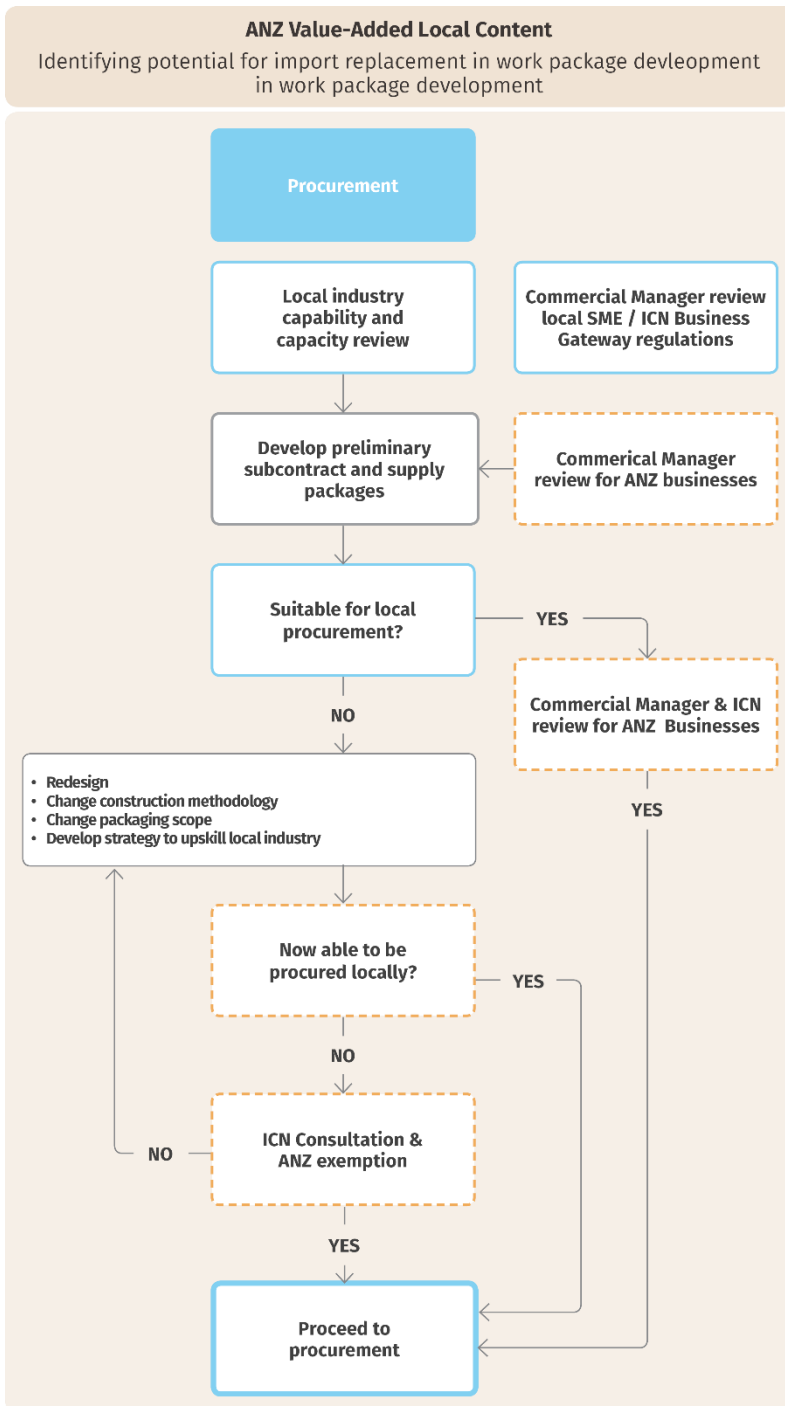


FIGURE 4-2: IDENTIFYING POTENTIAL FOR IMPORT REPLACEMENT IN WORK PACKAGE DEVELOPMENT

Subcontractors will be required to identify their requirements for the packages/items below at the time of tendering to assist in the identification of potential import replacement items as well as the expenditure to be made in local versus non-local goods and services.

As part of developing the need for import replacement in work packages we have identified a series of checkpoints where potential items for import replacement will be verified and confirmed. This will ensure, wherever possible, that the company supplying the product or service is a local company as are its goods and services.

Figure 4-3 outlines the checkpoint process for identifying import replacement. The three checkpoints are: 1) issue of tender documentation; 2) contract negotiation and execution; 3) and contract implementation.

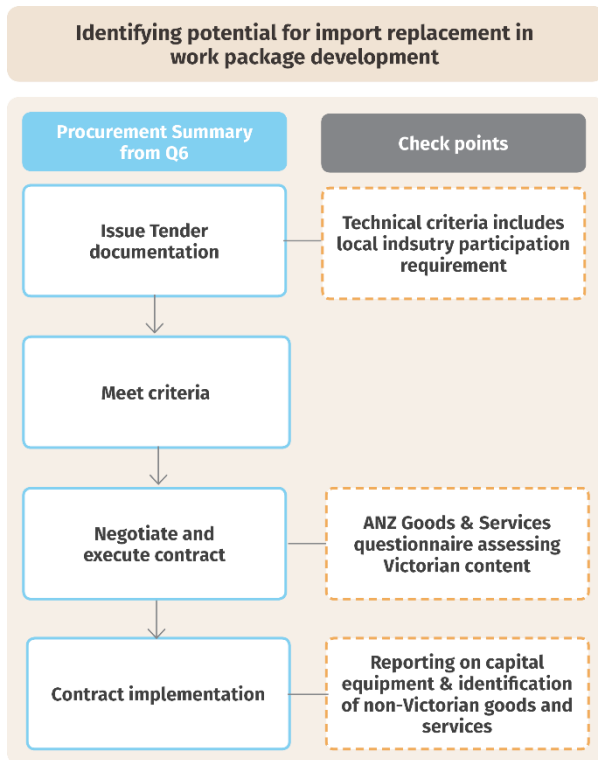


FIGURE 4-3: CHECK POINTS FOR IDENTIFYING POTENTIAL FOR IMPORT REPLACEMENT IN WORK PACKAGES

5. ASSESSING AND COMPARING LOCAL PRODUCTS AND CAPABILITIES WITH OVERSEAS EQUIVALENT/S

5.1. Benchmarking

As part of the procurement process for each trade package and supply element, CPBJH JV will use a subcontractor vetting process. As previously noted, we will exceed the State's targets for the three VIPP commitments for the West Gate Tunnel.

As part of the tender evaluation process we will use the percentage local content as one of the parameters in assessing the proposal. Additional information regarding the pre-identified contestable items will be included in the tender documentation to promote the use of local products by potential contractors.

CPBJH JV's assessment and comparison of products will be based on a detailed comparison of key features including local benefits, lifecycle performance, product quality, technical support, warranties, risk and overall value for money. The assessment of the ANZ value in products and services will include the following items:

- Local content
- Local support
- Product availability (timeframes)
- Quality.

Our RFT template, issued to suppliers and subcontractors, will include a returnable schedule on VIPP targets. This must be completed as part of all quotations for the West Gate Tunnel, holding suppliers and subcontractors responsible for setting their own VIPP target percentages.

For evaluation purposes, CPBJH JV will apply a weighting criteria to ensure LIDP targets can be achieved and will also include contractual obligations in all agreements to ensure tender LIDP target percentages are met by subcontractors and suppliers.

In addition, our conditions of tender guidelines for subcontractors and suppliers will state that tender submissions should consider local (ANZ) products and services alongside imported alternatives so that CPBJH JV can make a value for money judgement as appropriate. In all cases, the objectives of the VIPP are to be applied, particularly the following fundamental principles:

- Promoting open, effective competition
- Securing value for money
- Enhancing the capabilities of Victorian business and industries
- Protecting the environment
- Ensuring ethical behaviour and fair dealing
- Improving the skills base of local industries through development, innovation and knowledge transfer.

ICN Vic will be engaged and consulted to ensure benchmarks are correct, and that no potential suppliers/subcontractors are missed. Further guidance will be sought on increased involvement and participation within in the local manufacturing sector.

5.2. Assessing the local value-added content

Local value-added content will be assessed as part of the procurement process. Our approach to assessing local content includes:

- Identifying any imported content (products and services)
- Requesting the supplier identify in their trade or quote the percentage increase by value of the product between landed and purchase price (including any transport, storage, operation, profit, overhead, etc.)
- CPBJH JV will require its suppliers to identify the percentage value of fees that will be retained locally and the works that will be performed locally.

Subcontractors will be required to complete a local content questionnaire at the contract negotiation and execution stage of the procurement process. This will enable early identification of any non-local, value-added content in the supply chain so that CPBJH JV can work with the subcontractor to ensure the goods and services they supply are local.

5.3. Comparing local products and services against overseas equivalents

In comparing local products and services against overseas equivalents, subcontractor guidelines will state that tender submissions need to consider local products and services alongside imported alternatives.

This information will enable CPBJH JV to make a value for money judgement on local versus the overseas equivalent. We will assess each tender with appropriately weighted criteria incorporating value for money, capability, capacity, lifecycle benefits (or costs), local value-added content, value adding potential, innovation, industrial relations, safety, historical track record and if the item has been identified as contestable.

The highest overall rating for each submission would represent preferred tenderer status, leading towards further negotiation, clarification and ultimately award of contract.

6. CPBJH JV'S POLICIES AND PROCEDURES FOR PRODUCT OR SERVICE SELECTION

As part of our procurement strategy, CPBJH JV will undertake a detailed assessment of potential subcontractors and suppliers, using the CPB Contractors' Procurement Policy.

Work packages for tender will be packaged to encourage a range of subcontractor sizes and abilities. Submissions will be reviewed against the procurement and vetting criteria to ensure they meet the requirements of the tender and the project brief.

The objectives of the VIPP will apply in all cases, including:

- Promoting employment and business growth by expanding market opportunities for local industry
- Providing contractors with increased access to, and raised awareness of, local industry capability.
- Exposing local industry to world's best practice in workplace innovation, e-commerce and use of new technologies and materials
- Developing local industry's international competitiveness and flexibility in responding to changing global markets by giving local industry a fair opportunity to compete against foreign suppliers

- Upon concluding the assessment of potential subcontractors and suppliers, the recommended submission will be forwarded to the appropriate manager with the necessary limits of authority for final review and sign-off.

The process for selecting subcontractors and suppliers is outlined in Figure 6-1. After meeting the qualification and compliance criteria, subcontractors will then be assessed against technical criteria. Technical criteria assessment includes the following factors to provide a best value solution:

- Compliance with specifications
- Methodology
- Ability to deliver
- Value for money
- Innovation
- Local industry participation and workforce development including meeting VIPP: LIDP and Skills Guarantee requirements
- Previous experience
- Reputation, past dealings and cultural fit.

A weighting will be applied on each of these factors. Depending on the value of the works, an assessment report will be prepared and this assessment will be put forward for approval. Successful work package tenders will be published on the ICN Gateway to provide a referral for third and fourth tier suppliers. Unsuccessful tenders, where relevant, will be debriefed about their tender to increase their competitiveness on future tenders.

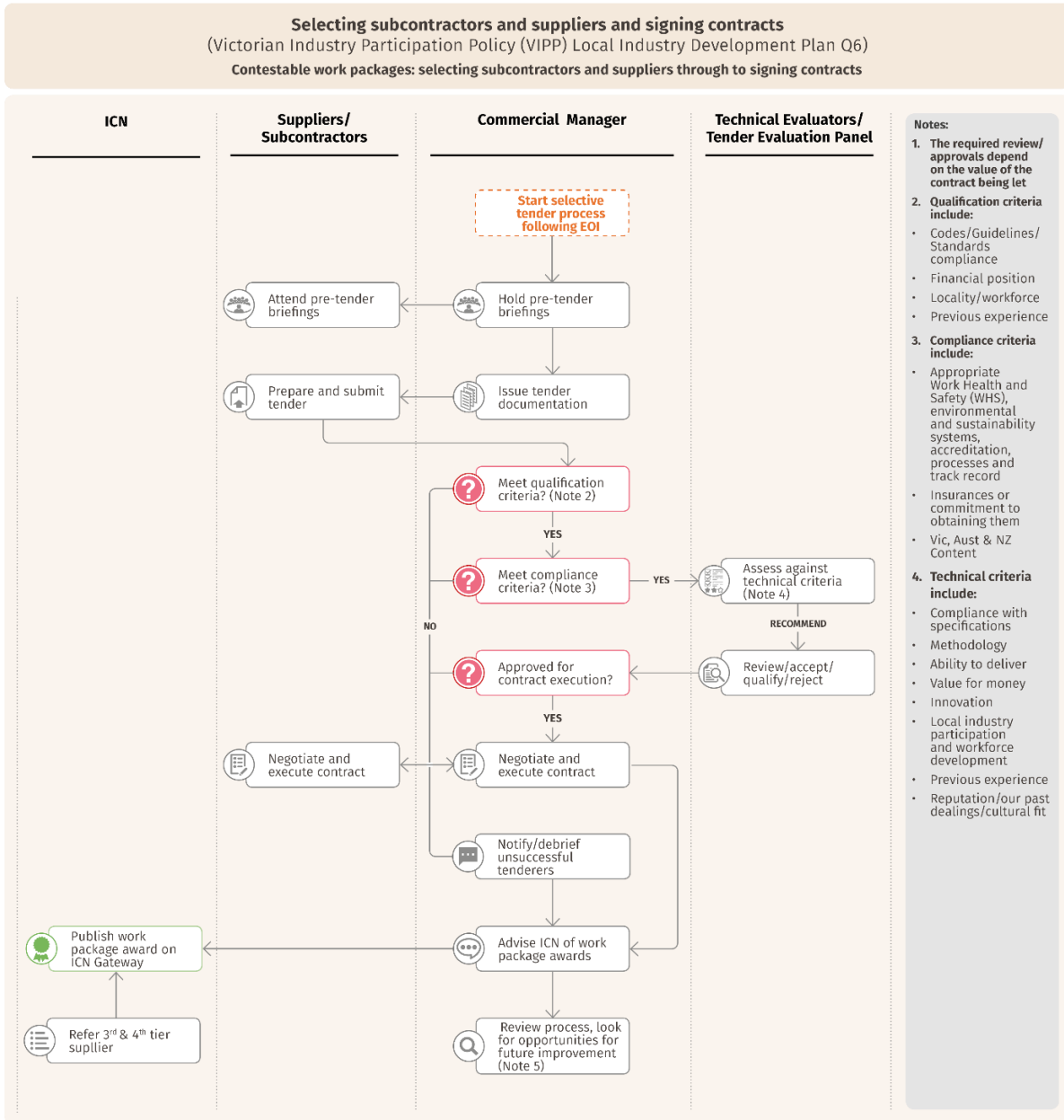


FIGURE 6-1: PROCESS FOR SELECTING SUBCONTRACTORS AND SUPPLIERS AND SIGNING CONTRACTS

7. MONITORING AND REPORTING ON LOCAL INDUSTRY INVOLVEMENT

CPBJH JV acknowledges the *Victorian Industry Participation Policy Act 2003* requirements. We will provide sufficient resources to monitor and report on local industry involvement and will implement a regular and robust monitoring and reporting process on local industry involvement.

To monitor and report on the outcomes of local industry involvement we will:

- Benchmark value for money/dollar value of local industry involvement against expected levels agreed with the ICN
- Charge CPBJH JV's Commercial and Finance General Manager with responsibility for managing the our VIPP obligations
- Conduct monthly meetings with the Transurban and State to ensure we are achieving the aims of the VIPP Plan, including a status report prepared by Commercial and Finance General Manager

4. Regular site meetings with subcontractors and suppliers to monitor the commitment to the VIPP
5. Monitor VIPP outcomes using the VIPP Commitments and Monitoring Tables.

Should meetings and reviews identify further action is required to meet our local industry commitments, organisations such as ICN will be asked to assist in identifying competitive ANZ sources of supply.

Information collected monthly from subcontractors will include:

- The number of jobs created and retained (AEE for the whole project including USPs, subcontractors, apprentices and trainees)
- The number of apprentices and trainees created and retained
- VIPP commitments secured against contract levels.

Another set of information will be reported on to meet the requirements of the Major Project Skills Guarantee. Additional information may be included following further discussions with ICN about their reporting and information requirements.

Subcontractors and suppliers' commitment to local industry participation will be monitored monthly through a monthly monitoring and reporting process. This will ensure corrective actions can be implemented in a timely manner, if required. Regular external audits of key subcontractors and suppliers will be undertaken to ensure reported data is accurate and reliable. The frequency of audits will depend on the level of subcontractor and supplier contribution towards achievement of the VIPP.

Subcontractors will be provided with a monthly overview of how they are tracking against their targets and where trend data indicates a possible non-compliance with the target. CPBJH JV may implement a number of corrective actions including:

- One-on-one meetings between the commercial team and key subcontractors on non-compliance and workshops and assistance on implementing corrective strategies
- Subcontractor correspondence. There are three tiers of correspondence: Correspondence 1 – reminder of targets; Correspondence 2 – official meeting regarding non-compliance; Correspondence 3 – breach of contract
- Subcontractor workshops to educate, facilitate and assist subcontractors to meet required targets.

8. STATEMENT OF COMPLIANCE

CPBJH JV will:

- Take all reasonable steps to comply with VIPP principles
- Agree to be monitored by the Department or Agency for compliance with VIPP commitments as part of overall performance management
- Agree to complete the Statutory Declaration (Attachment G) at practical completion of the project, confirming VIPP outcomes achieved
- Agree to allow ICN to certify the VIPP outcomes at the completion of the contract
- Acknowledge that the VIPP LIDP shall be centrally recorded by the Victorian Government, and
- Agree to the ICN Terms and Conditions as set out in Attachment H of this document.

| | |
|----------------------|---|
| Signed on behalf of: | CPB Contractors John Holland Group Joint Venture |
| Signature: | (Note: if submitting VIPP Industry Development Plan online, a signature is not required here) |
| Name: | |
| Position Title: | |
| Date: | |

ATTACHMENT A: CONTENTESTABLE PRODUCTS AND SERVICES

[not disclosed]

ATTACHMENT B: STEEL COMMITMENTS

[not disclosed]

ATTACHMENT C: TUNNEL, ROAD WORKS AND ELEVATED STRUCTURES COMMITMENTS

[not disclosed]

ATTACHMENT D: LANE USE MANAGEMENT SYSTEM COMMITMENTS

[not disclosed]

ATTACHMENT E: STEEL COMMITMENTS MONITORING TABLE

[not disclosed]

ATTACHMENT F: VIPP COMMITMENTS MONITORING TABLE

[not disclosed]

ATTACHMENT G: STATUTORY DECLARATION.

[not disclosed]

ATTACHMENT H: ICN TERMS AND CONDITIONS

[not disclosed]

Schedule 22 - Workforce Development Plan

The parties agree and acknowledge that:

- references to 'CPBJH JV' and 'we' in this Schedule 22 are to be read as references to 'the D&C Subcontractor';
- references to 'West Gate Tunnel', 'the West Gate Tunnel project' and 'the project' are to be read as references to the 'project comprising the carrying out of the D&C Activities (other than the Tolling Works and the D&C IRS Activities) during the D&C Phase';
- the obligations of Project Co under clauses 57 and 58 of this Agreement are not affected or limited in any way by the references to CPBJH JV or the D&C Subcontractor in this Schedule 22; and
- the plans set out in this Schedule 22 have not been updated to ensure compliance with all of the requirements of this Agreement to the extent such requirements have changed from, or are additional to, the requirements set out in the Agreed Project Agreement (as defined in the WD Commitment Deed). This Schedule 22 will be updated in accordance with clause 11(e) of the Project Agreement.

1. COORDINATED APPROACH TO WORKFORCE DEVELOPMENT

The Workforce Development Plan for the West Gate Tunnel, developed by the CPB Contractors John Holland Joint Venture (CPBJH JV), will deliver real and lasting benefits to Victorians.

It includes strategies and activities to ensure 20% of our workforce participates in nationally recognised accredited training. It also includes initiatives to meet or exceed the Aboriginal employment target of 2.5% of total labour hours on the West Gate Tunnel:

Through our Workforce Development Plan CPBJH JV will:

- Upskill 1000-1200 members of our workforce
- Employ up to 391 new apprentices, 70 new trainees and 62 cadets
- Provide employment and training to people from disadvantaged backgrounds including 60-90 Aboriginal people and 100-150 retrenched automotive workers
- Demonstrate how these activities meet the Major Project Skills Guarantee.

Our Workforce Development Plan builds on the creativity and innovation of organisations that deliver employment and training services to Victorians regardless of their circumstances or existing barriers to employment. To achieve this, we will work with over 25 service providers to identify interested people, prepare them for work, provide authentic and appropriate employment, train them for current and future roles and provide support to ensure their success.

We will build on existing capabilities in the Victorian employment service sector as we work with these organisations, sharing knowledge and shaping processes to achieve the best possible outcomes for those seeking work, the communities in which they live and the overall West Gate Tunnel project.

1.1. Our team

CPBJH JV's workforce development team will be led by Jobs and Social Procurement Manager, [not disclosed], who has a strong background in addressing social disadvantage and encouraging Aboriginal participation across a range of major infrastructure projects such as the Ichthys Onshore LNG Project in the Northern Territory and the Ord Irrigation Expansion Project in Western Australia.

[not disclosed] brings a wealth of practical experience and workable strategies to manage the diverse issues that impact on successful project delivery. She will be supported by five senior team members who will have a detailed understanding of the communities in Melbourne's west and strong existing relationships with community groups, Aboriginal Traditional Owners, employment agencies and key stakeholders to help us deliver on our commitments. Key responsibilities for these positions are included in Appendix E.

Our Jobs and Social Procurement team will be located in the West Gate Tunnel Employment Centre, described in Section 1.3.

1.2. Our Service Provider Network

Our Service Provider Network (SPN) is made up of local organisations and government-funded agencies that provide specialist employment and training services to Victorians. The SPN includes agencies with specialist capabilities to support people with a disability, migrants, Aboriginal and young people and workers facing changing circumstances such as the decline of the automotive sector. It also includes specialist training organisations for clients with existing skills and those seeking to transition into new roles.

Our planned approach leverages the current activities undertaken by these specialist service providers to ensure the benefits are felt in Melbourne's west long after the West Gate Tunnel is completed. Our ability to link employment services, training organisations, subcontractors and industry has the potential to transform the way Victorian infrastructure projects engage with people who face disadvantages when searching for work.

We will continue to investigate the possibilities of expanding our SPN upon contract award when further meetings are held and our training enrolments commence. We have engaged with each agency in our SPN. Their capability is described in Appendix A.

TABLE 1-1: OUR LOCAL SERVICE PROVIDER NETWORK

| Sector | Identified service providers |
|--|--|
| Mature-aged, disengaged youth, people with a disability | <ul style="list-style-type: none"> ▪ Wesley Mission – Disability Employment Services ▪ Wise Employment Services ▪ Jesuit Social Services ▪ Melbourne City Mission ▪ Salvation Army Employment Plus ▪ Epic Recruitment Assist |
| Disengaged youth/young people | <ul style="list-style-type: none"> ▪ AFL Sports Ready |
| Aboriginal people | <ul style="list-style-type: none"> ▪ Federation of Victorian Traditional Owner Corporations ▪ Programmed Skilled Workforce – Indigenous Employment Service ▪ Raw Recruitment ▪ Indigenous Prospects Training and Recruitment ▪ AFL Sports Ready – Indigenous Employment Program ▪ MEGT Australia (Vocational Training and Employment Centre for Melbourne) ▪ Korin Gamadji Institute ▪ Kangan Institute, Indigenous Education Centre |
| People from culturally and linguistically diverse (CALD) backgrounds | <ul style="list-style-type: none"> ▪ Adult Multicultural Education Services (AMES) Australia ▪ Asylum Seekers Resource Centre (ASRC) |
| Retrenched automotive workers from the manufacturing industry and supply chain | <ul style="list-style-type: none"> ▪ Turn2 Work Force Solutions (TWFS) ▪ Auto Skills Australia (ASA) ▪ Federation of Automotive Products Manufacturers (FAPM) ▪ Automotive Supplier Excellence Australia (ASEA) ▪ Automotive Manufacturing Transition - Skills & Training Initiative |
| School-based learning | <ul style="list-style-type: none"> ▪ Hobson Bay and Wyndham City Local Learning and Employment Network (LLEN) ▪ Capital City LLEN ▪ Maribyrnong and Moonee Valley LLEN ▪ Parkville Secondary College |
| Vocational Training and Education (VTEC) | <ul style="list-style-type: none"> ▪ MEGT VTEC ▪ AFL Sports Ready (VTEC) |
| Group Training Organisation/ Registered Training Organisation | <ul style="list-style-type: none"> ▪ Programmed Skilled Workforce |
| Cadets/interns | <ul style="list-style-type: none"> ▪ Career Trackers (Aboriginal) ▪ Victorian Universities |
| TAFE | <ul style="list-style-type: none"> ▪ Victoria Polytechnic, Footscray ▪ Wodonga TAFE |

1.3. Our West Gate Tunnel Employment Centre

To assist in the implementation of all activities outlined in this Workforce Development Plan we will open a community-focused West Gate Tunnel Employment Centre co-located with the West Gate Tunnel Visitor Hub.

The Employment Centre will be a one-stop-shop where local people, including those who face disadvantage in their search for employment, can find out about current employment and training opportunities. Vacant positions will be advertised on a jobs board along with a clear description about how to apply for these positions. We will provide computers for people who need to complete online applications, update resumes, copy training qualifications or scan licences to attach to applications.

Applicants who identify themselves as members of disadvantaged groups will be invited to meet with our Aboriginal Workforce Senior Advisor or Disadvantaged Workforce Senior Advisor. Applicants receiving employment support may request their Jobactive case worker to attend the meeting as well.

We will encourage our suppliers and subcontractors to use the West Gate Tunnel Employment Centre as a resource to engage with local people seeking work on the project.

1.4. Our success factors from previous projects

Our planned approach to attract and engage people from disadvantaged backgrounds is based on lessons learned on other major projects, with clear objectives for employment and training of Aboriginal people and people with a limited work history.

Recent successful projects include the Main Civil Works Package on the Ichthys Onshore LNG Project in Darwin, where a dedicated team of career development advisors worked with local community groups and organisations to employ over 300 local Aboriginal people, 49 of whom were long-term unemployed, with 89 achieving Certificate III or above qualifications during the project. This project achieved a 98% retention rate over 12 months, with one of its key success factors being its pre-employment approach which has been embedded in our plan for the West Gate Tunnel. Further lessons learned are detailed in section 3.

1.5. Our comprehensive pre-employment approach

Job seekers from disadvantaged backgrounds who have barriers to employment will be invited to an initial meeting with either our Aboriginal Workforce Senior Advisor or our Disadvantaged Workforce Senior Advisor. The initial meeting is designed to engage interested candidates in a voluntary, project specific, Individual Needs Assessment (INA) before they apply for and are interviewed for a position. Through the INA process the requirements of positions that jobseekers may be considering are explained to them and candidates are requested to identify personal circumstances or logistical challenges they may need to address before starting work.

The circumstances or challenges identified by the candidate are likely to be in areas that have traditionally resulted in people not being able to gain employment or are well documented as barriers to successfully remaining in employment. Examples include insecure accommodation, lack of support at home, language barriers, family and cultural responsibilities, undiagnosed health issues and limited access to transport.

The candidate will be encouraged to address these issues as much as possible with their family or employment service provider as they prepare for employment. Solutions to these issues often exist but need to be agreed with third parties such as family members who can provide support.

The INA will also identify training needs and longer-term career aspirations to determine the candidate's most appropriate employment pathway. This may be a direct hire employee, with a subcontractor or supplier or potentially a Group Training Organisation (GTO).

Candidates committed to preparing for employment and managing identified barriers to success are shortlisted for the next suitable position on the West Gate Tunnel. Our Workforce Advisors will match the candidate's experience, qualifications, aspirations and training pathways with available positions as direct hire with CPBJH JV or with subcontractors.

2. WORKFORCE INITIATIVES – NEW SKILLS FOR THE NEW ECONOMY

Victoria is the fastest growing state in Australia and is transitioning towards a knowledge economy. In this context it is important to ensure all Victorians benefit from the state's strong economy including young people, those facing disadvantage in employment and people transitioning from declining sectors such as the automotive industry.

CPBJH JV's workforce initiatives are targeted at delivering new workplace skills that leave a legacy for future infrastructure projects in Victoria. We have assessed existing and new government initiatives to identify how we can support their objectives.

2.1. Skills First – the new vision for TAFE

In January 2017 a new approach to training was implemented in Victoria's training and TAFE system, setting a high benchmark for training quality and providing courses that are most likely to lead to employment. The Victorian Government's new vision is for TAFEs to act as the engine room for jobs, partner with industry to deliver apprenticeship and traineeships, and retrain workers with new skills for the jobs of today and the future.

We support the government's vision for a stronger TAFE system and have met with and agreed to work with Victoria Polytechnic, the TAFE division of Victoria University, and the closest TAFE campus to the West Gate Tunnel project area. Wherever possible we will work with Victoria Polytechnic to deliver training and skills development for our workforce.

During our meeting with Victoria Polytechnic we discussed the opportunity for the West Gate Tunnel to act as a catalyst to help the college transition into the delivery of construction industry training.

Although construction industry training is not currently on their training scope, the project lead time will provide enough time for them to ensure their trainers are appropriately skilled, qualified and experienced in construction industry practices.

Along with the delivery of certificate and diploma level training, we agreed with Victoria Polytechnic that the Major Project Skills Guarantee and the commitment to provide employment opportunities to people living with disadvantage and migrant communities presented employment opportunities to the current cohort of people studying at TAFE in Footscray. It was recognised that new pathways from training to employment could be offered to existing students if they transferred to courses aligned with the civil infrastructure industry.

We identified several ways to make Victoria Polytechnic more relevant to the construction industry and build its industry knowledge. This included experienced members of our workforce assisting in course delivery such as one of our surveyors attending a training session to demonstrate the correct use and care of surveying equipment and allowing trainees to have hands on experience in the field. Other staff could also offer project experience and insights for a range of courses.

2.2. Existing government incentives and schemes

2.2.1. Back to Work Scheme

We will access the Back to Work Scheme to the extent it continues to apply to support targeted workers as they transfer to the West Gate Tunnel. Any funding received would be used to provide additional training opportunities to these workers. Our employment and training of former dairy farmers and automotive workers is not contingent on the Back to Work Scheme continuing.

2.2.2. Jobs Victoria Employment Network

Jobs Victoria Employment Network (JVEN) is the Victorian Government's new initiative for helping disadvantaged Victorian jobseekers gain employment. JVEN services are delivered by specialist employment agencies who work closely with employers to identify job opportunities and prepare job seekers for work who are ineligible for full Commonwealth employment services, such as Jobactive or disability support services. We will provide JVEN agencies with information on our employment and training opportunities and the requirements for available positions. We will also help JVEN agencies prepare jobseekers for future infrastructure projects.

2.2.3. Jobactive Service

Jobactive funding is available from the Australian Government to provide tailored recruitment services for disadvantaged jobseekers at no cost to the employer. Support is available for people looking for work, when referring work-ready candidates to prospective employers, supporting new employees after they start work, and providing wage subsidies for eligible employees, including Restart the Federal Government's program for mature-aged workers. We will work with Jobactive providers to identify suitable employment and training opportunities for their clients. Suitable positions will usually be at entry level to enable a greater level of post placement support to be provided.

2.2.4. Vocational Training and Education

Vocational Training and Education Centre (VTEC) is a Commonwealth Government initiative that aligns pre-employment training to real jobs for Aboriginal and Torres Strait Islander people. The model involves strong collaboration between employers, employment and training service providers and Aboriginal and Torres Strait Islander communities to provide pre-employment training, workplace mentoring and other support to ensure each VTEC placement transitions into ongoing work. MEGT VTEC has a current contract to place at least 250 Aboriginal and Torres Strait Islander people into employment in the greater Melbourne region. We will work with MEGT to identify suitable candidates for employment on the West Gate Tunnel and provide support to ensure their retention.

2.2.5. Measuring investment

To inform future government investment in employment support for disadvantaged jobseekers, we will measure the number of new employees referred to us by government-funded employment agencies and those who were eligible for funding through the Back to Work Scheme, JVEN, Jobactive and other funding arrangements. This information will be included in our monthly report.

3. ACHIEVING THE ABORIGINAL EMPLOYMENT TARGET

We have developed the following strategies to employ and train Aboriginal people on the West Gate Tunnel to achieve the target of 2.5% labour hours by Aboriginal people. We estimate this equates to approximately 60 people across a range of disciplines. However, we believe our approach has the potential to deliver a higher percentage of Aboriginal employees so we have set a stretch target of 4% Aboriginal employment or approximately 90 people.

CPBJH JV acknowledges the Wurundjeri people of the Kulin Nation as the traditional custodians of the land on which the West Gate Tunnel is being constructed and will respect their spiritual beliefs, cultural heritage, kinship systems, and governance and leadership structures.

We met with the Federation of Victorian Traditional Owner Corporations that is the peak representative body for legally recognised Traditional Owners. We discussed our approach to engaging with Aboriginal people and received overwhelming support for our strategies. The Federation agreed to support us in any way they could.

3.1. Lessons learned from previous projects

The activities outlined below are based on proven strategies and lesson learned on previous projects spanning civil construction, building, infrastructure services and energy projects across Australia. Appendix C contains John Holland's corporate commitment to Indigenous inclusion.

We know from experience that successful and sustainable employment for Aboriginal people is achieved one person at a time, one issue at a time, one solution at a time. Success is relationship-based, and establishing trust with the community is critical. We know that local knowledge and existing relationships are a shortcut, but these relationships must be honoured and respected and never taken for granted. We've learnt that news travels fast in the Aboriginal community and we must be vigilant in managing problems and responding to issues in a sensitive and transparent manner. We know the success of our Aboriginal employment programs will be noticed and this in turn will encourage more Aboriginal people to join our workforce.

3.2. Sourcing candidates

Candidates for employment will be identified from multiple sources including our corporate networks, existing workforce and the agencies in our SPN. Employment and training opportunities will also be promoted through the Federation of Victorian Traditional Owner Corporations and other organisations that provide a range of support services to local Aboriginal peoples. These organisations include the Aboriginal Land Council (Wurundjeri), Local Aboriginal Land Councils (Wathaurong, Bunurong), Aboriginal Health Services, Clontarf Foundation, White Lion Foundation, Department of Human Services, Department of Juvenile Justice, Kangan Indigenous Education Centre and Indigenous Employment Units of local TAFEs.

3.3. Preparing people for work

Aboriginal candidates who are interested in employment and have little or no work history will be offered the chance to participate in a structured project-specific work preparation program to prepare them for work on the West Gate Tunnel. These programs can be offered through VTEC, which is funded to prepare Aboriginal people for jobs, or outsourced to registered training providers.

Our recruitment and on-boarding process will be run concurrently with the program so that every person who completes the program will commence in a job. In addition to traditional training competencies, the work preparation program will include:

- Issuing branded personal protective equipment (PPE) to participants part way through the program to build a sense of belonging on the West Gate Tunnel team
- Conducting sessions to explain the entry-level positions that everyone who completes the program can take up, including hours of work, start and finish times each day and the location of work
- Supervisors participating in job placement interviews with participants part way through the program
- Attaining the construction white card
- Developing a strong relationship with our Aboriginal Workforce Senior Advisor who will provide ongoing support after mobilisation
- Identifying further training and qualifications that lead to career advancement
- Ensuring candidates understand our drug and alcohol policy.

VTEC and Jobactive providers will help identify and support candidates. We will work with them to develop and refine the support offered to Aboriginal trainees. This may include interventions in the areas of justice, health and family that can conflict with work attendance.

3.4. The recruitment process

Our pre-recruitment support and planning will ensure all candidates for employment have every expectation of successfully passing the standard recruitment process. They will be fully aware of the requirements of the position and will be given help to prepare for their interview. Our recruiters are culturally competent and understand the complexities of recruiting and retaining an Aboriginal workforce. They are aware of the potential difficulties of obtaining detailed reference checks for Aboriginal people and locating copies of completion certificates for previous training. SPN members who have previously supported Aboriginal candidates will assist us in this process.

3.5. Retention strategies and post-placement support

Not every Aboriginal worker will require post-placement support and, of those that do, each individual will require tailored support to be successful during their employment. This will be identified during initial meetings with each candidate.

Support services for all new Aboriginal workers include initial orientation after mobilisation and ongoing mentoring. New employees will be paired with a workplace buddy who will meet the employee on their first day, introduce them to their work crew or team, provide workplace advice for the first two weeks and will be available for ongoing advice. A workplace buddy usually works in the same crew or area as the new employee. Aboriginal workers new to the industry or experiencing disadvantage will be offered a separate workplace mentor who will regularly meet with them to discuss any challenges, encourage skills development and celebrate achievements. Members of our workforce who are interested in becoming mentors will be provided with mentoring training.

CPBJH JV also understands it is important to offer assistance to manage family, community and cultural commitments that impact on Aboriginal employment. These factors are often the reason why Aboriginal people leave employment. Table 3-1 includes some of the issues identified on previous projects and the support we will offer Aboriginal workers to manage these issues.

TABLE 3-1: SUPPORT OFFERED TO ABORIGINAL WORKERS

| Identified issue | Support offered or management of the issue |
|---|--|
| Humbugging – family and friends requesting money from the worker to the extent they have insufficient money to meet expenses between pay cycles | We understand this issue is a result of the relationship reciprocity that many Aboriginal people adhere to. If this becomes an issue for a worker, we will suggest they have their wages paid into multiple bank accounts, one visible to family and one only known to the person. |
| Family commitments – family demanding that the worker participates in activities on work days | We will suggest the worker discuss work commitments with family before commencing employment, explaining they can't just take days off without notice. They may be able to agree with the family, in advance, who could take their place at these activities. |

| Identified issue | Support offered or management of the issue |
|--|---|
| Cultural and ceremonial responsibilities – Aboriginal people may have cultural and ceremonial responsibilities they are unable to discuss with co-workers or supervisors, particularly if they are gender-specific | This is a complex issue as cultural responsibilities always take precedence over work commitments for Aboriginal workers. We will ensure the person understands the impacts of non-attendance at work, with and without notice, and discuss how they can manage without income for the period of leave without pay. We will also put in place a protocol detailing how and when to apply for leave and who to call for emergency leave, including back-up contact numbers. |
| Support during 'Sorry Business' – the cultural practices and protocols associated with death and bereavement. Individual circumstances, including the location of the family and funeral, may require extended leave with an uncertain return-to-work date | Support will include: <ul style="list-style-type: none"> ▪ Enabling the worker to leave to be with family as soon as practicable after receiving the news of death ▪ Ensuring the worker understands their leave entitlements, the potential need for leave without pay, and that appropriate leave forms need to be completed so that work crews are informed ▪ Where possible, contacting the worker as the expected return-to-work date approaches to ensure they are able to return as planned. If this cannot happen, we will inform their supervisor of the need for extended leave and reassure the worker of this approval and ongoing employment. |
| Communication and relationship difficulties – with supervisors or other workers | Difficulties are more often due to miscommunication or a lack of cultural understanding between parties. We will work with both parties separately to identify the issue and mediate an improved relationship. |
| Cultural protocols around avoidance relationships – cultural protocols related to relationships can include, in some traditional families, rules about who can talk to each other and be in the same place and who has seniority. | Our strategy is to acknowledge these protocols exist and workers are managing them, often without the awareness of supervisors, management or the wider workforce. If requested, we will help workers when a relationship cannot be self-managed. For example, if two people in an avoidance relationship are in a small crew where avoidance is impossible, the supervisor will move one of the impacted workers into another crew. |
| Racism – the CPBJH JV insists on zero tolerance to racism and the consequences of such behaviour | Issues will be escalated to supervisors and the project leadership. To maintain the trust of our Aboriginal workforce and community, we will be transparent about how the issue is being addressed. |

Our Aboriginal workers will be made aware of our specialist employee assistance program Indigenous Cultural Assist Response for Employees (I-CARE) operated by Assure Programs. I-CARE offers our workforce toll-free phone access to Indigenous counsellors who can help manage a wide range of challenges and goals. Most difficulties are resolved in a few sessions. When longer term counselling is required the counsellor considers the most appropriate referral option and makes a recommendation to the employee. I-CARE appointments are conducted by phone or Skype during business hours and extended hours can be negotiated.

I-CARE is also available for supervisors and managers of Aboriginal employees to access confidential and timely advice on a range of people management and support scenarios. These include culturally sensitive issues, managing wellbeing, the impact of negative events, change, performance conversations and how to refer employees to the I-CARE program.

3.6. Cross-cultural awareness

We understand that maintaining a culturally safe work environment is a major contributor to the retention of our Aboriginal workforce. This is achieved when the entire workforce understands local Aboriginal culture and shows respect for key days of Aboriginal cultural significance. This includes the celebration of National Aborigines and Islanders Day Observance Committee (NAIDOC) Week, Reconciliation Week and other opportunities where we can build cross-cultural understanding.

Our West Gate Tunnel induction will include a session for all members of our workforce, including subcontractors, about Aboriginal cultural values and inclusion. This session will be developed by our Corporate Indigenous and Community Advisor and delivered by trained West Gate Tunnel personnel.

3.7. Upskilling during employment

Aboriginal employees will be provided with upskilling opportunities during their employment. This will include assessments for certificates of competency (tickets) and other non-accredited training. Wherever possible, Aboriginal workers will be encouraged to undertake a formal qualification (a traineeship or apprenticeship) during their employment on the West Gate Tunnel.

3.8. Aboriginal Internships

CPBJH JV's corporate partners have an employment partnership agreement with CareerTrackers Indigenous Internship Program. CareerTrackers is a national non-profit organisation that recruits pre-professional Indigenous university students and links them with private sector employers to participate in a multi-year internship. Students perform their internship with a sponsor company with the aim of transferring into full-time employee upon completion of their degree. We will place 4 Aboriginal interns on the West Gate Tunnel each year.

3.9. Performance measurement

To meet our reporting requirements, we will record labour hours for all workers. Recorded labour hours for workers who identify as Aboriginal will be used to measure our performance in meeting our Aboriginal employment target of 2.5% of total labour hours on the West Gate Tunnel. We have established a stretch target of 4% of total labour hours and progress towards these targets will be included in our monthly report.

4. RECRUITING PEOPLE FROM DISADVANTAGED GROUPS

CPBJH JV shares the State and Transurban's objective to engage with and employ people from disadvantaged groups and people who have limited or no previous experience in the construction industry. Our ability to achieve this is closely linked to our ability to identify interested people, prepare them for work on the project, successfully recruit and engage workers and retain them.

The combined experience of our SPN members will directly support this process. Meetings with SPN members gave us a greater understanding of the number of people and skillsets potentially available for the project. Using the services of our SPN will be the most efficient way to identify suitable people and reach our employment objective.

4.1. Notifying relevant agencies of employment opportunities

Requests for labour/staff will be generated by CPBJH JV's recruitment team. The recruitment team, in consultation with our Disadvantaged Workforce Senior Advisor, will determine if the position is suitable to promote through the SPN. This would occur via a group email to relevant organisations who would in turn respond with the CVs of shortlisted candidates for each position.



FIGURE 4-1: PROCESS FOR NOTIFYING SPN ORGANISATIONS OF EMPLOYMENT OPPORTUNITIES

CPBJH JV recognises the diversity of Melbourne's west and we realise that in order to reach the widest possible audience we will need to communicate using a range of traditional and new media including job boards, forums and briefings, websites and other digital streams. We will advertise employment opportunities on local council employment portals, Talent Community websites, Melbourne West's Jobs' portal, and the West Gate Tunnel website. Current positions will also be promoted through our West Gate Tunnel Employment Centre co-located with the Visitor Hub.

4.2. Working with relevant agencies (our SPN)

Collaboration with specialist organisations in our SPN will be important to understand the challenges and barriers facing people from disadvantaged backgrounds. Working together, we will develop a detailed understanding of the demands of work in the construction industry and better prepare people for recruitment, employment and long-term retention.

Our Jobs and Social Procurement Manager, [not disclosed], will have ultimate responsibility for employment outcomes while our Employment Advisors will be the primary point of contact for the SPN. Each SPN organisation will nominate a key contact for our Employment Advisors.

Our role will be to identify the positions on the West Gate Tunnel that match the experience, capabilities and interests of the people referred by our SPN. The employment opportunities will include direct hire with CPBJH JV, direct hire by subcontractors and employment through Group Training Organisations (GTOs), who will place trainees and apprentices with us or our subcontractors.

4.3. Engaging suitable recruits

We will place people in positions that match both their capability and longer-term career aspirations and provide appropriate training and skills development. The process outlined in Figure 4-2 will guide how our Disadvantaged Workforce Advisor will work with SPN providers to engage suitable recruits and ensure they are given every opportunity to succeed.

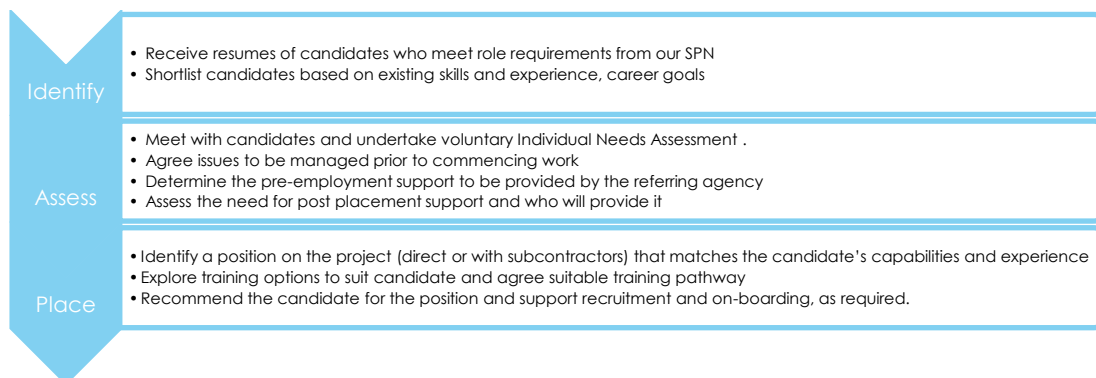


FIGURE 4-2: PROCESS FOR RECRUITING PEOPLE FROM DISADVANTAGED BACKGROUNDS

Our Disadvantaged Workforce Senior Advisor will monitor the progress of all candidates facing disadvantage as they prepare for work. Candidates who feel ready to progress will be referred to our Recruitment Centre to identify a position best suited to their experience, skills and interests. This will include positions for trainees and apprentices. Candidates will be supported throughout recruitment and during the on-boarding process by both our Employment Advisors as well as their referring agency.

4.4. Retention strategies

Not every worker from a disadvantaged background will require post-placement support and, of those that do, each person will require tailored support to ensure their success. The specialised skills and experience of our SPN will help us understand the barriers that each new employee may face to maintaining ongoing employment.

Workers who are identified as at risk of injury may require a safety management plan that is approved by the project Safety Manager before they can commence on-site. This will be identified during the Individual Needs Assessment (INA) process where potential challenges can be mapped. Strategies that can assist the new employee will be identified and responsibilities assigned. Strategies to support the worker could include:

- Assigning a workplace mentor to check in on the employee on a regular basis
- Documenting contact numbers for emergency health issues
- Recording details of a trusted person who can collect the employee from work
- Knowledge of personal circumstances that may impact on work and that are not usually shared with Human Resources, so the issue can be monitored by our Disadvantaged Workforce Senior Advisor and support offered if it is required
- Identifying unique circumstances that may trigger certain reactions and alerting line managers
- Awareness of language difficulties so that alternative communication strategies can be developed
- Cultural and religious activities that need to be observed and time/place made available.

4.5. Culturally and linguistically diverse people

CPB Contractors and John Holland, are proud of their diverse and inclusive workforces, which include people on temporary skilled work visas (457 visas) and people who have recently been granted permanent residency. Our workplaces celebrate diversity and we are experienced in managing the needs of a multicultural workforce.

Recognising the potential shortfall in skilled workers available for the West Gate Tunnel, we will work with key organisations to develop opportunities for people from two previously untapped labour markets.

4.5.1. Adult Multicultural Education Services (AMES) Australia

Each year, AMES Australia assists over 50,000 people by providing settlement, education, training and employment services to refugees and newly arrived migrants. AMES Australia is a Jobactive and Disability Services provider, that provides a continuous supply of job-ready and job-specific candidates to prospective employers. AMES has agreed to work with us to place a minimum of 20-30 migrants who are interested in working on the West Gate Tunnel.

4.5.2. Asylum Seeker Resource Centre (ASRC)

Around 10,000 asylum seekers live in Victoria. The ASRC is a community-led, not-for profit organisation and Australia's largest independent provider of assistance to people seeking asylum. Clients are provided with personalised assistance with health, language services, food and wellbeing while they await an outcome of their application for refugee status. Some asylum seekers have bridging visas that allow them to work and study in Australia. ASRC provides pathways to employment through its partnerships and corporate support programs.

We met with ASRC to discuss the skills and experience of asylum seekers and the potential for work on the West Gate Tunnel. ASRC will work with us to identify 15-20 interested people, confirm their work entitlements, assist with visa progression and provide mentoring and support during recruitment and ongoing employment.

4.6. People with a disability

One in five Australians lives with disability. A number of agencies in our SPN are specialist Disability Employment Service (DES) providers that provide ongoing support to people with a disability. DES providers help match employers to their client base and have committed to working with us to identify 30-40 suitable and interested candidates for the West Gate Tunnel.

Positions will be identified that match the interest, experience and capabilities of each potential candidate. DES providers will assist us to mentor and support people during their recruitment, training and ongoing employment.

4.7. Women in the construction industry

We recognise the benefits of gender diversity and the value that different perspectives and opinions bring to our business. Over 16% of CPB Contractors and John Holland's current workforce are female and during the West Gate Tunnel we will engage 400-600 women across diverse disciplines.

Our strategy to attract, retain and develop women includes a commitment to:

- Attract and promote women into non-traditional roles and support them to develop and succeed
- Host an annual Women in Construction networking event to celebrate success and share ideas
- Build an inclusive culture that accepts and values the contributions of both women and men
- Promote family-friendly work practices and identify ways to make flexible work options available to employees regardless of gender.

CPB Contractors and John Holland are members of the National Association of Women in Construction (NAWIC) which encourages women to establish and pursue careers in construction.

We are committed to encouraging young women to study science, technology, engineering and mathematics (STEM) courses. As an industry we are determined to encourage more young women to take up engineering courses and attract more women to the sector. The West Gate Tunnel will support this objective through an information campaign that promotes the inclusion of women in construction and supports STEM pathways for girls while still at school. Posters and flyers will be displayed in our community office and we will promote opportunities to female students, and their schools, who participate in our structured work-based learning.

As detailed in our Social Procurement Plan we will offer 5 scholarships, through Western Chances, to motivated, talented students who do not have the financial resources to pursue further education or qualifications. Our preference is that young women wanting to study STEM courses are given first priority.

[not disclosed]

In October 2016, [not disclosed], John Holland's Civil Interface Manager on the CVL9 roads and paving package of the Ichthys Onshore LNG Facilities project in Darwin, won the NAWIC Award (Northern Territory Chapter) for Project Development & Contribution to Management.

"[not disclosed] is an outstanding employee and excellent role model for women in our industry and for all engineers across our business." [not disclosed], General Manager Territoria Civil

4.8. Retrenched automotive workers

We have identified retrenched automotive workers as a significant source of labour for the West Gate Tunnel. Ford Australia ceased vehicle manufacturing in Australia in October 2016 and General Motors Holden and Toyota will cease operations by the end of 2017.

Until recently approximately 35,000–40,000 people were employed directly by these manufacturers, with industry figures indicating that for every person directly employed in by the automotive sector, another three to four people were employed indirectly. A conservative figure is that up to 120,000 people will be directly impacted by the decline of vehicle manufacturing in Australia. We have met with five automotive sector organisations who are working to support retrenched automotive workers and will help us engage with these workers.

4.8.1. Sourcing suitable candidates

Five organisations from our SPN will identify people exiting the automotive industry who are interested in transferring their skills and experience to our team. These organisations include Turn2 Workforce Solutions, Automotive Suppliers Excellence Australia, Federation of Automotive Products Manufacturers, Automotive Manufacturing Transition – Skills and Training Initiative and Auto Skills Australia.

Many retrenched workers are already clients of Jobs Victoria Employment Network and Jobactive providers or will be identified by other members of our SPN. The Skills and Jobs Centre being established across the Victorian TAFE network will also help identify suitable candidates for the West Gate Tunnel.

4.8.2. Recruitment and work placements

Our SPN process will ensure retrenched workers from the automotive industry have every opportunity to successfully transition into employment and training on the West Gate Tunnel. Key activities of each party are identified below. This process will be subject to quarterly reviews and adjusted as necessary to ensure continual improvements are identified. We have established a target of engaging 100-150 ex-automotive industry workers on the West Gate Tunnel.

TABLE 4-1: RECRUITMENT ACTIVITIES FOR AUTOMOTIVE WORKERS

| Organisation | Activities |
|--------------|--|
| SPNs | <ul style="list-style-type: none"> ▪ Mapping skills and qualifications and identifying transferrable skills ▪ Skills gap analysis and required retraining ▪ Promotion of identified employment opportunities ▪ Management and shortlisting of candidates ▪ Candidate referral to CPBJH JV ▪ Pre-employment mentoring/coaching/wellbeing support ▪ Preparing people for recruitment. |
| CPBJH JV | <ul style="list-style-type: none"> ▪ Identifying targeted placement opportunities – relevant to skills ▪ Identifying training opportunities and new career pathways ▪ Post-placement support and mentoring if required. |

4.8.3. Opportunities in precast yards

During meetings with automotive industry specialists in our SPN they told us that mature aged automotive workers were more likely to want to stay within the manufacturing industry than move to a new industry sector. We believe our new precast yards in Wodonga and Broadmeadows are the ideal opportunity for these workers as the work is production line based and suited to people who are new to precast manufacturing. Both sites will have a heavy training focus. All workers in Wodonga will receive facility-specific training at Certificate II, III, and IV level through Wodonga TAFE. There is also an opportunity to relocate some of our precast production to regional Victoria following the closure of the Hazelwood power station.

The facility at Broadmeadows will produce tunnel segments and is located close to Ford's decommissioned assembly plant. It will offer employment to around 40 workers across a range of disciplines. The facility in Wodonga will be a new regional employer drawing on the 80,000 strong local regional labour force, which is currently experiencing 7% unemployment.

The facility will include a batch plant, precast plant and pre-stressing plant. It will employ 325 workers and 30 support staff across safety, quality, human resources, commercial and training functions. The workforce will include 2 apprentices and 5 graduates. The Broadmeadows facility will employ around 35 workers and 10 staff.

5. TRAINING AND SKILLS DEVELOPMENT

Developing the skills base of Victorians is a key driver for the West Gate Tunnel and we have developed an effective strategy to meet the requirement of 20% of our workforce participating in nationally recognised accredited training. We estimate that 1000-1200 people will complete accredited training while engaged on the West Gate Tunnel.

During the development of our SPN, we established strong relationships with Registered Training Organisations (RTOs) and Group Training Organisations (GTOs) in Melbourne's west. We looked for obvious synergies to ensure our training budget left a legacy for the communities of Melbourne's west.

As outlined in Section 2.1, we met with Victoria Polytechnic, the TAFE division of Victoria University, and developed an in principle agreement for them to be our preferred training provider for direct hire workers on the West Gate Tunnel. Trainees and apprentices engaged by subcontractors may select an alternate RTO. Workers engaged through GTOs would be enrolled in traineeships or apprenticeships through the GTO's registration as an RTO.

TABLE 5-1: TRAINEESHIPS, APPRENTICESHIPS AND CADETSHIPS ON THE WEST GATE TUNNEL

| | |
|---------------------------------|-----|
| Apprentices | 391 |
| Trainees | 70 |
| Cadets – All disciplines | 62 |

Table 5-2 and Table 5-3 below identify the training qualifications and accredited short courses that will be offered to our workforce through Victoria Polytechnic, GTOs and other accredited training organisations.

TABLE 5-2: NATIONALLY RECOGNISED AND ACCREDITED SHORT COURSE SKILL DEVELOPMENT

| | | |
|--|--|---|
| Personnel and material Hoist | Work-zone traffic management | Vehicle loading crane |
| Non-slewing mobile crane | Conduct civil construction wheeled front end loader operations | Provide advanced first aid |
| Crane | Conduct roller operations | Conduct civil construction skid steer loader operations |
| Conduct civil construction grader operations | Handle and use dogging tools and equipment | Conduct civil construction excavator operations |
| Forklift licensing | Conduct backhoe/loader operations | Elevating work platform |
| Workplace spotting for service assets | Power Tool – safe handling | Conduct civil construction scraper operations |
| Concrete | Apply occupational health and safety regulations, codes and practices in the workplace | Test and tag training |
| Conduct civil construction wheeled front end loader operations | Conduct civil construction water cart operations | Handle construction materials |
| Use construction tools and equipment | Work effectively and sustainably in the construction industry | Carry out measurement and calculations |
| Asbestos awareness | Erect and dismantle basic scaffolding | Erect and dismantle advanced scaffolding |
| Erect and dismantle height restricted scaffolding | Follow OHS requirements, policies and procedures in the construction industry | Work safely in the construction industry |
| Rail worker safety awareness | Working at heights | |

Training specific to the West Gate Tunnel may be undertaken on or offsite and could be delivered as toolbox talks, inductions, or short term courses. It includes but is not limited to topics outlined in Table 5-3.

TABLE 5-3: NON ACCREDITED TRAINING

| | | |
|---------------------|-----------------------|--------------------|
| Site Induction | Emergency response | Cultural awareness |
| Manual handling | Heat stress awareness | Fatigue management |
| Hazardous materials | Spill response | Waste management |

| | | |
|-------------------------------------|-------------------------|-----------|
| Site-specific hazard identification | Mental health first aid | Mentoring |
|-------------------------------------|-------------------------|-----------|

5.1. Graduates

Both CPB Contractors and John Holland have a dedicated Graduate Program designed to enhance the development of future leaders in the construction industry by providing on-the-job training, structured learning and exposure to diverse industry opportunities. Graduates undertake a number of rotations throughout the program on various projects in Victoria and throughout Australia. It is estimated approximately 50 graduates will be rotating through the West Gate Tunnel at any one time.

5.2. Potential West Gate Tunnel rotation training program

Following our conversations with a number of Victorian philanthropic foundations and corporate foundations, such as RACV Foundation, we believe there is potential to develop a niche training opportunity via an accredited Group Training Organisation (GTO), whereby an apprentice, trainee or cadet could rotate between a number of organisations to gain exposure to different corporate cultures, develop a diverse range of skills and obtain a greater awareness of possible career pathways.

We believe our design partners, Aurecon and Jacobs, as well as stakeholders such as RACV Foundation, Transurban, VicRoads and the Level Crossing Removal Authority's Training for the Future Initiative could help create a West Gate Tunnel rotation training program for up to 20 people.

6. ASSESSING WORKFORCE SKILLS NEEDS AND DEVELOPING A SKILLS AND LABOUR GAP PLAN AND WORKFORCE PROFILES

6.1. Staff resources

We have developed a histogram showing staff (including designers) will peak at 820 positions (Appendix F). This includes forecast staff and design resources for self-performed work including precast and buildings over the life of the project.

6.2. Workforce

We have also developed a histogram of our labour requirements for our construction works and precast facilities (Appendix F), with a peak construction workforce of 1,600 plus 400 in precast yards. This histogram shows the pattern of build-up and tailing off of total workforce requirements over the life of the project, commencing with site establishment and precast facility construction in early 2018 until completion in late 2022, with a resourcing peak in late 2019 when all areas are at or close to peak.

We estimate about 20% of our workforce will be permanent staff and 80% subcontractors. The most widespread use of subcontractors will be in the East Area due to the amount of structures in this area.

6.3. Design

Design of the West Gate Tunnel will put a strain on the local design workforce in Victoria particularly as it will be carried out at the same time as the detailed design of Melbourne Metro. We believe the best way to mitigate this issue will be to spread the design over a longer period to flatten out the peak resource requirement. We have worked with our design team at Aurecon Jacobs Joint Venture and other consultants to develop a program that commences key activities early and defers significant areas of design work (e.g. Wurundjeri Way Widening and Extension) until a year after design commencement. This means significant parts of the design will be complete before other parts commence allowing the workforce to be engaged for longer.

6.4. Skills and labour gap plan

Based on our construction methodology and program, we have determined the following resource requirements and skill categories required for design and construction of the West Gate Tunnel.

6.4.1. Design

The design resource requirement will peak at about 300 staff from month 6 to month 18. Design skills that are most in demand will be structural engineers and drafters of all disciplines. It is anticipated that more than 50 structural drafters will be needed for the project at its peak. To meet this demand, we will engage people from the following sources:

- The existing large pool of design staff finishing on other major projects
- Retraining engineers and drafters from other disciplines (e.g. buildings)
- 15 civil, structural and mechanical and electrical engineering graduates engaged on the project
- 10 cadet drafters will be engaged. These will come from TAFE colleges that Aurecon, Jacobs and other consultants already have existing relationships with. Recruitment will start during the EES phase and cadets will be trained on existing major projects such as Caulfield to Dandenong Level Crossing Removal Project (Aurecon) and the North West Programme Alliance (Jacobs).
- New skilled hires and contract personnel.

6.4.2. Construction

Our traditional approach to meeting construction resourcing requirements is to first look at redeployment from within our organisations and then interrogate the market via a range of channels including industry groups such as the Civil Contractors Federation, Engineers Australia and Roads Australia, our major subcontractors and supply chain, and through briefings with ICN Victoria. This would occur prior to project commencement and usually after preferred contractor status.

6.5. Workforce profiles

Our approach to maintaining a highly skilled workforce is to ensure that current and future skill needs are mapped across the project duration. As part of this mapping process our Training Manager will map the current skills and competencies of each member of our workforce and identify training and skills that could build competencies in time to meet our program. This mapping process also reveals the requirement to recruit additional people who may be more experienced or have specialised skills that cannot be developed in the available timeframe.

7. MONITORING AND REPORTING

To monitor our performance against the strategies described in this Workforce Development Plan, we have established the following KRAs and KPIs that will be measured in addition to our compliance with the Major Project Skills Guarantee. KPIs will be measured each month and the results included in the project's monthly report provided in accordance with the PSR.

TABLE 7-1: KRAS AND KPIS FOR MEASURING PERFORMANCE AGAINST THE WORKFORCE DEVELOPMENT PLAN

| KRA | KPI | Measure | Target | Stretch |
|----------|---|--|--------|---------|
| 1 | CONTRIBUTE TO FUTURE INFRASTRUCTURE DELIVERY THROUGH TRAINING AND UPSKILLING OUR WORKFORCE | | | |
| | Provide workers training in higher qualifications while employed on the West Gate Tunnel | Number of workers who undertake a higher qualification during their employment | 300 | 400 |
| | Upskill workers with additional certified competencies while employed on the West Gate Tunnel | Number of additional competencies assessed and achieved | 900 | 1000 |
| | Build capacity in the construction industry by training people entering the industry for the first time | Number of new employees who undertake accredited training | 300 | 400 |
| | Grow future industry leaders by providing graduates with industry experience | Grow future industry leaders by providing graduates with industry experience | 50 | 60 |
| 2 | PROVIDE JOBS FOR VICTORIANS WHO FACE BARRIERS TO ENTERING THE CONSTRUCTION INDUSTRY | | | |

| KRA | KPI | Measure | Target | Stretch |
|----------|---|---|-------------------------------------|---------|
| | Provide opportunities to increase the number of women working on the West Gate Tunnel | Number of women working across all positions on the West Gate Tunnel | 400 | 600 |
| | Engage retrenched automotive workers on the West Gate Tunnel | Number of retrenched automotive workers engaged on the West Gate Tunnel | 100 | 150 |
| | Provide employment for people who are economically or socially disadvantaged, including Aboriginal people, migrants, people with a disability, young people and the mature-aged | Number of people who identify as Aboriginal on the West Gate Tunnel | 60 | 90 |
| | | Number of employees who were receiving government support before employment on the West Gate Tunnel | 200 | 400 |
| | | Number of asylum seekers engaged on the West Gate Tunnel | 15 | 20 |
| | | Number of new migrants engaged on the West Gate Tunnel | 20 | 30 |
| | | Number of people with a disability (registered with a DES provider) engaged on the West Gate Tunnel | 30 | 40 |
| 3 | DEVELOP THE CAPACITY OF VICTORIAN EMPLOYMENT SERVICE PROVIDERS | | | |
| | Foster cooperation between industry and government-funded service providers | Percentage of service providers identified in our SPN who actively engage with our recruitment process | 100 | 100 |
| | Implement processes to prepare people from disadvantaged backgrounds for employment | Number of people referred from agencies in our SPN for available positions on the West Gate Tunnel Number of referrals that progress to employment on the West Gate Tunnel | Growth over the term of the project | |

7.1. Major Project Skills Guarantee

Our Jobs and Social Procurement Team includes a Major Projects Skills Guarantee Senior Advisor who will monitor, measure and report progress towards compliance with the plan. This will include managing compliance reporting from subcontractors. We will provide progressive performance reports against the Major Project Skills Guarantee at the following intervals:

- Interim Report on the fifth day of March, June, September and December each year during contract works
- Annual report on the anniversary of commencement
- Interim Report mid-way through the contract works
- Final Report within two months of the West Gate Tunnel Completion.

8. SUBCONTRACTORS

Project subcontractors will be required to adopt the workforce development strategies outlined in this document. All requests for tenders will contain mandatory clauses requiring subcontractors to demonstrate how they will contribute to achieving the Major Project Skills Guarantee. Information provided will be considered in terms of its contribution to meeting our employment and training targets during tender evaluation and the awarding of contracts.

To assist subcontractors who may not have previous experience or success in employing and training Aboriginal or disadvantaged groups or in skills development training, we will provide:

- Referral to our SPN who will identify candidates for roles within their delivery team
- Referral to specialist providers such as those experienced in providing training for Aboriginal people
- Referral to our specialist GTOs who will directly hire trainees and apprentices and place them in the subcontractor's workforce
- Access to our Jobs and Social Procurement Team to provide daily mentoring and tailored support to workers from disadvantaged groups, including people working for subcontractors on the project.

Subcontractors will be required to provide monthly reports demonstrating their performance against their commitments in their Major Project Skills Guarantee compliance plan.

APPENDIX A – OUR SERVICE PROVIDER NETWORK (SPN)

The following agencies have been identified as key service providers to the West Gate Tunnel, based on the following criteria:

- A significant and proven track record in delivering outcomes to their sector
- Proximity to the project area
- Initiatives or activities that support our objectives
- Opportunities for synergies in service delivery
- A diverse client base.

The SPN will be an evolving network with agencies added as they are identified during the project.

Employment service providers

- *AFL SportsReady* is an independent, not-for-profit company dedicated to helping young Australians develop careers through traineeships and educational opportunities. The traineeship model is a three-way partnership between AFL SportsReady, young people and employers.
- *Raw Recruitment* is a Group Training Organisation and labour-hire company that delivers employment services to Aboriginal people seeking employment in the construction industry.
- *The Korin Gamadji Institute (KGI)* is a unique and innovative Indigenous space focused on leadership development, education, training and career pathways.
- *Indigenous Prospects Training & Recruitment* specialises in helping job seekers find employment and develop the necessary skill for a successful interview.
- *Wesley Mission – Employment Services* is a Jobactive provider, which identifies people who are disadvantaged in their search for work. Their clients include people with a disability, including mental illness; disengaged youth; the mature-aged; and migrants.
- *Wise Employment Services* is one of the largest disability employment services in Australia. It provides tailored support to people with mental illness or intellectual and physical impairments or disabilities.
- *Jesuit Social Services, Salvation Army Employment Plus and Melbourne City Mission* work with the most disadvantaged members of our communities. They are Jobactive providers, who offer a diverse range of support services including literacy training and preparation for employment.
- *Epic Recruitment Assist* provides a personalised service to assist people with a disability or disadvantage to achieve success and provider services under the National Disability Insurance Scheme. EPIC Assist was the first organisation in Australia to achieve Disability Confident Recruiter Status.
- *The Asylum Seekers Resource Centre and AMES* are Jobactive providers, which work with thousands of new migrants each year seeking to build employment and career skills.

Organisations supporting retrenched automotive workers

- *Turn2Workforce Solutions (TWFS)* provides specialised recruitment, outplacement and training solutions to retrenched workers from vehicle manufacturers and the automotive industry supply chain. They are assisting the three vehicle manufacturers in their outplacement programs, as well as a number of large and medium-sized organisations in the automotive supply chain including DSI in Albury, Venture, Futuris and CMI. TWFS utilises grant funds through the Back to Work Scheme. They also work with the Department of Employment's Jobactive providers to place ex-workers with various types of disadvantage for employment (Indigenous, disabled, youth, mature-aged, long-term unemployed).
- *Automotive Manufacturing Transition – Skills and Training Initiative* is federally funded to facilitate new employment opportunities for employees within the vehicle manufacturing and the automotive component manufacturing sector.

- *Auto Skills Australia Limited* is the peak body, funded by the Commonwealth Government, responsible for the development and maintenance of nationally accredited automotive training qualifications in Australia. ASA is a content expert on the skill base residing in the vehicle manufacturers and is assisting all three manufacturers in the wind-up plans for workers.
- *The Federation of Automotive Products Manufacturers (FAPM)* is the association for manufacturers engaged in the production of automotive products. FAPM has extensive knowledge of the labour requirements of the automotive supply chain.
- *Automotive Supplier Excellence Australia (ASEA)* supports programs that improve the long-term profitability, sustainability and productivity of the domestic component sector and has in-depth knowledge of the automotive supply chain.

Training providers

Our SPN training organisations have been chosen because of their proximity to the West Gate Tunnel corridor, their sole provider status in Melbourne or their alignment and agreement with our adaptive and collaborative approach to providing pre- and post-employment training and skill development on the West Gate Tunnel.

- *Victoria Polytechnic in the TAFE Division of Victoria University*. They provide targeted, work-based and flexible vocational education with innovative blended study options and digital modes of delivery.
- *MEGT* is a VTEC in Victoria and has a current contract to place at least 250 Aboriginal and Torres Strait Islander people into employment in the greater Melbourne region. VTECs are a Commonwealth Government initiative aligning pre-employment training to real jobs. The model involves strong collaboration between employers, employment and training service providers and Aboriginal and Torres Strait Islander communities to provide pre-employment training, workplace mentoring and other support to ensure each VTEC placement transitions into ongoing work.
- *Programmed Skilled Workforce (Programmed)* is a national Group Training Organisation and Registered Training Organisation, and is Australia's largest workforce services provider and the 13th largest employer in Australia. Programmed provides a daily workforce in excess of 1500 people to over 500 clients across greater Melbourne. Programmed's diverse client base assists them to provide redeployment opportunities to apprentices or trainees who are demobilised when their work is complete. This is a critical requirement in ensuring that trainees and apprentices are able to complete the requirements of their training, be assessed as competent and receive their qualifications.
- *CareerTrackers* is a national non-profit organisation that recruits pre-professional Indigenous university students and links them with private sector employers to participate in a multi-year internship.
- *The Kangan Institute Indigenous Education Centre* is a purpose-built TAFE facility for Aboriginal education. Every aspect of the centre reflects Indigenous cultures from across Victoria, with a particular focus on the local Gunung-Willam-Balluk people. The Kangan Institute will be a key referral source for Aboriginal trainees.
- *Local Learning and Employment Networks (LLENs)* are funded by the Victorian Government to deliver and broker initiatives that support community capacity building, youth engagement and re-engagement, student retention and placement of senior secondary students in structured workplace learning placements.

APPENDIX B – NOT USED

APPENDIX C – JOHN HOLLAND RECONCILIATION ACTION PLAN

[not disclosed]

INCREASED OPPORTUNITIES

John Holland is committed to enhancing the wellbeing and quality of life of the Aboriginal and Torres Strait Islander communities we engage with. We aim to identify realistic, tangible and sustainable improvements, particularly in rural and remote areas. We aim to provide employment and training opportunities to enhance the skills of Aboriginal and Torres Strait Islander people for long-term career growth. We aim to support Aboriginal businesses in reaching the standards required to become qualified to work on John Holland projects. We aim to work with our subcontractors to maximise opportunities for them to engage the services of Aboriginal and Torres Strait Islander businesses.

OUR GOAL

To become a recognised employer of choice for Aboriginal people. To actively work to increase the number of Aboriginal and Torres Strait Islander peoples in both professional and workforce roles. To maximise opportunities for Aboriginal businesses to work with John Holland directly and through our subcontractors.

| ACTIONS – JOHN HOLLAND WILL: | RESPONSIBILITY | TIMELINE | DELIVERABLES |
|---|--|-----------------------------------|--|
| Continue to meet Aboriginal employment participation rate targets | Recruitment Manager Diversity & Inclusion Manager Aboriginal Advisor | December 2017 | <ul style="list-style-type: none"> • Implement the existing Aboriginal and Torres Strait Islander employment and retention strategy • Continue to engage with existing Aboriginal and Torres Strait Islander employees to consult on employment strategies • Continue to review and update internal procedures and policies to remove any barriers to the advancement of Aboriginal and Torres Strait Islander employees • Target role advertising to Aboriginal communities to ensure applications from this group are received |
| Ensure that John Holland's recruitment processes are culturally appropriate for Aboriginal candidates and support efforts to employ more Aboriginal peoples | Group Manager Resourcing Hiring Managers | December 2017 | <ul style="list-style-type: none"> • Recruitment team and hiring managers complete cultural awareness training • Consolidate the collection of information on current Aboriginal and Torres Strait Islander staff to inform future employment opportunities |
| Increase procurement spend from Aboriginal businesses | Diversity & Inclusion Manager Aboriginal Advisor | December 2016 | <ul style="list-style-type: none"> • Review procurement policies and procedures to incorporate targets for spend with Aboriginal and Torres Strait Islander businesses • In conjunction with Supply Nation, communicate internally a list of Aboriginal and Torres Strait Islander businesses that can be used to procure goods and services • Embed relationships with Aboriginal and Torres Strait Islander businesses within the organisation |
| Become an employer of choice for Aboriginal and Torres Strait Islander peoples by promoting employment success stories with John Holland | Aboriginal Advisor Diversity & Inclusion Manager | December 2016 | <ul style="list-style-type: none"> • Profile Aboriginal employment training and procurement success stories within John Holland • Publish Aboriginal related articles on the John Holland intranet page and provide social media updates |
| Build the capability of Aboriginal and Torres Strait Islander businesses | Aboriginal Advisor | December 2017 and review annually | <ul style="list-style-type: none"> • Formalise the process to help Aboriginal businesses understand and reach the mandatory requirements to work with John Holland in terms of safety, environment and Building Code compliance |

APPENDIX D – NOT USED

APPENDIX E – KEY RESPONSIBILITIES FOR THE JOBS AND SOCIAL PROCUREMENT TEAM

Jobs & Social Procurement Manager:

- Manage and lead team in delivering outcomes and meeting commitments.
- Facilitate and manage key internal and external relationships.
- Work with key stakeholders to develop Impact Measurement Framework for the West Gate Tunnel.
- Manage progress towards KPI's.
- Manage mentoring program for project leaders.
- Manage relationships with Philanthropic Foundations and not-for-profit groups to deliver agreed initiatives (business incubator and youth scholarships).
- Manage recording and reporting requirements and compliance.

Service Provider Network (SPN) Advisor

- Monitor organisations in the SPN and identify gaps in service delivery.
- Work with SPN to identify candidates for employment (Disability, young people, migrants, asylum seekers, mature aged, people with a disability, women, ex automotive industry workers)
- Monitor service provider's capability to prepare candidates for project work and assist or improve activities where required.
- Liaise with recruiters to identify available positions.
- Assist subcontractors to engage with the SPN to identify suitable targeted jobseekers.
- Maintain records to measure KPIs and prepare reports as required.

Aboriginal Workforce Senior Advisor

- Work with Service Provider Network and local Aboriginal groups to identify candidates for employment.
- Meet identified candidates and engage them in an Individual Needs Assessment, monitor progress towards issues management and when work ready refer to recruitment team.
- Assist in co-ordinating pre-employment programs and provide support to trainees during program delivery.
- Support candidates through the recruitment and on-boarding.
- Monitor workers as they commence onsite and provide support as required.
- Continue to monitor progress, training opportunities and any provide support required to ensure retention.
- Assist subcontractors to identify suitable Aboriginal jobseekers with relevant skills and experience.
- Deliver Aboriginal Cultural Values and Inclusion session at project induction.
- Maintain records to measure KPIs and prepare reports as required.

Disadvantaged Workforce Senior Advisor

- Work with Service Provider Network to identify candidates for employment.
- Implement initiative to engage with and employ asylum seekers
- Meet identified candidates and engage them in an Individual Needs Assessment, monitor progress towards issues management and when work ready, refer to recruitment team.
- Support candidates through the recruitment and on-boarding.
- Monitor workers as they commence onsite and provide support as required.
- Continue to monitor progress, training opportunities and any provide support required to ensure retention.
- Assist subcontractors to identify suitable disadvantaged jobseekers with relevant skills and experience.
- Promote Women in Construction activities.
- Facilitate youth in detention placements on project.
- Maintain records to measure KPIs and prepare reports as required.

Major Project Skills Guarantee Senior Advisor

- Promote employment and training positions.
- Monitor apprenticeships across project (registration, progress, employment, demobilisation) and maintain records as required.
- Monitor progress on traineeships across project and ensure required reporting is maintained.
- Manage cadetships across projects, including placements, scheduling, rotations.
- Coordinate graduate placements and Aboriginal Interns across project.
- Attend community briefings and information sessions as required.
- Maintain records to meet compliance Major Project Skills Guarantee compliance reporting requirements and other KPIs.
- Receive and collate subcontractor's monthly reports into Major Project Skills Guarantee and other KPIs.
- Prepare reports as required

West Gate Tunnel Employment Centre Co-ordinator:

- First point of contact with local people seeking employment.
- Co-ordinate initial meeting with Aboriginal/Disadvantaged Workforce Senior Advisors.
- Assist disadvantaged jobseekers prepare application forms, obtain necessary documents.
- Maintain confidential records and prepare reports for SPN member organisations as required (government incentives, employment outcomes, retention data).
- Maintain databases and team records.
- Support subcontractors to access SPN services, coordinate interviews.
- Provide administrative support to Jobs and Social Procurement team.

Social Procurement Manager:

- Identify potential social enterprises that have capacity to supply the project.
- Identify potential procurement opportunities that match identified social enterprise's capability.
- Assist procurement team to evaluate potential supply by social enterprise and Aboriginal businesses and engage if possible.
- Identify need to build capability of social enterprises, Aboriginal businesses and local small-scale businesses.
- Manage supplier development program.
- Maintain records to measure KPIs and prepare reports as required.

Social Procurement Senior Advisor:

- Facilitate volunteering and workplace giving initiatives.
- Arrange industry and subcontractor briefings.
- Support suppliers and contractors to engage with social enterprises.
- Coordinate toolbox talks by Traditional Owners.
- Co-ordinate Graffiti Removal Project with local governments.
- Facilitate structured workplace learning placements with LLENs.

APPENDIX F – PEAK STAFF AND WORKFORCE

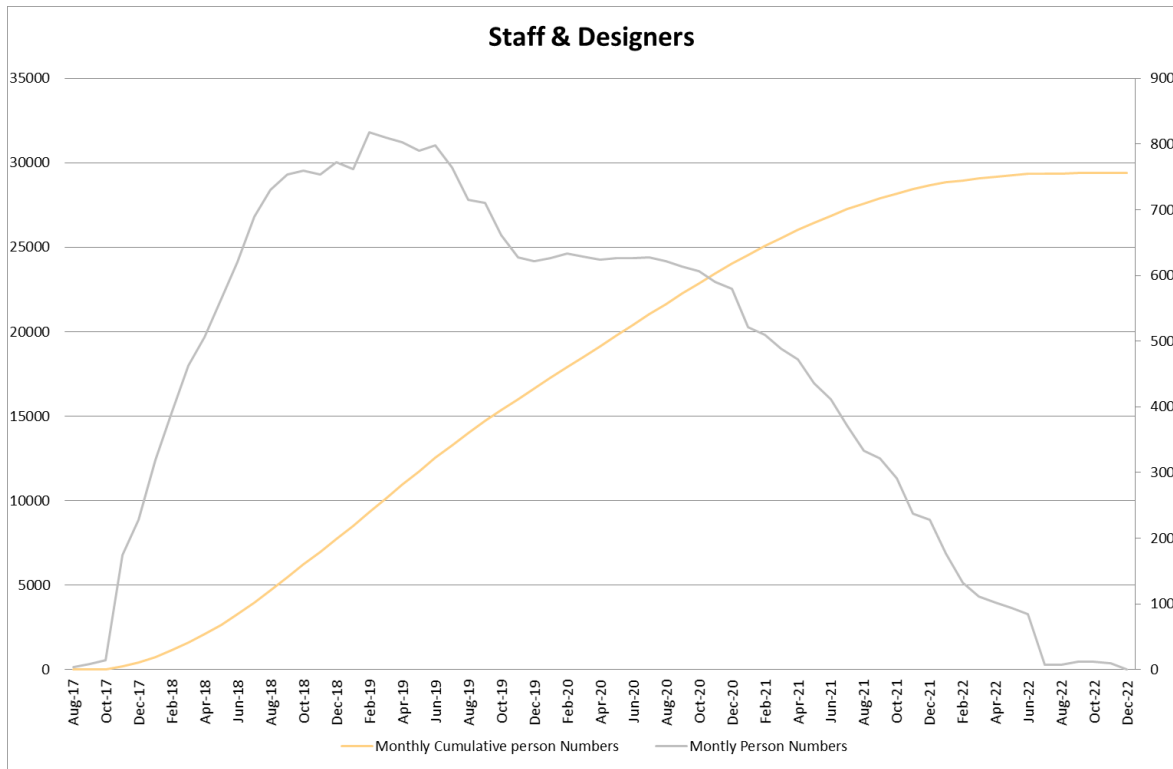


FIGURE 1: TOTAL STAFF AND DESIGN RESOURCES REQUIRED FOR WEST GATE TUNNEL

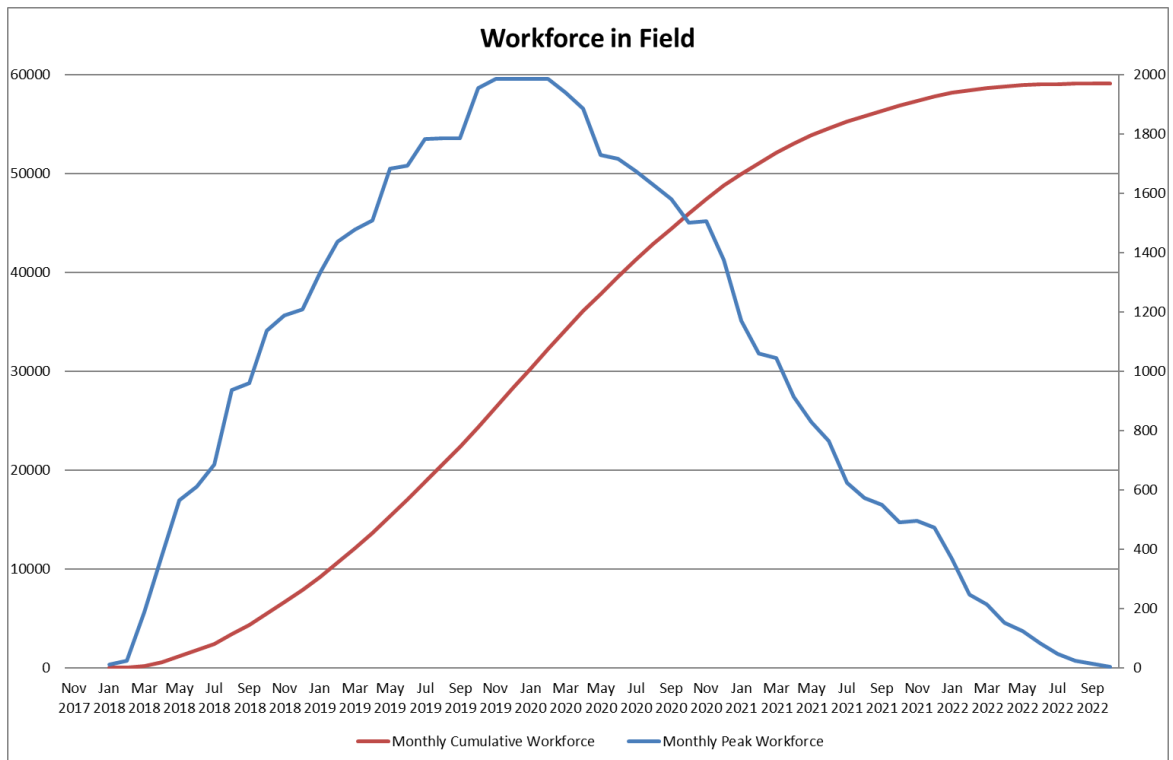


FIGURE 2: WORKFORCE REQUIREMENTS FOR WEST GATE TUNNEL

APPENDIX G – MAJOR PROJECT SKILLS GUARANTEE COMPLIANCE PLAN

1. COMPLIANCE

Contract

Number:

Title: West Gate Tunnel

Deemed Hours : 18 million man hours

Principal Contractor CPB Contractors John Holland Joint Venture (CPBJH JV)

Trading Name: CPBJH JV

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]

Contact Person:

Name: [not disclosed]

Signature of authorised person: [not disclosed] Date: 17 November 2016

2. TOTAL ESTIMATED LABOUR HOURS

[not disclosed]

3. ACKNOWLEDGEMENT

We are aware and acknowledge that under the Major Projects Skills Guarantee, the Victorian Government actively encourages the engagement of Victorian apprentices, trainees and/or engineering cadets who are drawn from groups under-represented in vocational training such as women, and/or those who have faced barriers to employment such as Indigenous people, those with a disability, older people and recently retrenched employees.

4. OUR COMMITMENT

Having read and understood the Major Project Skills Guarantee, CPBJH JV will comply with this Major Project Skills Guarantee Compliance Plan.

The CPBJH JV commits to ensuring that 10% of the Total Estimated Labour Hours for the West Gate Tunnel will be undertaken by Victorian registered apprentices, Victorian registered trainees or engineering cadets (either separately or in any combination).

5. OUR COMPLIANCE STRATEGY

Our JV partners CPB Contractors and John Holland pride themselves on their commitment to, and investment in, training and professional development of their workforces. This commitment extends to all projects and transcends minimum requirements to ensure we maintain and sustain a progressive, capable workforce.

We believe the foundation of a strategic training plan starts with the teams that are delivering the core elements of the project scope and importantly, the training opportunities that their work can generate. Linked to this, we also understand that apprenticeships and traineeships are competency based and therefore training placements must be mapped against the actual work activities on the project.

Developing the skills base of Victorians is a key driver for the West Gate Tunnel and we have developed an effective strategy to meet the requirement of a minimum 20% of our workforce participating in nationally recognised accredited training. We estimate around 1000-1200 people will complete accredited training while engaged on the West Gate Tunnel including at least 391 apprentices and 63 cadets.

This core understanding of the practicalities of training across a diverse project site, and the importance of embedding training requirements in our project-wide workforce planning, will ensure that training opportunities are maximised, training hours to reach competency are factored into our work team/crew allocations, and our managers/supervisors take a lead role in ensuring we reach our training objectives.

5.1. Identifying and mapping our training needs

Our Training Manager will be responsible for identifying training needs across all West Gate Tunnel project sites. This mapping exercise is a continual process and training opportunities rely on the availability of suitable and safe supervision of trainees and apprentices. To determine training needs the Training Manager will work closely with Construction Director [not disclosed], area-based Construction General Managers, Design Director [not disclosed], Design Leads, area-based Engineering Managers and other staff as required.

We have assessed our project scope and construction methodology and mapped the labour requirements against the potential to engage trainees, apprentices and engineering cadets.

We have also developed a strategy to determine the most appropriate engagement process for individuals who may fill those positions. For example, if the training opportunity is in civil construction and the construction plan indicates a 2-year timeframe remaining in the project, the direct hire of an apprentice is a suitable option. However, if the identified apprenticeship opportunity is with a subcontractor who is engaged on the project for 12 months and cannot guarantee the ability to

continue to employ the apprentice post contract, a suitable option may be to engage the apprentice through a Group Training Organisation.

As part of developing our training and development strategy for the West Gate Tunnel, we have established a Service Provider Network (SPN) including Registered Training Organisations (RTOs) and Group Training Organisations (GTOs) in Melbourne's west. We looked for obvious synergies as well as how our training budget will leave a legacy in the communities close to the West Gate Tunnel.

As part of this process we met with Victoria Polytechnic, the TAFE division of Victoria University and developed an in principle agreement for them to be our preferred training provider for direct hire workers on the West Gate Tunnel. Trainees and apprentices engaged by subcontractors may select an alternate RTO. Workers engaged through GTOs would be enrolled in traineeships or apprenticeships through the GTOs registration as an RTO.

The full details on these initiatives and how they will be implemented is included in Schedule 22 (Workforce Development Plan) to which this document is attached.

5.2. Key service providers

Our strategy to achieve the Major Projects Skills Guarantee is to leverage the work undertaken by relevant Victorian-based service providers. These service providers offer a range of support services to assist Victorians to engage in employment and training opportunities. Once identified, all entry level or 'new to industry' workers will be encouraged to undertake a formal qualification as part of their employment.

We have met with each of the service providers described in Table 3 and mapped how they can contribute to meeting the requirements of the Major Projects Skills Guarantee. We received a very positive response from service providers about how the West Gate Tunnel could contribute to the training and upskilling of their client base. Individually, service providers identified significant potential for the West Gate Tunnel to deliver employment and growth opportunities.

TABLE 3: OUR SERVICE PROVIDER NETWORK

| Sector | Identified service providers |
|--|--|
| Mature aged, disengaged youth, disability | <ul style="list-style-type: none"> ▪ Wesley Mission – Disability Employment Services ▪ Wise Employment Services ▪ Jesuit Social Services ▪ Melbourne City Mission ▪ Salvation Army Employment Plus ▪ Epic Recruitment Assist |
| Disengaged youth/young people | <ul style="list-style-type: none"> ▪ AFL Sports Ready |
| Aboriginal | <ul style="list-style-type: none"> ▪ Federation of Victorian Traditional Owner Corporations ▪ Programmed Skilled Workforce – Indigenous Employment Service ▪ Raw Recruitment ▪ Indigenous Prospects Training and Recruitment ▪ AFL Sports Ready – Indigenous Employment Program ▪ MEGT Australia (Vocational Training and Employment Centre for Melbourne) ▪ Korin Gamadji Institute ▪ Kangan Institute, Indigenous Education Centre |
| Migrants | <ul style="list-style-type: none"> ▪ Adult Multicultural Education Services (AMES) Australia ▪ Asylum Seekers Resource Centre (ASRC) |
| Retrenched automotive workers from the manufacturing industry and supply chain | <ul style="list-style-type: none"> ▪ Turn2 Work Force Solutions (TWFS) ▪ Auto Skills Australia (ASA) ▪ Federation of Automotive Products Manufacturers (FAPM) ▪ Automotive Supplier Excellence Australia (ASEA) ▪ Automotive Manufacturing Transition - Skills & Training Initiative |
| School-based learning | <ul style="list-style-type: none"> ▪ Hobson Bay and Wyndham City Local Learning Employment Network (Wyn Bay LLEN) ▪ Capital City LLEN ▪ Maribyrnong and Moonee Valley LLEN ▪ Parkville Secondary College |

| Sector | Identified service providers |
|--|--|
| Vocational Training and Education (VTEC) | <ul style="list-style-type: none"> ▪ MEGT VTEC ▪ AFL Sports Ready (VTEC) |
| Group Training Organisation / Registered Training Organisation | <ul style="list-style-type: none"> ▪ Programmed Skilled Workforce |
| Cadets | <ul style="list-style-type: none"> ▪ Career Trackers (Aboriginal) ▪ Victorian universities |
| TAFE | <ul style="list-style-type: none"> ▪ Victoria Polytechnic, Footscray ▪ Wodonga TAFE |

5.3. Our preferred training partner

In January 2017 a new approach to training was implemented in Victoria's training and TAFE system, setting a high benchmark for training quality and providing courses that are most likely to lead to employment.

We support the Victorian Government's vision for a stronger TAFE system and have met and agreed to work with Victoria Polytechnic, the TAFE division of Victoria University, and the closest TAFE campus to the West Gate Tunnel.

During our meeting with Victoria Polytechnic we discussed the opportunity for the West Gate Tunnel to act as a catalyst for the college to transition into the delivery of construction industry training. Although construction industry training is not currently part of their training scope, the project lead time would provide enough time for them to ensure their trainers are appropriately skilled, qualified and experienced in construction industry practices.

We identified several ways to make Victoria Polytechnic more relevant to the construction industry and build its industry knowledge. This included experienced members of our workforce assisting in course delivery and offering project experience and insights for other courses.

5.4. Training our precast workforce

Our precast yard in Wodonga, which will produce around 500,000 tonnes of structural precast segments, will have a heavy training focus with around 325 workers and 30 staff who will receive accredited training related to their roles. Our tunnel segment facility in Broadmeadows will employ around 35 workers and 10 staff.

All workers will complete Certificate II Manufactured Mineral Products (Concrete), with 40% of the workforce expected to complete Certificate III and 10% of the workforce expected to complete Certificate IV. The Wodonga facility is also expected to employ 2 boiler making apprentices, 3 graduate engineers, 1 commercial graduate and 1 safety graduate.

5.5. Subcontractors

We will ensure our subcontractors clearly understand their role to assist us to meet the Major Project Skills Guarantee and we will support them to achieve their agreed targets. This will include the following activities:

- Tender requests will include information on the Major Projects Skills Guarantee applied to the West Gate Tunnel and how we expect subcontractors to assist us to meet our obligations
- We will provide an overview of our Service Provider Network to our potential subcontractors and the assistance they/we can offer
- We will request subcontractors to provide details of their contribution to the Major Projects Skills Guarantee, and their key contact person for this, when they tender for work on the project. The way subcontractors respond to this condition will form a part of the evaluation and selection process
- After contracts are awarded we will monitor each subcontractor's performance against their commitment and provide support as required. Their success is our success and we will seek to work in a collaborative and continual learning environment
- Subcontractors will be required to regularly report on their contribution to the Major Project Skills Guarantee.

5.6. Potential issues and barriers

We identified the following issues, barriers and considerations that may impact on the Major Projects Skills Guarantee for the West Gate Tunnel, along with mitigations to each of these as far as practicable.

TABLE 4: POTENTIAL ISSUES AND BARRIERS THAT MAY IMPACT ON MAJOR PROJECTS SKILLS GUARANTEE

| Potential issue or barrier | Mitigation |
|--|---|
| 1. Intense competition in the labour market | |
| The West Gate Tunnel will commence in a very competitive civil infrastructure labour market, with several projects concurrently working towards targets in their Major Project Skills Guarantee. As such our ability to identify and attract quality people to undertake a traineeship or apprenticeship will be constrained. We also recognise that compliance with the Major Project Skills Guarantee is measured in labour man hours and is therefore dependant on our ability to retain new employees and complete the expected man hours. This may be a significant challenge, particularly when a high percentage of workers will be from disadvantaged backgrounds, may face multiple barriers to sustainable employment or will be new to the construction industry. | <ol style="list-style-type: none"> 1. Creation of our Service Provider Network containing a range of diverse and multi-faceted organisations and agencies to identify people wanting to work, provide pre-employment support, offer targeted services to disadvantaged people and provide training and upskilling to encourage people to transfer existing skills to new industries. These agencies share our passion to upskill the next generation of construction employees as well as offering training and apprentice opportunities to people who are often excluded from employment on major projects. 2. We will open a community-based West Gate Tunnel Employment Centre in a suitable location close to the alignment. This centre will be a one-stop-shop where local people, including people who face disadvantage, can enquire about current employment and training opportunities. The centre will have a jobs board where employment and training opportunities are advertised and online application forms can be completed. |
| 2. Finding the right training provider to meet our needs | |
| The selection of our preferred training provider included consideration and discussion on the certified training we need to deliver to our workers. Training providers must have the relevant training scopes on their schedule and be able to demonstrate that the trainers are appropriately skilled, qualified, experienced and competent with workplace training and assessing qualifications. | <ol style="list-style-type: none"> 3. Our early engagement with Victoria Polytechnic included the identification of the workforce qualifications required for the West Gate Tunnel. This early advice will provide sufficient time for the Polytechnic to bring the qualifications on scope once a preferred proponent is announced. |
| 3. The ability of apprentices and trainees to complete their qualifications | |
| The ability for trainees and apprentices to complete the necessary units of competency to gain their qualifications is always a concern on projects that may not be able to offer the diversity of experience or length of time required to allow competency to be achieved. | <ol style="list-style-type: none"> 4. Our preferred training provider Victoria Polytechnic has identified an off-site facility where trainees could safely operate required plant or machinery and participate in an assessment of their competency. 5. The engagement of some trainees and apprentices through a Group Training Organisation enables those trainees to transfer to another host employer if we are unable to offer the required experience or employment duration to allow completion. We would select this option if the training duration (hours) of the qualification is deemed to be longer than the time remaining on the West Gate Tunnel. |

6. ESTIMATED COMPLIANCE SCHEDULE

[not disclosed]

7. PROPOSED COMPLIANCE REPORTING SCHEDULE

7.1. Collecting the data

CPBJH JV has an industry based software package for recording all direct hire man hours worked on projects. The information is entered after each shift and is linked to our payroll system. We can identify individual workers in the system that we need to track in order to meet the reporting requirement and complete the tables listed in Attachment A.

Subcontractors working across the West Gate Tunnel will record the labour hours of all workers allocated to the West Gate Tunnel. They will also provide details of all trainees, apprentices and cadets allocated work on West Gate Tunnel. Subcontractor's claims for payment must include details of the approved hours worked by these classifications.

CPBJH JV will combine the information on both direct hire and subcontractors labour hours to complete the compliance report for the Major Project Skills Guarantee.

We will also maintain a register of apprentices, trainees and cadets working on the West Gate Tunnel and details of their progress towards training completion. This register will be available on request.

7.2. How this has been applied on previous projects.

On the Furlong Main Blackburn Heatherdale Level Crossing Removal Project and the Caulfield to Dandenong Level Crossing Removal Project, CPB Contractors records all direct hire labour hours worked across the project through an electronic interface, then runs reports against the identified trainees, apprentices and cadets to identify the hours worked against the total hours worked.

In addition to this, subcontractors are required to record the labour hours for their workers on timesheets or work diaries that are collected and approved by supervisors after each shift. The hours recorded by a subcontractor's workers on timesheets or diaries must agree with the hours covered in the subcontractor's claim for payment or invoice. Subcontractors are required to identify trainees, apprentices and cadets that are included in their workforce.

The information from the direct hire report and subcontractor's reports is compiled in a spreadsheet and accompanying report for the client each month.

This recording and reporting methodology will be used on the West Gate Tunnel.

7.3. Frequency of reporting

CPBJH JV will provide progressive performance reports against the Major Project Skills Guarantee requirement at the following intervals:

- One interim report on the 5th day of March, June, September and December each year during contract works
- An annual report on the anniversary of commencement
- An Interim Report midway through the contract works
- A Final Report within two months of contract works Practical Completion.

ATTACHMENT A. INTERIM AND FINAL COMPLETION REPORT TEMPLATE

CPBJH JV will use the following report template to provide interim and final compliance reports as outlined in Section 7.3.

Major Projects Skills Guarantee: Interim and Final Compliance Report

A statutory declaration must be submitted with interim and final reports

- Interim Compliance Report
- Final Compliance Report

Contract

| | |
|---------------|--|
| Number: | |
| Title: | |
| Deemed Hours: | |

Principal Contractor

| | |
|---------------|---|
| Trading Name: | CPB Contractors and John Holland Joint Venture (CPBJH JV) |
| Address: | |
| Phone: | |
| Email: | |

Contact Person:

| | |
|-------|--|
| Date: | |
|-------|--|

Performance summary

TABLE 1: OVERALL OUTCOMES

| Agreed Deemed hours (as per plan) | Total Hours Achieved - Interim | As % of target | Total Hours Achieved - Final | As % of target |
|--------------------------------------|-----------------------------------|----------------|---------------------------------|----------------|
| | | | | |
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TABLE 2: DISAGGREGATED OUTCOMES

| | Total hours | Hours from new | Hours from existing |
|--------------------|-------------|----------------|---------------------|
| Apprentices | | | |
| Trainees | | | |
| Engineering cadets | | | |
| TOTAL | | | |

TABLE 3: REPRESENTATION

| | No. Female | No. Indigenous | No. Mature aged (45+) | No. CALD Culturally & linguistically diverse | No. With Disability |
|--------------------|------------|----------------|--------------------------|---|------------------------|
| Apprentices | | | | | |
| Trainees | | | | | |
| Engineering cadets | | | | | |

I declare the above information is true and correct

 Signature of authorised person

 Date

TABLE 4: APPRENTICE DETAILS

| Apprentice Name | Training contract no.* | Occupational type | Existing/New | Hours |
|------------------|------------------------|-------------------|--------------|-------|
| e.g. Sally Smith | 201206789 | Plumber | New | 40 |
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* If ID numbers are not available for reasons such as apprentices/trainees being registered in another state, then a Statutory Declaration must be submitted providing name, gender, date of birth and confirmation that they were employed in Victorian during the reporting period by the principal contractor or sub-contractor.

I declare the above information is true and correct

 Signature of authorised person

 Date

Statutory Declaration

I, _____

[full name]

of _____

[residential address]

, do solemnly and sincerely declare that:

[occupation]

I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.

Declared at _____

In the State of Victoria, this _____ day of _____ 20____

Signature of deponent making this declaration

Before me:

Signature of authorised witness

The authorised witness must print or stamp his or her name, address, and title under section 107A of the Evidence (Miscellaneous Provisions) Act 1958 (as of 1 January 2010), (previously Evidence Act 1958), (e.g. Justice of the Peace, Pharmacist, Police Officer, Court Registrar, Bank Manager, Medical Practitioner, Dentist)

Schedule 23 - Social Procurement Strategy

The parties agree and acknowledge that:

- references to 'CPBJH JV' and 'we' in this Schedule 23 are to be read as references to 'the D&C Subcontractor';
- references to 'West Gate Tunnel', 'the West Gate Tunnel project' and 'the project' are to be read as references to the 'project comprising the carrying out of the D&C Activities (other than the Tolling Works and the D&C IRS Activities) during the D&C Phase';
- the obligations of Project Co under clause 58 of this Agreement are not affected or limited in any way by the references to CPBJH JV or the D&C Subcontractor in this Schedule 23; and
- the plans set out in this Schedule 23 have not been updated to ensure compliance with all of the requirements of this Agreement to the extent such requirements have changed from, or are additional to, the requirements set out in the Agreed Project Agreement (as defined in the WD Commitment Deed). This Schedule 23 will be updated in accordance with clause 11(e) of the Project Agreement.

1. OUR APPROACH TO SOCIAL PROCUREMENT

Our Social Procurement Strategy for the West Gate Tunnel outlines an exciting plan to address social disadvantage, boost the local economy and improve liveability in Melbourne's western suburbs.

Through our strategic procurement processes, CPB Contractors John Holland Joint Venture (CPBJH JV) will ensure that new social enterprises, Aboriginal businesses and small-scale businesses based in Melbourne's western suburbs are actively engaged as part of our supply chain to improve economic and social outcomes for Melbourne's west.

Boosting opportunities in Melbourne's west

Social procurement on the West Gate Tunnel will be achieved by:

- Providing meaningful employment opportunities, training and upskilling to long-term unemployed, retrenched workers and other disadvantaged people
- Supporting the participation of Aboriginal people and businesses
- Procuring goods and services from small-medium businesses that employ local people
- Developing innovative, well-targeted initiatives that offer new opportunities for socially excluded community members
- Supporting existing programs that work with young people transitioning into employment
- Strategically aligning our activities with government policy and initiatives.

During the delivery of the West Gate Tunnel Project we have a unique opportunity to create significant change and provide new opportunities to people living with disadvantage. The size and duration of the project allows us to think more like a business, and not just a short-term project, to develop strategies that will:

- Provide school-based traineeships to 10 young people in juvenile detention with the goal of reducing recidivism and creating new futures
- Support the transition of 15 young disadvantaged people from school into the workforce through structured workplace learning placements
- Employ people from culturally and linguistically diverse backgrounds, some of whom are of the most vulnerable and isolated members of our society
- Offer 5 scholarships through Western Chances to motivated and talented students who lack the finances to pursue education and career goals
- Provide suitable work for highly skilled asylum seekers with working visas
- Recognise Aboriginal connection to Country and train our workforce in cross-cultural awareness through 36 site toolbox sessions
- Purchase goods and services from social enterprises, Aboriginal businesses and local businesses
- Drive social procurement through to our subcontractors and facilitate their relationships with social enterprises, local businesses and aboriginal businesses
- Enable workplace giving and pro-bono activities

CPBJH JV's Social Inclusion Team will be led by Jobs and Social Procurement Manager, Leigh Hardingham, who has a strong background in addressing social disadvantage and encouraging Aboriginal participation across a range of major infrastructure projects such as the Ichthys Onshore LNG Project in the Northern Territory and the Ord Irrigation Expansion Project in Western Australia.

Leigh will be supported by a Social Procurement Manager and Social Procurement Senior Advisor who will both have strong existing relationships with locally based employment and training providers, non-profit organisations, philanthropic foundations and local learning and employment networks committed to addressing social disadvantage in Melbourne's western suburbs. Key responsibilities for these positions, as well as other positions to be maintained, are included in Appendix D.

To better inform our thinking and help determine where our activities can provide the greatest benefit, we met with several employment agencies, training organisations and social enterprises during the RFT phase. This knowledge underpins the place-based collaborative approach embedded in our Social Procurement Strategy and will result in sustainable employment opportunities and positive social outcomes for Melbourne's west during the delivery of the West Gate Tunnel and beyond.

A full list of the organisations CPBJH JV consulted is included at Appendix B.

2. INITIATIVES TO GENERATE POSITIVE SOCIAL AND ECONOMIC OUTCOMES

To operate successfully and sustainably in Melbourne's west, CPBJH JV recognises we must maintain a workforce that reflects the communities in which we operate. As active members of the Diversity Council of Australia, CPB Contractors and John Holland are committed to local participation across all projects and diversity across our organisational structures. CPB Contractors' Indigenous and Social Inclusion Policy and John Holland's Reconciliation Action Plan underpin and guide our efforts in social inclusion and Aboriginal and Torres Strait Islander engagement.

2.1. Benefits to youth in juvenile detention

CPBJH JV has developed a training and employment initiative for young people in the juvenile justice system, which supports the Victorian Government's 2016/17 *Justice for all* commitment.

Developed in conjunction with the Parkville Secondary College at the Melbourne Youth Detention Centre, the initiative provides work placements on the West Gate Tunnel for young people as part of the college's employment and training program. Trainees will move into fulltime employment on the West Gate Tunnel upon their release.

TABLE 2-1: JUVENILE JUSTICE TRAINING PILOT PROGRAM

Actions which CPBHJV will undertake during the carrying out of the West Gate Tunnel project include:

- Work with Parkville Secondary College to identify suitable students undertaking a school-based traineeship who could gain practical experience by working on the West Gate Tunnel
 - Facilitate placements and provide supervision and experience to help students achieve their qualification
 - Link students with a workplace mentor to build confidence and support success
 - Provide ongoing employment to participants who successfully complete their school-based traineeships
 - Continue employment on students' release from detention
-

Target: 10 participants over the term of the project

Economic and social wellbeing benefits:

The training placements:

- Have the potential to reduce the recidivism of young people by providing ongoing employment
 - Supports the transition of young disadvantaged people from school into the workforce
 - Improves pathways into further education, training or employment after release from the justice system
-

2.2. Benefits to students transitioning to work

CPBJH JV has developed an initiative that aligns with the Victorian Government's 2016/17 \$49 million investment to support higher education, training and skills development by building students' skills and confidence and helping them get a stable job in a growing industry.

We met with Local Learning and Employment Networks (LLENs) in the municipalities of Melbourne, Maribyrnong, Moonee Valley, Hobson Bay and Wyndham to discuss how we could offer structured workplace training to VCE or VCAL students undertaking a school based traineeship. Placements are usually undertaken on mid-year school vacations or on a one-day-per-week roster.

Trainees would transition into employment on the West Gate Tunnel once they finished their studies.

TABLE 2-2: STRUCTURED WORKPLACE LEARNING PLACEMENTS

Actions which CPBHJV will undertake during the carrying out of the West Gate Tunnel project include:

- Provide structured workplace learning for five VCE or VCAL students each year through LLENs programs
 - Provide workplace mentoring and support to help students achieve their qualification
 - Attend LLENs Annual Jobs and Trades Fairs to increase students' and parents' awareness of employment opportunities in the construction industry
 - Transition students into full-time employment when they graduate from school
-
- **Target:** Five students per year (15 students over the course of the project)

Economic, social and environmental wellbeing benefits:

The structured work-based learning program will:

- Support the transition of young people from school into the workforce
- Provide engaging work experience for young people leading to a range of academic/vocational pathways
- Improve pathways into further education, training or employment for school leavers
- Build the skills and confidence of young people to make informed decisions about their careers
- Increase student engagement with science, technology, engineering and maths (STEM) by identifying possible employment pathways

2.3. Benefits to disadvantaged young people

As part of our commitment to help talented young people across Melbourne's western suburbs, we will work with not-for-profit organisation Western Chances to support young people who lack the finances, networks or opportunities to pursue their education and career goals.

CPBJH JV will provide five talented, motivated young people with a scholarship over four years to support their studies. We will also provide a cadetship on the West Gate Tunnel in their second year of tertiary education to launch their careers in the construction industry.

Where possible we will work with Western Chances to award these scholarships to young women studying science, technology, engineering and/or mathematics.



FIGURE 2-1: WESTERN CHANCES SCHOLARSHIP

RECIPIENTS

TABLE 2-3: SCHOLARSHIPS AND CADETSHIPS

Actions which CPBJHJV will undertake during the carrying out of the West Gate Tunnel project include:

- Provide up to five scholarships over four years to cover education-related expenses
- Build the relationship with scholarship recipients through meetings and mentoring opportunities
- Provide suitable scholarship recipients with a cadetship on the West Gate Tunnel in their second year of tertiary education

Economic, social and environmental wellbeing benefits:

The scholarships will:

- Support the transition of young disadvantaged people from high school into tertiary education
- Improve pathways into further education, training or employment for school leavers
- Build the skills and confidence of young people to make informed decisions about their careers
- Increase student engagement with science, technology, engineering and mathematics (STEM) by offering cadetships
- Strengthen the educational and employment prospects for talented young people in Melbourne's west

2.4. Benefits to culturally and linguistically diverse communities

CPBJH JV met and agreed to work collaboratively with Adult Multicultural Education Services (AMES) Australia and the Asylum Seeker Resource Centre (ASRC) to gain a better understanding of the needs of newly arrived migrants and refugees, and how we can work with these services to provide employment and targeted training opportunities on the West Gate Tunnel.

Our intention is to work through the Victorian Government's Jobs Victoria Employment Network (JVEN) to identify opportunities to employ people from African, Afghan and Lebanese communities and other multicultural backgrounds.

We will support the Victorian Government's Asylum Seeker VET Program and identify suitable asylum seekers and refugees on temporary protection visas for employment and training opportunities on the West Gate Tunnel. Around 27% of the 10,000 asylum seekers currently living in Victoria are estimated to live in the western suburbs.

TABLE 2-4: ENGAGING WITH THE CALD COMMUNITY

Actions which CPBJJV will undertake during the carrying out of the West Gate Tunnel project include:

- Work with AMES and ASRC to provide newly arrived migrants and refugees with job opportunities and training on West Gate Tunnel
- Identify suitable work positions and assist with placement of highly skilled asylum seekers on temporary bridging visas and temporary protection visas and approval to work and train in Australia
- Provide support and mentoring to aid retention and build understanding within our workplace culture
- Identify upskilling opportunities that build confidence and increase future employment choices

-
- **Target: 35-50 people**

Economic, social and environmental wellbeing benefits

This initiative will:

- Increase employment rates and labour market outcomes for newly arrived migrants and refugees
 - Reduce dependency on government welfare payments
 - Increase post-tax income for the State
 - Improve education and economic outcomes
 - Increase future employment prospects for migrants
-

2.5. Benefits to long-term unemployed, retrenched workers and economically disadvantaged groups

CPBJH JV's objectives is to engage with and employ people from disadvantaged groups as well as skilled workers transitioning from declining industries such as the automotive industry who have limited or no previous experience in the construction industry.

We have established and will maintain a diverse Service Provider Network (SPN) that includes 25 specialist agencies that provide employment support and training to people with a disability, migrants, mature-aged people, retrenched automotive workers, young disengaged people and Aboriginal people. Collaboration with our SPN will help us better understand relevant challenges and barriers to employment. A full list of agencies in our SPN is included in Appendix B.

Training and employment opportunities will be provided for people from disadvantaged groups, ensuring we place people in positions that match their capability and longer-term career aspirations. For example, with additional training and support, former automotive workers are likely to be well suited for a wide range of construction jobs on the West Gate Tunnel including in our precast manufacturing.

Refer to Schedule 22 (Workforce Development Plan) for more information about our commitment to providing opportunities to people from disadvantaged groups.

2.6. Benefits to people with a disability

The Australian Network on Disability (AND) reports that one in five Australians lives with disability. A number of agencies in our SPN are specialist Disability Employment Service (DES) providers that provide ongoing support to people with a disability. DES providers assist employers to engage with their client base and have committed to working with us to identify suitable 30 interested candidates for the the West Gate Tunnel. Positions on the project will be identified that match the interest, experience and capabilities of each interested person. DES providers will assist us to mentor and support people during their recruitment, training and ongoing employment. Refer to Schedule 22 (Workforce Development Plan) for more information on strategies to provide opportunities to people with a disability.

2.7. Recognising the cultural heritage of Aboriginal people

CPBJH JV acknowledges the Wurundjeri people of the Kulin Nation as the traditional custodians of the land where the West Gate Tunnel is being constructed and will respect their spiritual beliefs, cultural heritage, kinship systems, and leadership structures.

We met with the Federation of Victorian Traditional Owner Corporations to ask how we can best engage with Traditional Owners to develop opportunities in employment, business engagement, training and land management and ensure that our workforce understands and respects Aboriginal connection to Country and cultural heritage features in the project area.

One of key initiatives will be to engage a Traditional Owner Corporation or business to present toolbox talks to inform the project about the cultural significance of the project area. We will also identify an environmental or land management scope of work that could be delivered by a business that employs young Aboriginal people. By working with Traditional Owners we will develop opportunities that are culturally appropriate for local people as well as develop initiatives to support Aboriginal workers during their employment and help them retain their jobs.

It is our intention to exceed the Aboriginal employment target of 2.5% of total labour hours on the West Gate Tunnel by establishing a stretch target of 4% of total labour hours. Refer to Schedule 22 (Workforce Development Plan) for more information.

TABLE 2-5: ABORIGINAL CULTURAL HERITAGE

Actions which CPBHJV will undertake during the carrying out of the West Gate Tunnel project include:

- Engage a Traditional Owner Corporation or business to present toolbox talks about the cultural significance of western Melbourne to local Aboriginal people
- Identify an environmental/land management scope to be delivered by a Traditional Owner business that employs young Aboriginal people

Target:

- 36 toolbox talks presented by a Traditional Owner
- One environmental/land management scope of work awarded to a local Aboriginal business

Economic, social and environmental wellbeing benefits

Our Aboriginal cultural heritage initiative will:

- Increase cross-cultural understanding within our workforce
 - Enable workforce understanding of sites of cultural significance
 - Develop Aboriginal businesses and provide employment for young Aboriginal people
-

2.8. Corporate social responsibility initiatives, workplace giving and volunteering

We will invest in innovative ways to actively support the communities in which we work. We will support FoodBank in Yarraville, which distributes donated food to those in need as part of the Victorian Government's School Breakfast Clubs program. We will run a one-month canned food and cash drive for our employees over Easter and Christmas, with all goods and funds directed to the School Breakfast Program. CPBJH JV will match all funds raised.

To help build the capacity of local charities, our Senior Leadership Team will volunteer their professional time as additional paid leave for two days each year. We will encourage all staff on the project to apply for an additional day's paid leave to volunteer at one of our identified non-profit or community groups such as AMES or the Asylum Seekers Resource Centre.

2.9. Working with LeadWest

LeadWest is a key regional advocacy organisation in Melbourne's west, with an eight-year history of achieving positive economic, social and environmental outcomes in the western suburbs. LeadWest members include local government, corporate companies, not-for-profit groups and training organisations.

We have had preliminary discussions with LeadWest, attended by Transurban and the State, to discuss priority needs in western Melbourne such as education and skills, economic development, community wellbeing, sustainable liveability, enabling infrastructure, experience and enjoyment and regional leadership. Post contract award we will draw on the expertise of LeadWest to leverage the opportunities offered by the West Gate Tunnel such as connecting communities in the west, creating a skilled workforce and providing new business opportunities.

3. SUPPORTING GOVERNMENT INITIATIVES

CPBJH JV is aware and supportive of the Victorian Government's updated metropolitan planning strategy, Plan Melbourne, which outlines a vision for Melbourne's growth to 2050. We are also mindful that two of the six National Employment Clusters which are referred to in Plan Melbourne are within two of the municipal boundaries impacted by the West Gate Tunnel.

The five local councils affected by the West Gate Tunnel have a number of key strategies, policy documents and structure plans promoting community health and wellbeing that guide local economic development. In addition, LeadWest's Western Agenda 2012-2016 and A Jobs and Industry Strategy for

Melbourne's west, co-authored with Regional Development Australia, offer a clear roadmap for employment creation and economic growth that is required to meet the needs of a rapidly-growing population. We have taken these policies into account in relation to urban planning, design and construction of the West Gate Tunnel as well as in the development of Schedule 22 (Workforce Development Plan) and this Social Procurement Strategy.

3.1. Local government initiatives

The West Gate Tunnel's local government stakeholders (City of Melbourne, Maribyrnong City Council, Hobsons Bay City Council, Brimbank City Council and Wyndham City Council) have each stated they expect the West Gate Tunnel to support local businesses, help stimulate employment and community-led initiatives, and improve education and local training opportunities. The initiatives outlined in Section 2 detail how we will work with local councils, local agencies and community organisations to achieve this outcome.

Wyndham Council recently launched its Multicultural Entrepreneur Awards to celebrate the contribution of newly arrived migrants to the local economy through their creativity, innovation, resilience and community focus. CPBJH JV will support and help promote this award.

People's perception of community safety affects their ability to participate and contribute to the community in which they live. The Graffiti Removal Program (GRP), delivered across Melbourne by local government, plays an important role in deterring anti-social behaviour and reducing crime. GRP allows offenders to make reparation for their crimes by removing graffiti and supports rehabilitation by providing work-related skills to help increase employment opportunities. We will engage with the GRP to clean-up graffiti hotspots along the alignment.

3.2. Victorian Government initiatives

The Victorian Government's Jobs for Victoria policy establishes a framework for investment in major infrastructure and the creation of new jobs. The government funds a number of initiatives and agencies to deliver employment and training based on this policy.

CPBJH JV will engage with service providers that deliver government programs such as the Jobs Victoria Employment Network (JVEN), TAFE Skills and Jobs Centres, Education First Youth Foyers, the Back to Work Scheme, Reconnect: Engagement and Learning Support Program, LOOKOUT Education Support Centres, Navigator and the Victorian Aboriginal Directory, to ensure all employment and training opportunities are identified and promoted.

Business Victoria hosts small business days in conjunction with municipalities in Melbourne's west. We will actively participate in and promote these events as part of our social procurement strategy. We will also ensure local social enterprises are considered in our LIDP and will explore innovative ways to procure their goods and services, build their capacity and measure their performance for future Victorian Infrastructure projects.

3.3. Commonwealth Government initiatives

The Commonwealth Government is committed to developing a competitive labour market by facilitating jobs growth through policies that promote fair, productive and safe workplaces. These policies and programs help job seekers find work, meet industry needs and increase Australia's workforce participation.

The Commonwealth Government has a suite of measures that promote skills training, employment pathways and industry participation in job growth. These measures include the National Disability Insurance Scheme, Disability Employment Services, Jobactive, Youth Employment Package, Youth Jobs PaTH, New Enterprise Incentive Scheme (delivered as part of Jobactive), Centrelink and the Office of the Migration Agents Registration Authority. We will proactively support these initiatives for the benefit of jobseekers in western Melbourne and for the West Gate Tunnel project as a whole.

Additionally, we will support and promote the work of Indigenous Business Australia to help local Aboriginal businesses that may be interested in supplying goods and services to the West Gate Tunnel.

4. SUPPORTING SOCIAL PROCUREMENT BY IMPLEMENTING STRATEGIC PROCUREMENT PRACTICES

Social enterprises are businesses that trade with the intention of tackling social problems, improving communities, providing people with access to employment and training, and tackling environmental

problems. Research shows these enterprises are more likely to employ people from a disadvantaged background while Aboriginal businesses are 100 times more likely to employ Aboriginal people than non-Aboriginal businesses.

Due to the number of large-scale infrastructure projects underway or currently being procured in Victoria, CPBJH JV understands there will be increased demand on the resources and energies of existing social enterprises and Aboriginal businesses. We have developed strategies to assist these enterprises and businesses to engage with multiple projects and potential opportunities, which are outlined below in sections 4.1 and 4.3.

CPBJH JV is already a member of, or has engaged with, specialist organisations to help maximise our engagement with social enterprises and Aboriginal businesses and refine our strategic procurement practices. Some of these arrangements or agreements include:

- *Social Traders* was established in 2008 by the Victorian Government to empower social enterprises to transform communities. As industry members of Social Traders' Crunch program, we have access to experts that understand the social enterprise sector and offer in-depth data analysis regarding the capacity, scalability and governance structure of certified social enterprises. Social Traders will use its centralised database to identify social enterprises with capabilities that match the West Gate Tunnel project opportunities.
- *Supply Nation* is dedicated to connecting Australian corporate and government organisations with Indigenous business suppliers. In 2009 CPB Contractors became a founding member of Supply Nation. In 2014/15, CPB Contractors spent more than \$34 million on transactions with Supply Nation businesses. Supply Nation will use its centralised database to identify certified Aboriginal businesses with capabilities that match the West Gate Tunnel project opportunities.
- *Social Ventures Australia* assists social enterprises and Aboriginal businesses to build their capacity to meet contractual requirements while delivering improved social outcomes. Social Ventures Australia will offer approved businesses a range of services including cash flow support which is traditionally a barrier to small businesses engaging with Tier One contractors.
- *ICN Victoria* has provided details of registered small businesses with capabilities to deliver scopes of work advertised on its network.
- *Victorian Aboriginal Directory* is an online portal established by the Aboriginal Economic Development Unit (AEDU) in the Department of Economic Development, Jobs, Transport and Resources. The AEDU delivers programs to improve economic opportunities for Aboriginal Victorians. It draws on a number of Victorian Government programs and policies that support and promote pathways to jobs and underpins the continuous development of Aboriginal businesses.

CPBJH JV recognises the diversity of Melbourne's west and we realise that in order to reach the widest possible audience we will need to communicate using a range of traditional and new media including job boards, forums and briefings, websites and other digital streams. We will also promote opportunities in languages other than English and provide interpreter services.

4.1. How we will work with social enterprises, Aboriginal businesses and local small-scale businesses

CPBJH JV is committed to integrating social enterprises, Aboriginal businesses and local businesses into the West Gate Tunnel supply chain. We are also committed to helping these businesses grow in size and capability during the West Gate Tunnel to enable them to service future Victoria Infrastructure projects. The following process will be implemented to maximise the value of supply opportunities awarded to social enterprises and Aboriginal businesses.

4.1.1. Identify supply opportunities or scopes of work

CPBJH JV will identify suitable supply opportunities for social enterprises, Aboriginal businesses and local small-scale businesses throughout the project.

To increase the number of suitable supply opportunities, we will unbundle larger work packages and enable more participation by smaller, emerging local businesses. The process of unbundling work is a well-documented practice to support small business participation. It lowers the risk profile when engaging new suppliers and allows their capability to grow over the term of the contract.

Identifying suitable supply opportunities for social enterprises and Aboriginal businesses by CPBJH will include:

- Quantifying potential supply

- Confirming supply lead-time and timeframe
- Ensuring sufficient time for the business to prepare tender information, price the supply/service, resource, enter contractual agreement (if required) and demonstrate their capacity
- Determining delivery risk which may include:
 - Impact on critical path if the supply or scope is not completed on time
 - Reputational risk if a problem occurs and there is a commercial conflict
 - Financial risk to the project if the business is unable to fill the contract
 - Identifying the contribution to meet project commitments
 - Identify the potential contribution to project targets
 - Identify how the supply or scope will contribute to positive community relationships

4.1.2. Identify potential suppliers

Local small-scale businesses will be given every opportunity to obtain contracts in relation to the West Gate Tunnel project. Targeting local businesses for inclusion in our supply chain will increase employment opportunities and help re-energise the local economy.

To boost local business participation and they are properly informed about procurement opportunities and processes, we will host four industry briefings with ICN support for:

- Industry Chambers of Commerce
- Western Suburbs Business Association
- Local government economic and employment committees such as Brimbank Learning and Employment Steering Committee, Enterprise Maribyrnong Special Committee, Committee for Wyndham, Enterprise Melbourne
- East Werribee Employment Precinct
- LeadWest

We will identify social enterprises and Aboriginal businesses through a range of sources including Social Traders, Supply Nation, Social Ventures Australia and ICN as well as our existing supplier networks, previous projects, regional company databases and local networks such as the Federation of Victorian Traditional Owner Corporations and LeadWest.

Our approach will be to develop an extensive list of certified social enterprises and Aboriginal businesses with capabilities that match the work required to deliver the West Gate Tunnel. As members of Social Traders and Supply Nation, we will participate in social enterprise marketplaces and other networking and training events where business showcase their services. These events provide excellent opportunities to build relationships and help lead to supply opportunities.

4.1.3. Assess supplier's existing capability to deliver scope of work

CPBJH JV will assess the capability of potential suppliers based on a range of criteria as well as their ability to provide sufficient supporting documentation. However, we recognise that sometimes these requirements are a barrier for social enterprises or Aboriginal businesses.

For this reason, the level of assessment and the requirement to meet full pre-qualification will be tailored so it is in line with the scope of work, the procurement or contract value, and associated risk. This decision will be managed by the procurement team, in consultation with the project team member requesting the item or service. To inform the required level of assessment, we will assist businesses to prepare their required information. At a minimum this will include the following:

- Ownership to ensure certified social enterprise or Aboriginal business status
- Contact details including key personnel and their roles
- Location of the business including premises and street address
- Current capability statement and plant list (if appropriate)
- Current workload (to ensure ability to supply) and client list or previous relevant experience
- Relevant insurances, licences or certifications
- Financial capability.

Our key priority will be to gather base information on each potential supplier. This will be maintained electronically so it can be accessed by the relevant procurement lead for consideration when a supply opportunity becomes available.

4.1.4. Assess need to build capacity prior to contract award

Businesses that have the potential to supply the project but require assistance to meet our procurement requirements may be referred to our SPN organisations, such as Social Ventures Australia and Social Traders, for additional support.

We met with [not disclosed] from the Scanlon Foundation, a private philanthropic trust that has successfully piloted a business incubator model in Tarneit. Post award we will work with the City of Hobsons Bay and the Scanlon Foundation to see if there was an opportunity to extend the business incubator model, Enterprising Tarneit, and include a supplier development program targeted to the West Gate Tunnel. Enterprising Tarneit is focussed on supporting new small businesses in areas of low local employment by providing mentors, guest speakers and business planning advice.

4.1.5. Award contract and monitor performance

Contracts will be awarded to suitable businesses and performance will be regularly monitored. Where areas of concern are identified we will meet with the relevant management teams to discuss the issue and wherever possible, resolve it. Opportunities to provide additional support will be identified throughout the project and upskilling or performance enhancement opportunities will be encouraged and supported.

4.2. Providing ongoing benefit

Our strategic procurement process will ensure new social enterprises, Aboriginal businesses and small-scale businesses based in the western suburbs are engaged as part of our supply chain, which will increase their competitiveness and ability to supply or service future infrastructure projects. Through their work on the West Gate Tunnel these businesses will then be able to reference the project to demonstrate their capacity to meet delivery deadlines, manage contracts, manage cash flow around payment terms, and maintain appropriate records.

In addition, these businesses will be more likely to employ people from disadvantaged backgrounds and/or Aboriginal people and this will help contribute to improved economic and social outcomes for Melbourne's west.

4.3. Assisting subcontractors and suppliers to engage social enterprises and Aboriginal businesses

Our tender documentation will require subcontractors and suppliers to demonstrate how they will create employment and training opportunities for disadvantaged people in the local community. This will include partnering with or purchasing from social enterprises, Aboriginal businesses and local small-scale businesses.

CPBJH JV will support subcontractors and suppliers to meet our social procurement requirements by:

- Hosting three subcontractor briefings a year, with attendance by subcontractors and suppliers from our company database, potential subcontractors and suppliers and social enterprises, Aboriginal businesses and local small-scale businesses.

Making a difference and improving lives

CPB Contractors has engaged *Cleanable*, a social enterprise providing cleaning and maintenance services, on a range of recent projects including Regional Rail Link, CityLink Tulla Widening Project and the Caulfield Dandenong 9 Project.



Cleanable workers provided services to Regional Rail Link for four years at the project's site office in Tottenham and a site depot in Sunshine.

Cleanable employs people who are re-entering the workforce and/or living with disability and has built a reputation for high quality, cost-effective service. The sense of pride it fosters among workers helps them re-engage with their communities and improves self-esteem.

The Regional Rail Link contract provided part time and casual employment for up to 26 people from Melbourne's western suburbs. On CityLink Tulla Widening eight people were employed for 12 months.

- Directing subcontractors and suppliers to the online Supply Chain Sustainability School early in the prequalification process to improve procurement practices. Developed jointly by contractors and government agencies including John Holland, the Supply Chain Sustainability School is an online learning forum designed to help the construction sector assess and improve its knowledge of sustainability issues. We believe the School will help the supply chain understand the value of social procurement and sustainable construction, and how they can realise opportunities to provide a competitive advantage.
- Engaging a dedicated Social Procurement Senior Advisor to liaise with subcontractors, suppliers, social enterprises, Aboriginal businesses and local businesses to create connections and opportunities.
- Showcasing the capability statements of social enterprises and Aboriginal business in our Employment Centre so that subcontractors can easily access this information.

Our subcontractors are required to report monthly to demonstrate they are meeting their social procurement plans and to monitor non-conformance. We will monitor subcontractors who are failing to meet their requirements and work with them to improve their performance.

4.4. Social procurement activities on other projects

CPB Contractors and John Holland have a long history and depth of experience working with social enterprises and Aboriginal businesses across a wide range of projects in urban, regional and remote Australia. The following scopes of work have been delivered by Social Enterprises and Aboriginal businesses on previous projects:

| | | |
|-----------------------|----------------------|------------------------------------|
| Cleaning services | Maintenance services | Recycling and waste management |
| Catering services | Graffiti removal | Printing and distribution services |
| Distribution services | Landscaping | Security management |
| Traffic management | Spoil haulage | Road barrier installation |
| Line-marking | Fencing installation | Office products |
| Beverage products | Street furniture | Plant hire |
| Corporate gifts | Bathroom products | Public art providers |
| Graphic design | | |

To effectively implement our social procurement strategy, we will leverage our existing relationships in Victoria as per Table 11. These social enterprises and Aboriginal businesses will be invited to our subcontractor briefings to promote their capabilities to the West Gate Tunnel.

TABLE 4-1: EXISTING RELATIONSHIPS WITH SOCIAL ENTERPRISES AND ABORIGINAL BUSINESSES

| Social Enterprise Aboriginal Business | Social benefit | Overview of services | Project Experiences |
|--|--|--|---|
| Clean Force Property Services | Employment and training for disadvantaged people | Cleaning and maintenance | Caulfield to Dandenong: Level Crossing Removal Project |
| T2m maintenance services | Employment and training for disadvantaged people | Maintenance, cleaning, gardening, painting, gutters, safety surfaces, environmental services | Caulfield to Dandenong: Level Crossing Removal Project |
| Marriott Industries | Supported disability employment | Packing, sorting, light assembly | Caulfield to Dandenong: Level Crossing Removal Project |
| Waverley Industries | Supported disability employment | Catering, mail outs, stock packing – and communications assistance | Caulfield to Dandenong: Level Crossing Removal Project |
| Gateway Industries | Supported disability employment | Landscaping and litter patrol | Caulfield to Dandenong: Level Crossing Removal Project |
| Grumble Tumms | Employment for Aboriginal people | Catering | Level Crossing Removal Projects – North McKinnon and Centre |

| Social Enterprise Aboriginal Business | Social benefit | Overview of services | Project Experiences |
|---|--|-----------------------------|---|
| Kooya Consultancy | Aboriginal-owned | Cultural awareness program | Perth Hospital Redevelopment |
| Western Chances (local community organisation) | For young students in engineering and graphic design | Work experience | Western Hwy – Anthony's Cutting Realignment |
| Cleanable (Western Community Initiatives Group social enterprise) | Employment and training for disadvantaged people | Cleaning and maintenance | CityLink–Tulla Widening Project & Regional Rail Link (See attached Letter of Support) |
| GAME Traffic and Contracting | Training and employment for disadvantaged people | Traffic management business | Caulfield to Dandenong: Level Crossing Removal Project |
| RAW Recruitment | Aboriginal-owned | Workforce | Caulfield to Dandenong: Level Crossing Removal Project |
| Yarra View Nursery | Supported disability employment | Wholesale nursery | Caulfield to Dandenong: Level Crossing Removal Project |
| Nadrasca | Supported disability employment | Printing, direct mail | Caulfield to Dandenong: Level Crossing Removal Project |
| Charcoal Lane | Provides opportunities for young Aboriginal people. | Catering | Furlong, Main, Blackburn and Heatherdale Level Crossing Removal Project, Victoria. |

5. MONITORING AND REPORTING OUR PERFORMANCE

As part of developing an appropriate measurement and reporting process for social procurement on the West Gate Tunnel, we reviewed existing measurement tools and identified the need for a more robust process to measure economic, social and environmental wellbeing and assess the return on investment.

We believe there is an opportunity for CPBJH JV to work with an independent, non-profit organisation such as Social Ventures Australia, Social Traders or Mission Australia, and key government agencies to help develop a new measurement and reporting process that could be piloted on the West Gate Tunnel.

This process would be responsive to the needs of government and include measuring the impact and efficiency of existing government and not-for-profit initiatives to support organisations interacting with the project. This process would deliver a new benchmark for Victoria and enable the Victorian Government to more accurately quantify the benefits of social procurement on major projects. The final scope of the new process would be agreed with key stakeholders including government.

5.1. Key result areas and key performance indicators

To monitor our performance against the strategies described in this plan, we have established the following KRAs and KPIs that will be measured each month and the results included in the project's monthly report in accordance with the PSR. We will require subcontractors and suppliers to report on their social procurement outcomes as a part of their monthly progress claims.

TABLE 12: PROPOSED IMPACT MEASUREMENT FRAMEWORK

| KRA | KPI | Measure | Target | Stretch |
|-----|---|---|--------|---------|
| 1 | GENERATE POSITIVE SOCIAL OUTCOMES TO STRENGTHEN THE ECONOMIC AND SOCIAL WELLBEING OF THE COMMUNITY | | | |
| 1.1 | Provide structured workplace learning placements for young people in Juvenile detention | Number of young people in juvenile detention in structured work based learning positions on the project | 10 | 15 |

| KRA | KPI | Measure | Target | Stretch |
|-----|--|--|--------|---------|
| 1.2 | Transition graduates of structured workplace learning (Juvenile detention) in full time employment | Number of young people from juvenile detention commencing employment | 10 | 15 |
| 1.3 | Provide structured work place learning placements to students identified through LLENs | Number of young people identified through LLENs in structured work based learning positions on the project | 20 | 25 |
| 1.4 | Recognise the cultural heritage of Aboriginal people | Number of Tool box or similar sessions delivered by Aboriginal people | 36 | 50 |
| 1.6 | Local Business and subcontractor Briefings | Number of local business and subcontractor briefings | 8 | 12 |
| 2 | IMPLEMENTING STRATEGIC SOCIAL PROCUREMENT PRACTICES | | | |
| 2.1 | Assist social enterprises and Aboriginal businesses to meet project requirements | Number of social enterprises engaged on the project | 5 | 10 |
| | | Number of Aboriginal businesses engaged on the project | 5 | 10 |

APPENDIX A: NOT USED

APPENDIX B: ORGANISATIONS CPBJH JV CONSULTED

| Identified service providers | Sector |
|--|--|
| <ul style="list-style-type: none"> ▪ Wesley Mission – Disability Employment Services ▪ Wise Employment Services ▪ Jesuit Social Services ▪ Melbourne City Mission ▪ Salvation Army Employment Plus | Mature-aged, disengaged youth, people with a disability |
| <ul style="list-style-type: none"> ▪ AFL Sports Ready | Disengaged youth / young people |
| <ul style="list-style-type: none"> ▪ Federation of Victorian Traditional Owner Corporations ▪ Programmed Skilled Workforce – Indigenous Employment Service ▪ Raw Recruitment ▪ Indigenous Prospects Training and Recruitment ▪ AFL Sports Ready – Indigenous Employment Program ▪ MEGT Australia (Vocational Training and Employment Centre for Melbourne) ▪ Korin Gamadji Institute ▪ Kangan Institute, Indigenous Education Centre | Aboriginal peoples |
| <ul style="list-style-type: none"> ▪ Adult Multicultural Education Services (AMES) Australia ▪ Asylum Seekers Resource Centre (ASRC) | People from culturally and linguistically diverse (CALD) backgrounds |
| <ul style="list-style-type: none"> ▪ Turn2 Work Force Solutions (TWFS) ▪ Auto Skills Australia (ASA) ▪ Federation of Automotive Products Manufacturers (FAPM) ▪ Automotive Supplier Excellence Australia (ASEA) ▪ Automotive Manufacturing Transition - Skills & Training Initiative | Retrenched automotive workers from the manufacturing industry and supply chain |
| <ul style="list-style-type: none"> ▪ Hobson Bay and Wyndham City Local Learning Employment Network (LLEN) ▪ Capital City LLEN | School-based learning |

| Identified service providers | Sector |
|--|--|
| <ul style="list-style-type: none"> ▪ Maribyrnong and Moonee Valley LLEN | |
| MEGT VTEC | Vocational Training and Education (VTEC) |
| Programmed Skilled Workforce | Group Training Organisation / Registered Training Organisation |
| Career Trackers (Aboriginal) Victorian universities | Cadets / Interns |
| Victoria Polytechnic, Footscray | TAFE |
| Trusts and Foundations | Philanthropic Sector |
| The Scanlon Foundation | The Scanlon Foundation supports projects that encourage cooperation for mutual benefit that lead to improved social cohesion. |
| The Ian Potter Foundation | The Ian Potter Foundation is a major Australian philanthropic foundation that supports and promotes excellence and innovation. |
| The Myer Foundation | Myer family philanthropy engages with the community to promote a just, creative, enlightened, caring and sustainable Australia. |
| The Australian Multicultural Foundation | AMF aims to cultivate in all Australians a strong commitment to Australia as one people drawn from many cultures and by so doing to advance its social and economic well-being; the promotion of an awareness among the people of Australia of the diversity of cultures within Australia and the contribution of people from all cultures to the development of Australia; and the spread of respect and understanding between all cultural groups through any appropriate means. |
| The RACV Foundation | RACV Community Foundation makes a significant contribution to the social fabric of Victoria. They provide a source of philanthropic funding for Victorian charitable and community organisations in order to enhance quality of life, and to increase mobility in Victorian communities, with a view to enhancing social cohesion, safety, and/or environmental sustainability. |
| SOCIAL Procurement | AREA |
| Social Traders | Australia's leading social enterprise development organisation, they work to break the cycle of disadvantage and build resilience in Australian communities. |
| Social Ventures Australia | Social Ventures Australia works to improve the lives of people in need in Australia. |
| Supply Nation | With a depth of knowledge and experience working with Indigenous businesses and procurement teams from government and corporate Australia, Supply Nation has shaped the Indigenous business sector. |
| Raw Recruitment | Raw recruitment provides equal opportunities for all aboriginal or Torres Strait islander by employing them to the company of their skills. |
| Cleanable | A social enterprise developed by Westgate Community Initiatives Group (WCIG Inc.), committed to providing high quality property maintenance services at competitive rates whilst providing a supportive environment for people re-entering the workforce and living with disability. |
| Asylum Seekers Resource Centre Cleaning | ASRC Cleaning is a social enterprise business that provides commercial and domestic cleaning services to the Melbourne region. All employees are members of the ASRC. When you choose to use ASRC Cleaning, you are helping to support sustainable employment for people seeking asylum. |
| Asylum Seekers Resource Centre Cooking | We are a non-for-profit social enterprise of the Asylum Seeker Resource Centre, who offer global food experiences, with a cause. Their food reflects the rich and diverse cultures of their asylum seeker members, which is expressed in the modern interpretations of classic flavours from Africa, the Middle East and Asia. |

| Identified service providers | Sector |
|------------------------------|---|
| Western Chances | Western Chances has a vision to see young people in Melbourne's western suburbs achieve their full potential. |

APPENDIX C: NOT USED

APPENDIX D: KEY RESPONSIBILITIES OF THE JOBS AND SOCIAL PROCUREMENT TEAM

Jobs & Social Procurement Manager

- Manage and lead team in delivering outcomes and meeting commitments
- Facilitate and manage key internal and external relationships
- Work with Social Ventures Australia to develop Impact Measurement Framework for the West Gate Tunnel
- Manage progress towards KPIs
- Manage mentoring program for project leaders
- Manage relationships with Philanthropic Foundations and not-for-profit groups to deliver agreed initiatives (business incubator and youth scholarships)
- Manage recording and reporting requirements and compliance

Service Provider Network (SPN) Advisor

- Monitor organisations in the SPN and identify gaps in service delivery.
- Work with SPN to identify candidates for employment (Disability, young people, migrants, asylum seekers, mature aged, people with a disability, women, ex automotive industry workers) .
- Monitor service provider's capability to prepare candidates for project work and assist or improve activities where required.
- Liaise with recruiters to identify available positions.
- Assist subcontractors to engage with the SPN to identify suitable targeted jobseekers.
- Maintain records to measure KPIs and prepare reports as required.

Aboriginal Workforce Senior Advisor

- Work with Service Provider Network and local Aboriginal groups to identify candidates for employment.
- Meet identified candidates and engage them in an Individual Needs Assessment, monitor progress towards issues management and when work ready refer to recruitment team.
- Assist in co-ordinating pre-employment programs and provide support to trainees during program delivery.
- Support candidates through the recruitment and on-boarding.
- Monitor workers as they commence onsite and provide support as required.
- Continue to monitor progress, training opportunities and any provide support required to ensure retention.
- Assist subcontractors to identify suitable Aboriginal jobseekers with relevant skills and experience.
- Deliver Aboriginal Cultural Values and Inclusion session at project induction.
- Maintain records to measure KPIs and prepare reports as required.

Disadvantaged Workforce Senior Advisor

- Work with Service Provider Network to identify candidates for employment.
- Implement initiative to engage with and employ asylum seekers.
- Meet identified candidates and engage them in an Individual Needs Assessment, monitor progress towards issues management and when work ready, refer to recruitment team.
- Support candidates through the recruitment and on-boarding.
- Monitor workers as they commence onsite and provide support as required.

- Continue to monitor progress, training opportunities and any provide support required to ensure retention.
- Assist subcontractors to identify suitable disadvantaged jobseekers with relevant skills and experience.
- Promote Women in Construction activities.
- Facilitate youth in detention placements on project.
- Maintain records to measure KPIs and prepare reports as required.

Major Project Skills Guarantee Senior Advisor

- Promote employment and training positions.
- Monitor apprenticeships across project (registration, progress, employment, demobilisation) and maintain records as required.
- Monitor progress on traineeships across project and ensure required reporting in maintained.
- Manage cadetships across projects, including placements, scheduling, rotations.
- Coordinate graduate placements and Aboriginal Interns across project.
- Attend community briefings and information sessions as required.
- Maintain records to meet compliance Major Project Skills Guarantee compliance reporting requirements and other KPIs.
- Receive and collate subcontractor's monthly reports into Major Project Skills Guarantee and other KPIs.
- Prepare reports as required

West Gate Tunnel Employment Centre Co-ordinator:

- First point of contact with local people seeking employment.
- Co-ordinate initial meeting with Aboriginal/Disadvantaged Workforce Senior Advisors.
- Assist disadvantaged jobseekers prepare application forms, obtain necessary documents.
- Maintain confidential records and prepare reports for SPN member organisations as required (government incentives, employment outcomes, retention data).
- Maintain databases and team records.
- Support subcontractors to access SPN services, coordinate interviews.
- Provide administrative support to Jobs and Social Procurement team.

Social Procurement Manager:

- Identify potential social enterprises that have capacity to supply the project.
- Identify potential procurement opportunities that match identified social enterprise's capability.
- Assist procurement team to evaluate potential supply by social enterprise and Aboriginal businesses and engage if possible.
- Identify need to build capability of social enterprises, Aboriginal businesses and local small-scale businesses.
- Manage supplier development program.
- Maintain records to measure KPIs and prepare reports as required.

Social Procurement Senior Advisor:

- Facilitate volunteering and workplace giving initiatives.
- Arrange industry and subcontractor briefings.
- Support suppliers and contractors to engage with social enterprises.
- Coordinate toolbox talks by Traditional Owners.
- Co-ordinate Graffiti Removal Project with local governments.
- Facilitate structured workplace learning placements with LLENs.

Schedule 24 – Rail interface

1. Excluded works

1.1 Scope of excluded works

Without limiting the obligations of Project Co under section 1.2, the following works do not form part of the Rail Interface Works for the purposes of the definition of Rail Interface Works:

- (a) the permanent relocation of parcels 835 and 842 in Figure 2 of Attachment 1 to this Schedule 24 (**V/Line Depot**) outside the South Dynon Area; and
- (b) the permanent relocation of parcels 863, 865, 871, 882, 893 and 901 in Figure 1 of Attachment 1 to this Schedule 24 (**Metro Trains Melbourne's Depot**) outside the South Dynon Area,

(each a **Permanent Relocation**).

Nothing in this section 1.1 limits the obligations of Project Co under clauses 10.7 and 10.12 of this Agreement (including the obligation to fully co-operate with the Interface Parties and to permit the Interface Parties to undertake the Permanent Relocation), and Project Co accepts all risks (and the cost of such risks) in connection with delivering the Project Activities and the Works and is not entitled to make any Claim against the State for any Liabilities incurred by Project Co in connection with a Permanent Relocation.

For the avoidance of doubt, nothing in this section 1.1 limits the obligations of Project Co under the Project Documents in respect of any relocation (permanent or otherwise) of the V/Line Depot or Metro Trains Melbourne's Depot within the South Dynon Area.

For the purposes of this Schedule 24, South Dynon Area means the Categories 1 to 4 Rail Land south of Dynon Road (**South Dynon Area**).

1.2 Minimise impact

Project Co must minimise the extent of the impact of the Works and Project Activities on:

- (a) the V/Line Depot such that permanent relocation of the V/Line Depot outside the South Dynon Area is not required; and
- (b) Metro Trains Melbourne's Depot such that permanent relocation of the Metro Trains Melbourne Depot outside the South Dynon Area is not required,

and must keep the State regularly informed during development of relevant Design Documentation in relation to its compliance with this section 1.2.

2. Rail Interface Parties

2.1 Category 1 Rail Interface Parties

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

- (b) Metro Trains Melbourne Pty Ltd (ABN 43 136 429 948), in its capacity as the franchise operator of the suburban passenger railway network of Melbourne (**Metro Trains Melbourne**);
- (c) V/Line Pty Ltd (ABN 29 087 425 269), in its capacity as lessor of the rural passenger railway network of Victoria (**V/Line**); and
- (d) Australian Rail Track Corporation Ltd (ABN 75 081 455 754), in its capacity as lessor and manager of Victoria's interstate track and related assets.

2.2 Category 2 Rail Interface Parties

- (a) Asciano Services Pty Limited (ABN 48 052 134 362) (formerly known as Pacific National (ACT) Limited), being the lessee for the "Pacific National" land as identified in section 3.2;
- (b) Gemco Rail Pty Ltd (ABN 61 079 764 444); and
- (c) Port Manager (solely in respect of parcel 921).

2.3 Category 3 Rail Interface Parties

- (a) [not disclosed], being the lessee for the "Port Truckie Diner" site (parcel 830);
- (b) The Department of Economic Development, Jobs, Transport and Resources (**DEDJTR**) (parcel 845); and
- (c) Vibrant Investments Pty Ltd (ABN 32 006 183 811), being the lessee for the "Tech Road Hire" site (parcel 877).

2.4 Category 4 Rail Interface Parties

- (a) Victorian Rail Track (ABN 55 047 316 805), trading as VicTrack.

3. Rail Land

3.1 Category 1 Rail Land

The land described in the following table is set out in Figures 2 and 7, as set out in Attachment 1 to this Schedule 24.

| Parcel | Description | Lessee |
|--------|--|--------------------|
| 899 | Overhead structures store. MTM Stores and material laydown. | MTM |
| 803 | V/Line infrastructure lease (with a sublease to ARTC) Dock Rail Link (Port Connection). | ARTC and V/Line |
| 806 | V/Line infrastructure lease (with a sublease to ARTC) for 2 x dual gauge tracks up to the dwarf signal on west side of CityLink. 2 x dual gauge tracks used and managed by ARTC (under an agreement from V/Line) to the dwarf signal on west side of CityLink. Track to east of dwarf signal is used by: | ARTC and V/Line |

| Parcel | Description | Lessee |
|--------|---|--------------------------|
| | <p>1. Link from Port via ID857 (loop line within E-Gate) to broad gauge refuelling at ID833. Used by broad gauge freight operators (Qube, PN, SCT).</p> <p>2. Pacific National make-up and arrive interstate trains in the Melbourne Operations Terminal (ID809) which extends into 806 to east of dwarf signal.</p> <p>3. V/Line and MTM works trains from the stabling yard (ID859) accessing rail network in the west.</p> <p>Arrival and departure of trains and light engines to Appleton Dock.</p> | |
| 807 | Rail freight tracks for the Melbourne Operations Terminal Arrival and departure of trains and light engines to Appleton Dock. | ARTC Pacific National |
| 814 | Car parking associated with V/Line use of Dynon Maintenance shed at ID820. | V/Line |
| 819 | V/Line rail access tracks to the locomotive fuel point at ID833, standard gauge stabling and access to wash Substation 48 extends from south-mid section of polygon into ID815. Pacific National (and others) access for light engines to the standard gauge turntable and standard gauge fuel point. | V/Line |
| 820 | V/Line rail access tracks to the Dynon maintenance shed (e.g. VLOCITY trains), inclusive of Dynon maintenance shed or South Dynon maintenance annex (leased by V/Line). Sand and store road tracks. Westernport & broad gauge infield maintenance of loco | V/Line |
| 823 | Mainline (up to Moonee Ponds Creek) for the Melb-Sydney freight line (Standard gauge). Beyond Moonee Ponds Creek it is a freight shunting track to break up trains and push them back into Pacific National (interstate terminal). Interstate passenger trains. Standard gauge train operations (several operators) | ARTC |
| 831 | Rail siding providing connectivity/turnaround to Dynon Maintenance Area heading east to F-Gate area. Single track to turntable (Track extends to east of F-Gate towards the broad gauge bridge over Moonee Ponds Creek). Connects to ID834. Loco maintenance Holland's Loop and access to broad gauge turntable. Provides access to back of South Dynon Maintenance Centre and Wagon Maintenance Shop. Locomotives use Holland's Loop to access Canal Lead onto the V/Line and ARTC Network to complete gauge transfers (standard to broad and vice versa). | V/Line |
| 833 | Broad gauge fuel point (managed by Bombardier). | V/Line and |

| Parcel | Description | Lessee |
|--------|--|------------|
| | | Bombardier |
| 834 | Rail siding providing connectivity/turnaround to Dynon Maintenance Area heading east to F-Gate area. Connects to ID831. Holland's Loop and access to broad gauge turntable. Provides access to back of South Dynon Maintenance Centre and Wagon Maintenance Shop. Locomotives use Holland's Loop to access Canal Lead onto the V/Line and ARTC Network to complete gauge transfers (standard to broad and vice versa). | V/Line |
| 835 | V/Line network and access storage (plant and response area). | V/Line |
| 836 | Rail siding. Canal Lead bridge over Moonee Ponds Creek. Access required for locomotives to Holland Loop from the Canal Lead onto V/Line and ARTC network. | V/Line |
| 842 | V/Line network and access storage (plant and response area). Is main work area for the Network Maintenance Team - Signalling and Comms and Track and Civil and the Major Maintenance Teams. | V/Line |
| 846 | Diesel storage tanks for locomotive refuelling x 2 tanks. Fuel pipeline is on a raised structure over the road and then runs along the ground in a westerly direction to ID833, ID826 | V/Line |
| 857 | Reversing loop used for locomotive turnaround and heritage train turnaround to ensure seats facing forward. Also used occasionally by the steel train to access the MoT. Access to West Tower from Canal Road to enter into South Dynon Yard. | V/Line |
| 858 | New storage facility used for turnouts and other railway purposes (storage / spoil - possibly used as a laydown as part of the RRL construction). | V/Line |
| 859 | V/Line stabling yards for ballast, engine, locomotives and passenger wagons. Stabling facility required for V/Line (unless Southern Cross can provide stabling area). Short term (until end of [not disclosed]) arrangement with MTM to use 3 tracks. Up and down engine tracks to access fuelling point. Plant train, EM100 | V/Line |
| 866 | Environmental / contaminated water management | V/Line |
| 871 | MTM maintenance facility, plant storage and car parking (current lease ends [not disclosed] and refranchising lease across the entire network is to be renegotiated). Motor fitters: workshop, plant & equipment on south-west end of polygon extending into ID863. | MTM |

| Parcel | Description | Lessee |
|--------|---|----------------|
| | Signals equipment room mid-south of polygon. MTM Stores and material laydown mid to east of polygon. | |
| 873 | Melbourne Sydney freight line and Melbourne Yards (ARTC). Main interstate rail corridor and rail freight operating and shunting areas. | ARTC |
| 879 | V/Line (broad gauge) Passenger and freight shunting tracks from West Tower to V/Line engine tracks to maintenance sheds at ID820 and fuelling at ID833 and train wash. Dudley Street SEQ and switch room. Melbourne to Sydney interstate passenger train line. | V/Line |
| 884 | Rail corridor and Melbourne arrivals sidings (stabling and through traffic) | V/Line |
| 886 | Supporting area for MTM maintenance facility and access to car park. | MTM |
| 890 | V/Line / MTM train light maintenance (window replacement, air conditioning maintenance etc.), wash facility, offices and depot | MTM |
| 891 | V/Line / MTM secure staff car park and pedestrian path to ID890 | MTM |
| 892 | Regional Rail Link overpass (Operating rail areas main line access to networks). V/Line building and security | V/Line |
| 893 | MTM plant, maintenance areas and store (current lease ends [not disclosed] and refranchising lease across the entire network is to be renegotiated). MTM Stores and material laydown. | MTM |
| 894 | V/Line shed. MTM Substation. | V/Line and MTM |
| 895 | Subway tunnel under Dynon Road | MTM |
| 896 | MTM operating tracks. Substation 94 on north-west end of polygon. | MTM |
| 897 | Car park and access to tracks. New signalling equipment room (SEQ) for V-Line | MTM |
| 898 | Yarra Trams maintenance facility (current lease ends [not disclosed] and refranchising lease across the entire network is to be renegotiated). Site includes truck wash that would need to be relocated if impacted. MTM Stores and material laydown. | Yarra Trams |
| 900 | MTM stabling yard | MTM |
| 901 | Occupied by MTM - Stores and material laydown. | MTM |

| Parcel | Description | Lessee |
|--------|--|-------------|
| 902 | Yarra Trams maintenance facility (current lease ends [not disclosed] and refranchising lease across the entire network is to be renegotiated). Yarra Trams track storage area for up to 2000T of rail. This is delivered twice yearly in 1000T deliveries by semi truck. Rail comes in 18m lengths and is lifted with a crane on the back of the truck. Needs access to rail bending facility (parcel 862). | Yarra Trams |
| 939 | Storage | V/Line |
| _824A | Shared Use Path construction Newport Rail Line (at West Gate Freeway) | V/Line |
| _824B | Newport Rail Line (at West Gate Freeway) | ARTC |
| _825 | Shared Use Path construction Newport Rail Line (at West Gate Freeway) | V/Line |
| _395 | Construction of Hyde Street Ramps - installation of beams across rail line Werribee Line (At West Gate Freeway) | MTM |

3.2 Category 2 Rail Land

The land described in the following table is set out in Figure 3, as set out in Attachment 1 to this Schedule 24.

| Parcel | Description | Lessee |
|--------|--|------------------|
| 809 | Melbourne Operations Terminal - Standard Gauge sidings used for arriving and making-up interstate freight trains (Pacific National). These can extend to 1700m in length. This parcel also includes the wagon maintenance shed at western end which is [not disclosed]% standard gauge wagon maintenance, [not disclosed]% broad gauge wagon maintenance. Melbourne Operations Terminal (MOT) yard. Arrival, Departure and Marshalling of Intermodal Steel Trains and Access to the Melbourne Wagon Shop. Wagon storage for Standard Gauge Services. | Pacific National |
| 810 | ANNEX AIS Stores for heavy wagon components. These vary in size and are moved using 1 of the 2 forklifts onsite. Also includes offices for 3 staff. Requires semi trailer access, and road access to the Wagon Maintenance Shop (western end of Parcel 809) | Pacific National |
| 815 | South Dynon Maintenance lease to Pacific National, with sub-lease to EDI / Bombardier locomotive maintenance. | Pacific National |

| Parcel | Description | Lessee |
|--------|---|-------------------|
| | Pacific National surrendering lease to VicTrack. Substation 48 on north side of polygon and extends into ID820 | |
| 822 | Leased to Pacific National | Pacific National |
| 826 | Gemco Rail locomotive maintenance Tracks at eastern end are shown on Gemco lease, but are operated by VicTrack as open access tracks | Gemco Rail |
| 827 | Railway purposes (storage).Stores for heavy wagon components and recovery trucks. | Pacific National |
| 838 | Pacific National freight terminal Pacific National advise they will surrender this lease on [not disclosed], however VicTrack advise that hand back has not been finalised. Operations staff will still require access. | Pacific National |
| 840 | Storage Shed | Gemco Rail |
| 843 | Open air storage area with security fence. Provides pedestrian access to Gemco Shed on parcel 840. | Gemco Rail |
| 847 | Sheds and portable office buildings (poor condition) Pacific National advised they were intending to surrender this lease on [not disclosed], not yet surrendered to VicTrack. Operations staff will still require access. | Pacific National |
| 860 | Area under CityLink used as a laydown area. Tracks access the Pacific National South Dynon (Melbourne) Freight Terminal - MFT. Freight train operations within the Container Terminal and through movements over to the main SG line and eastward on the extended shunting tracks. Also see ID824. | Pacific National |
| 870 | Pacific National laydown area used for storage of heavy wagon components. Pacific National currently reviewing lease requirement. | Pacific National |
| 921 | Port of Melbourne Corporation rail access tracks leased from VicTrack and managed by ARTC | Port of Melbourne |
| 927 | Pacific National surrendering lease to VicTrack. South Dynon Maintenance Shed access. Pacific National advised they surrendered lease on [not disclosed]. | Pacific National |
| 930 | Railway Purposes. Part of Pacific National lease for maintenance facility to east on ID927/ 915. | Pacific National |

3.3 Category 3 Rail Land

The land described in the following table is set out in Figure 4, as set out in Attachment 1 to this Schedule 24.

| Parcel | Description | Lessee |
|--------|---|--------------------|
| 830 | Truck stop diner building. Prior to using for construction purposes, the diner building will need to be relocated by Project Co within the rail precinct. The relocated diner building must be relocated simultaneously with, and adjacent to, the relocated truck parking referred to at parcels 821 and 829 to the satisfaction of VicTrack and VicRoads. | Port Truckie Diner |
| 845 | Shed used for storage of geotech cores. | DEDJTR |
| 877 | Traffic management equipment (hire and sales) | TechRoads |

3.4 Category 4 Rail Land

The land described in the following table is set out in Figures 5 and 8, as set out in Attachment 1 to this Schedule 24.

| Parcel | Description |
|--------|--|
| 800 | Licensed to Port of Melbourne as part of the lease for Parcel 921 Dock Rail Link (rail corridor access to the Port of Melbourne). Port of Melbourne has operational management agreement with ARTC |
| 801 | Vacant |
| 802 | Vacant |
| 804 | Vacant |
| 805 | Road access to leased and vacant areas. Incorporated with Viva Energy lease of ID 802 |
| 808 | Vacant |
| 811 | Vacant |
| 813 | VicTrack common user tracks throughout South Dynon, including the broad gauge and standard gauge turntables, and rail access to leases (equivalent to common user roadway to tenancies) Standard gauge fuel roads. |
| 816 | Vacant |
| 817 | Vacant (former driver training facility and car parking area) |

| Parcel | Description |
|--------|--|
| 818 | Vacant |
| 821 | Truck stop diner parking. Prior to using for construction purposes, provision for truck parking will need to be relocated by Project Co within the rail precinct. The relocated truck parking must be relocated simultaneously with, and adjacent to, the relocated diner building referred to at parcel 830 to the satisfaction of VicTrack and VicRoads. |
| 828 | Vehicle access to MOT, South Dynon & Wagon Maintenance Shop (incl annexe). Vehicle access required to operating areas for light vehicles up to B-Doubles to deliver wagon componentry and fuel to the fuel points |
| 829 | Truck stop diner parking. Prior to using for construction purposes, provision for truck parking will need to be relocated by Project Co within the rail precinct. The relocated truck parking must be relocated simultaneously with, and adjacent to, the relocated diner building referred to at parcel 830 to the satisfaction of VicTrack and VicRoads. |
| 832 | Vacant |
| 837 | Banks of Moonee Ponds Creek |
| 839 | Shed (vacant) |
| 848 | Banks of Moonee Ponds Creek (bike tracks and beautifications area) |
| 849 | Shed (vacant) |
| 850 | Banks of Moonee Ponds Creek (bike tracks and beautifications area) |
| 851 | VicTrack car parking used by Gemco and V/Line. Gemco and V/Line have expressed the need for this car parking. |
| 852 | Road (access to V/Line/MTM secure staff car park (ID891), Tech Road (ID877) and MTM / Yarra Trams maintenance facility's (ID862/ 863/ 865/ 869/ 871/ 882/ 893/ 898/ 902)) |
| 853 | Railway purposes (storage / spoil - possibly used as a laydown as part of the RRL construction) |
| 855 | Road (access to V/Line/MTM secure staff car park (ID891), Tech Road (ID877) and MTM / Yarra Trams maintenance facility's (ID862/ 863/ 865/ 869/ 871/ 882/ 893/ 898/ 902)) Substation 41 on green island in-between access, adjacent to west-south face of ID863 and west face of ID865. |
| 861 | Access to MTM and Yarra Trams maintenance/ depot facilities |
| 864 | Banks of Moonee Ponds Creek |
| 867 | Vacant ARTC Signalling equipment (signal 210) |

| Parcel | Description |
|---|---|
| 872 | Access throughout northern part of E-Gate area. Extends across Moonee Ponds Creek bridge on south side. |
| 874 | Banks of Moonee Ponds Creek (bike tracks and beautifications area) |
| 875 | Banks of Moonee Ponds Creek. Under the RRL project ID 875/881 & 885 were future proofed as an additional rail bridge into the Freightlink track ID883 giving the capability to Marshall 1800m trains within the confines of the MFT and not impact the mainline. |
| 880 | Road (access to V/Line/MTM secure staff car park (ID891), Tech Road (ID877) and MTM / Yarra Trams maintenance facility's (ID862/ 863/ 865/ 869/ 871/ 882/ 893/ 898/ 902)) New signalling equipment room for V/Line |
| 881 | Banks of Moonee Ponds Creek (bike tracks and beautifications area) |
| 883 | Vacant |
| 885 | Electricity kiosk. |
| 887 | Road (access to V/Line/MTM offices, stabling yard, maintenance area and emergency access to metropolitan rail network") |
| 923 | Vacant |
| 925 | Vacant. Former rail spur to Port of Melbourne. Dock Rail Link. |
| 926.1 926.2 | Land adjacent to North edge of Melbourne Market. |
| 933 | Eastern end of former Melbourne market site and buildings |
| 934A | Part of former Melbourne market site |
| 934B | Part of former Melbourne market site |
| 856* | Vacant (former Pacific National freight terminal) Access to parcel 856 is conditional upon ensuring access at all times for VicTrack, the State and relevant accredited rail operators through this parcel of land from Footscray Road (at the intersection opposite Waterfront Way) for bus access to VicTrack's car park area on Dudley Street adjacent to parcel 856 or provide an alternative access to the satisfaction of VicTrack, the State and accredited rail operators. |
| 619.1* (shown as 619 & 619.EA1 on the LAP) | Portion of Moonee Ponds Creek |

| Parcel | Description |
|---|-------------------------------|
| 619.3* (shown as _813 and 619.EA1 on the LAP) | Portion of Moonee Ponds Creek |
| 619.4* (shown as _814 on LAP) | Portion of Moonee Ponds Creek |

*Land also identified on the West Gate Tunnel Project Land Availability Plans.

| Add'l CPBJH Parcel I.D. | Description | Location |
|-------------------------------|---|-------------------------|
| _1000 | North Dynon Terminal freight sidings common rail. | North Dynon Terminal |

4. Rail Projects Agreements and Interstate Infrastructure Lease excluded clauses

4.1 Definitions

Terms used in this section 4 of Schedule 24 that are capitalised but not defined in this Agreement shall have the same meaning as in the relevant Rail Projects Agreement or Interstate Infrastructure Lease (as applicable).

Clause references are to clauses of the relevant Rail Projects Agreements or Interstate Infrastructure Lease (as applicable).

4.2 Franchise Agreement - Train Projects Module

| Clause | Extent of the parties' responsibility for clause specified |
|------------------------------------|--|
| 3.6 (Reimbursement of costs) | The State will be responsible for complying with all of its obligations under this clause, except that Project Co will be responsible for reimbursing the Franchisee for all Direct Costs incurred by the Franchisee and the Franchisee's Project Margin on the Direct Costs in performing its obligations under clause 3 in respect of the Proposed Project or State Project that is the subject of the Rail Interface Works. |
| 4 (Governance) | The State will be responsible for complying with all of its obligations under this clause, except that Project Co must use reasonable endeavours to provide all assistance and cooperation reasonably requested by the State in performing its obligations under clause 4 and upon request by the State |

| Clause | Extent of the parties' responsibility for clause specified |
|--|---|
| | must attend any meeting of the Project Steering Committee relevant to the Rail Interface Works and join the Project Delivery Group to the extent relevant to the Proposed Project or the State Project the subject of the Rail Interface Works. |
| 6 (Network development and project identification) | The State will be responsible for complying with all of its obligations under this clause. |
| 7 (Preliminary obligations for Proposed Projects) | The State will be responsible for complying with all of its obligations under this clause, except clause 7.8 - Project Co will be responsible for the reimbursement of all Direct Costs incurred by the Franchisee in performing its obligations under clause 8 in respect of the Proposed Project the subject of the Rail Interface Works. |
| 8 (Proposed Project managed by PTV) | The State will be responsible for complying with all of its obligations under this clause. |
| 9 (Proposed Project managed by Franchisee) | The State will be responsible for complying with all of its obligations under this clause. |
| 10 (Delivery Model) | The State will be responsible for complying with all of its obligations under this clause. |
| 11.3 (State Projects - Each party to appoint a representative) | The State will be entitled to appoint the Western Distributor Authority as representative under clause 11.3, but Project Co may be appointed as PTV's Project Manager for the purposes of clauses 11.2 and 11.4 in respect of the State Project the subject of the Rail Interface Works. |
| 13.18 (Amendments to Infrastructure Module) | The State will be responsible for complying with all of its obligations under this clause. |
| 13.19 (Amendments to OCMS Module) | The State will be responsible for complying with all of its obligations under this clause. |
| 13.20 (Amendments to Rolling Stock Module) | The State will be responsible for complying with all of its obligations under this clause. |
| 14.3 (Adjustment to Franchise Payments) | The State will be responsible for complying with the obligations under this clause including the payment of the Franchise Payments, except Project Co must provide all documents, assistance and cooperation reasonably requested by the State to assist the State to determine the adjustment to the Franchise Payments. |

| Clause | Extent of the parties' responsibility for clause specified |
|---|--|
| 15 (EOPR Arrangements for State Projects) | The State will be responsible for complying with all of its obligations under this clause. |
| 26.2 (Stakeholder Approvals - Reimbursement of costs) | Project Co will be responsible for reimbursing the Franchisee for all Direct Costs incurred by the Franchisee and the Franchisee's Project Margin on the Direct Costs in performing its obligations under clause 26.1 in respect of the Proposed Project or the State Project the subject of the Rail Interface Works. |
| 28 (Payment) | The State will be responsible for all obligations under clause 28 except that Project Co will be responsible for any obligation relating to payment of Direct Costs and the Franchisee's Project Margin on the Direct Costs (including any GST under the Franchise Agreement) in performing the Franchisee's obligations under the Rail Project Agreement, or performing the Franchisee's Role, to the extent the invoice relates to costs incurred in respect of the Proposed Project or State Project the subject of the Rail Interface Works. |

4.3 Franchise Agreement - Tram Projects Module

| Clause | Extent of the parties' responsibility for clause specified |
|--|---|
| 3.6 (Reimbursement of costs) | The State will be responsible for complying with all of its obligations under this clause, except that Project Co will be responsible for reimbursing the Franchisee for all Direct Costs incurred by the Franchisee and the Franchisee's Project Margin on the Direct Costs in performing its obligations under clause 3 in respect of the Proposed Project or the State Project that is the subject of the Rail Interface Works. |
| 4 (Governance) | The State will be responsible for complying with all of its obligations under this clause, except that Project Co must use reasonable endeavours to provide all assistance and cooperation reasonably requested by the State in performing its obligations under clause 4 and upon request by the State must attend any meeting of the Project Steering Committee relevant to the Rail Interface Works and join the Project Delivery Group to the extent relevant to the Proposed Project or the State Project that is the subject of the Rail Interface Works. |
| 6 (Network development and project identification) | The State will be responsible for complying with all of its obligations under this clause. |
| 7 (Preliminary obligations for Proposed Projects) | The State will be responsible for complying with all of its obligations under this clause except clause 7.8 - Project Co will be responsible for the reimbursement of all Direct Costs incurred by the Franchisee in performing its obligations under clause 8 in respect of the Proposed Project the subject of the Rail Interface Works. |

| Clause | Extent of the parties' responsibility for clause specified |
|---|---|
| 8 (Proposed Project managed by PTV) | The State will be responsible for complying with all of its obligations under this clause. |
| 9 (Proposed Project managed by Franchisee) | The State will be responsible for complying with all of its obligations under this clause. |
| 10 (Delivery Model) | The State will be responsible for complying with all of its obligations under this clause. |
| 11.3 (Each party to appoint arepresentative) | The State will be entitled to appoint the Western Distributor Authority as representative under clause 11.3, but Project Co may be appointed as PTV's Project Manager for the purposes of clauses 11.2 and 11.4 in respect of the State Project the subject of the Rail Interface Works. |
| 13.18 (Amendments to Infrastructure Module) | The State will be responsible for complying with all of its obligations under this clause. |
| 13.20 (Amendments to Rolling Stock Module) | The State will be responsible for complying with all of its obligations under this clause. |
| 13.19 (Amendments to OCMS Module) | The State will be responsible for complying with all of its obligations under this clause. |
| 14.3 (Adjustment to Franchise Payments) | The State will be responsible for complying with the obligations under this clause including the payment of the Franchise Payments, except Project Co must provide all documents, assistance and cooperation reasonably requested by the State to assist the State to determine the adjustment to the Franchise Payments. |
| 15 (EOPR Arrangements for State Projects) | The State will be responsible for complying with all of its obligations under this clause. |
| 26.2 (Stakeholder Approvals - Reimbursement of costs) | Project Co will be responsible for reimbursing the Franchisee for all Direct Costs incurred by the Franchisee and the Franchisee's Project Margin on the Direct Costs in performing its obligations under clause 26.1 in respect the State Project the subject of the Rail Interface Works. |
| 28 (Payment) | The State will be responsible for all obligations under clause 28 except that Project Co will be responsible for any obligation relating to payment of Direct Costs and the Franchisee's Projects Margin on the Direct Costs (including any GST under the Franchise Agreement) in performing the Franchisee's obligations under the Rail Project Agreement, or performing |

| Clause | Extent of the parties' responsibility for clause specified |
|--------|---|
| | the Franchisee's Role, to the extent the invoice relates to costs incurred in respect of the Proposed Project or State Project the subject of the Rail Interface Works. |

4.4 Projects Agreement – V/Line

| Clause | Extent of the parties' responsibility for clause specified |
|--|---|
| 3.6 (Reimbursement of costs) | The State will be responsible for complying with all of its obligations under this clause, except that Project Co will be responsible for reimbursing the Services Provider for all Direct Costs incurred by the Services Provider and the Services Provider's Margin on the Direct Costs in performing its obligations under clause 3 in respect of the Proposed Project or State Project that is the subject of the Rail Interface Works. |
| 4 (Governance) | The State will be responsible for complying with all of its obligations under this clause, except that Project Co must use reasonable endeavours to provide all assistance and cooperation reasonably requested by the State in performing its obligations under clause 4 and upon request by the State must attend any meeting of the Project Steering Committee relevant to the Rail Interface Works and join the Project Delivery Group to the extent relevant to the Proposed Project or the State Project the subject of the Rail Interface Works. |
| 6 (Network development and project identification) | The State will be responsible for complying with all of its obligations under this clause. |
| 7 (Preliminary obligations for Proposed Projects) | The State will be responsible for complying with all of its obligations under this clause except clause 7.8 - Project Co will be responsible for the reimbursement of all Direct Costs incurred by the Services Provider in performing its obligations under clause 8 in respect of the Proposed Project the subject of the Rail Interface Works. |
| 8 (Proposed Project managed by PTV) | The State will be responsible for complying with all of its obligations under this clause. |
| 9 (Proposed Project managed by Services Provider) | The State will be responsible for complying with all of its obligations under this clause. |
| 10 (Delivery Model) | The State will be responsible for complying with all of its obligations under this clause. |
| 11.3 (Preliminary obligations for | The State will be entitled to appoint the Western Distributor Authority as Representative under clause 11.3, but Project Co may be appointed as PTV's Project Manager for the purposes of clauses 11.2 and 11.4 in |

| Clause | Extent of the parties' responsibility for clause specified |
|--|---|
| State Projects - Each party to appoint a Representative) | respect of the State Project the subject of the Rail Interface Works. |
| 13.18 (Amendments to Infrastructure Lease) | The State will be responsible for complying with all of its obligations under this clause. |
| 13.19 (Amendments to a State Rolling Stock Lease) | The State will be responsible for complying with all of its obligations under this clause. |
| 14.3 (Payment for performance of Services Provider Role - Adjustment to Fixed Monthly Services Sums) | The State will be responsible for complying with the obligations under this clause including the payment of the Fixed Monthly Services Sums, except Project Co must provide all documents, assistance and cooperation reasonably requested by the State to assist the State to determine the adjustment to the Fixed Monthly Services Sums. |
| Part 4 (clauses 15 - 18) (Services Provider Projects) | The State will be responsible for complying with all of its obligations under this clause. |
| Part 5 (clauses 19-22) (Third Party Projects) | The State will be responsible for complying with all of its obligations under this clause. |
| 23.2 (Stakeholder Approvals - Reimbursement of costs) | Project Co will be responsible for reimbursing the Services Provider for all Direct Costs incurred by the Services Provider and the Services Provider's Margin on the Direct Costs in performing its obligations under clause 23.1 in respect of the Proposed Project or State Project the subject of the Rail Interface Works. |
| 25 (Intellectual Property) | The State will be responsible for complying with all of its obligations under this clause. |
| 26 (Payment) | The State will be responsible for all obligations under clause 26 except that Project Co will be responsible for any obligation relating to payment of Direct Costs and the Services Provider's Margin on the Direct Costs (including any GST under clause 26.3) in performing the Services Provider's obligations under the Rail Project Agreement, or performing the Services Provider's Role, to the extent the invoice relates to costs incurred in respect of the Proposed Project or State Project the subject of the Rail Interface Works. |
| 34 (Termination) | The State will be responsible for complying with all of its obligations under this clause. |

| Clause | Extent of the parties' responsibility for clause specified |
|---|--|
| 35.1 (Confidentiality and Privacy - General) | The State will be responsible for complying with all of its obligations under this clause. |

4.5 Interstate Infrastructure Lease

| Clause | Extent of the parties' responsibility for clause specified |
|---|--|
| 5 ([Redacted - Confidential]) | The State will be responsible for complying with all of its obligations under this clause. |
| 7 (Project planning for Proposed Rail Projects) | <p>The State will be responsible for complying with all of its obligations under this clause except:</p> <ul style="list-style-type: none"> clause 7.2 - Project Co will be responsible for reimbursing ARTC for all reasonable and demonstrable Direct Costs incurred by ARTC in performing its obligations under clause 7.2 in respect of any proposals and strategies put forward by or on behalf of the State that is the subject of the Rail Interface Works; and clause 7.4(f) - Project Co will be responsible for reimbursing ARTC for all reasonable and demonstrable Direct Costs incurred by ARTC in meeting its obligations under clause 7.4 in respect of the Proposed Rail Project the subject of the Rail Interface Works. |
| 8 (Minimum Role in delivery of State Rail Projects) | <p>The State will be responsible for complying with all of its obligations under this clause except:</p> <ul style="list-style-type: none"> without limiting Project Co's obligations in relation to clauses 8.2(b), 8.9 and 8.10 as set out below, Project Co must use reasonable endeavours to provide all assistance and cooperation reasonably requested by the State in performing its obligations under clause 8; clause 8.2(b) - Project Co will be responsible for remunerating ARTC for performing a role in the delivery of the State Rail Project over and above the Minimum Role in respect of the State Rail Project the subject of the Rail Interface Works; clause 8.9 - Project Co will be responsible for reimbursing ARTC for all reasonable and demonstrable Direct Costs incurred by ARTC in performing the Minimum Role which are directly attributable to ARTC's performance of the Minimum Role relating to obligations arising in respect of the State Rail Project the subject of the Rail Interface Works; and clause 8.10 - Project Co will be responsible for compensating ARTC for all loss suffered by ARTC as a result of any disruption to ARTC's Rail Operations in accordance with clause 8.10 arising in respect of the State Rail Project the subject of the Rail Interface Works, but only to the extent those losses |

| Clause | Extent of the parties' responsibility for clause specified |
|--|---|
| | arise from the provision of access to Project Co for the purposes of the Project Activities. |
| 9 (Road Projects) | The State will be responsible for complying with all of its obligations under this clause. |
| 12 - 15 (General Maintenance and Renewal Obligations; Specific Maintenance and Renewal Obligations; Asset Management Plan and Annual Works Plan; Key Performance Indicators) | <p>The State will be responsible for complying with all of its obligations under this clause, except:</p> <ul style="list-style-type: none"> • clause 12.5 - Project Co must, upon request by the State, attend any meeting under clause 12.5 relevant to the Rail Interface Works; and • Project Co must use reasonable endeavours to provide all assistance and cooperation reasonably requested by the State in performing its obligations under clauses 12 to 15. |
| 23 (Access) | The State will be responsible for complying with all of its obligations under this clause. |
| 24 (Environmental Obligations) | The State will be responsible for complying with all of its obligations under this clause, except Project Co will be responsible for complying with clause 24.1(d). |
| 26 (Rates, taxes and charges), | The State will be responsible for complying with all of its obligations under this clause. |
| 28 (Intellectual Property) | The State will be responsible for complying with all of its obligations under this clause. |
| 32-34 (Default; Disengagement; Obligations on Expiration or Termination) | The State will be responsible for complying with all of its obligations under this clause. |

5. Principles of Direct Interface Agreements with Category 2 Rail Interface Parties

5.1 Responsibility for costs

The Direct Interface Agreements with the Category 2 Rail Interface Parties are to be consistent with the following principles in relation to responsibility for the Category 2 Rail Interface Parties' costs:

- (a) subject to paragraph 5.1(b), the D&C Subcontractor will be responsible for reimbursing the Category 2 Rail Interface Party for all costs and expenses as agreed with the Category 2 Rail Interface Party, including:

- (i) any direct costs incurred by the Category 2 Rail Interface Party and the Category 2 Rail Interface Party's margin on the direct costs arising in respect of the Rail Interface Works, including any:
 - A. planning, project management and project coordination costs; and
 - B. design review costs;
 - (ii) any costs incurred by the Category 2 Rail Interface Party in relation to the carrying out of the D&C Activities or in relation to any breach by the D&C Subcontractor of any D&C Project Document or any other wrongful act or omission of the D&C Subcontractor; and
 - (iii) costs, financial loss or damages suffered by the Category 2 Rail Interface Party as a result of the carrying out of the Rail Interface Works; and
- (b) the D&C Subcontractor will not be responsible for any additional costs incurred by the Category 2 Rail Interface Party following completion of the relevant Rail Interface Works in accordance with the D&C Subcontract that are associated with the permanent impact of the Relevant Infrastructure, including:
- (i) additional costs associated with the Relevant Infrastructure being located on the relevant Category 2 Rail Interface Party's land;
 - (ii) changes to amounts payable under the relevant Category 2 Lease;
 - (iii) costs associated with facilitating any changes to the areas subject to the relevant Category 2 Lease; and
 - (iv) any revenue impacts or increases in net costs associated with the long-term impact of the Project,

except to the extent that any such costs arise as a result of a breach by the D&C Subcontractor of any D&C Project Document or any other wrongful act or omission of the D&C Subcontractor.

6. Category 4 Rail Interface Parties

Project Co will be responsible for such costs and expenses incurred by the Category 4 Rail Interface Party arising in respect of the Rail Interface Works in accordance with the WGT Rail Licence.

West Gate Tunnel
Project Agreement
Schedule 24 - Rail interface

Attachment 1 - Rail Land plans

West Gate Tunnel
Project Agreement

Schedule 25 - Draft form of WGT-OSARs Interface Agreement

[Not disclosed]

Schedule 26 - Principal Road Interfaces

- (i) Princes Freeway (Kororoit Creek Road to west of M80);
 - (ii) M80 Ring Road (Boundary Road to Princes/West Gate Freeway);
 - (iii) Grieve Parade (between Dohertys Rd and Geelong Rd);
 - (iv) Millers Road (between Blackshaws Rd and Geelong Rd);
 - (v) Williamstown Road (between Hudsons Rd and Francis St);
 - (vi) Hyde Street (between Simcock Avenue and Francis St);
 - (vii) Footscray Road (between CityLink Northbound entry ramps and Dudley Street);
 - (viii) Wurundjeri Way / Wurundjeri Way Extension (between Bourke St and the WGT connection);
 - (ix) Dynon Road (between the WGT connection and Dryburgh Street); and
 - (x) on and from expiry or termination of the CityLink Concession Deed, CityLink (between West Gate Freeway and Racecourse Road).
-

Schedule 27 - Not used

Schedule 28 - Toll Calculation Schedule

1. Definitions and Interpretation

1.1 Definitions

Bus is a Motor Vehicle having more than 12 seating positions (including that of the driver).

Car is a Motor Vehicle, other than a Motor Cycle, a Light Commercial Vehicle, a Heavy Commercial Vehicle or a High Productivity Freight Vehicle, even if such a Motor Vehicle is towing a trailer or caravan.

City Access means the eastbound lanes of the Freeway east of:

- (a) Appleton Dock Road; and
- (b) the City Link exit,

including the Footscray Road, Dynon Road and Wurundjeri Way exit ramps.

City Link Tollable Section means a Tollable Section under and as defined in the City Link Toll Calculation Schedule.

City Link Toll Calculation Schedule means Schedule 4 to IFA (as defined in the CityLink Concession Deed) or, if the IFA (as defined in the CityLink Concession Deed) is terminated, Schedule 3 of the CityLink Concession Deed.

Charge Toll for a Tollable Section, a quarter and a category of Vehicle is the amount set as such in relation to that Tollable Section, that quarter and that category of Vehicle under clause 3.1 of this Schedule.

Exempt Vehicle is:

- (a) a police vehicle;
- (b) an ambulance;
- (c) a fire service unit;
- (d) a State Emergency Service vehicle;
- (e) a vehicle of the Australian Defence Force, conveying any of its members or property while on march or duty; or
- (f) a vehicle being utilised in the performance of emergency services under authority of a statute or the State.

Heavy Commercial Vehicle or **HCV** is:

- (a) a rigid Truck with three or more axles;
- (b) an articulated Truck;
- (c) a Bus; or

(d) a two axle rigid Truck having a gross vehicle mass which exceeds 4.5 tonnes, but does not include a High Productivity Freight Vehicle.

High Productivity Freight Vehicle or HPFV is:

- (a) a rigid Truck with three or more axles;
- (b) an articulated Truck;
- (c) a Bus; or
- (d) a two axle rigid Truck having a gross vehicle mass which exceeds 4.5 tonnes, which has a total length equal to or greater than 26 metres.

Light Commercial Vehicle is a two axle rigid Truck having a gross vehicle mass which exceeds 1.5 tonnes, but does not exceed 4.5 tonnes.

Link has the meaning given in the CityLink Concession Deed.

Maximum Charge Toll for a WGT/CityLink Trip, a quarter and a HCV or HPFV is the amount set as such in relation to that quarter and that category of Vehicle under clause 3.2 of this Schedule.

Maximum Theoretical Toll for a WGT/CityLink Trip, a HCV or HPFV and a particular quarter is the amount calculated in relation to that category and that quarter under clauses 2.1(b), 2.4 and 2.5 of this Schedule.

Motor Cycle is a two wheeled Motor Vehicle (and includes such a Motor Vehicle even if it has a trailer, fore car or side car attached).

Motor Vehicle is a vehicle which is used or intended to be used on a highway or in a public place and which has its own motive power (other than human or animal power) but does not include:

- (a) a vehicle intended to be used on a railway or tramway; or
- (b) a motorised wheel chair capable of a speed of not more than 10 kilometres per hour which is used solely for the conveyance of an injured or disabled person.

Theoretical Toll for a Tollable Section, a category of Vehicle and a particular quarter is the amount calculated in relation to that Tollable Section, that category of Vehicle and that quarter in accordance with clauses 2.1, 2.2, 2.3 and 2.5 of this Schedule.

Tollable Section is a part of the Freeway described in the table set out in clause 2.1(a) of this Schedule.

Trip is the passage of a Vehicle on one or more Tollable Sections uninterrupted by exit and subsequent re-entry.

Truck is a Motor Vehicle other than a Bus which has a cab-chassis construction and a gross vehicle mass which exceeds 1.5 tonnes.

Vehicle is a Motor Vehicle constituted by a Motor Cycle, Car, Light Commercial Vehicle, Heavy Commercial Vehicle or High Productivity Freight Vehicle.

West Gate Freeway Section means the Freeway between Millers Road and Williamstown Road;

West Gate Tunnel means that part of the Freeway comprising generally of the eastbound tunnel section between the southern portal near Williamstown Road and the northern portal location West of Maribyrnong River and the westbound tunnel section between the northern portal located West of Maribyrnong River and the southern portal located west of Newport to the Sunshine Freight Rail line.

WGT/CityLink Trip is, the passage of a Heavy Commercial Vehicle or a High Productivity Freight Vehicle on both one or more City Link Tollable Sections (which would constitute a "Trip" under the CityLink Toll Calculation Schedule) and one or more Tollable Sections on the Freeway:

- (a) uninterrupted by exit and subsequent re-entry; or
- (b) if so interrupted, the interruption consists only of travel directly between the West Gate Freeway between Williamstown Road / Melbourne Road (including West Gate Bridge) and Southern Link and Western Link (each as defined in the CityLink Concession Deed),

which occurs where there has not been a termination of the CityLink Concession Deed or an expiry of the Concession Period (as defined in the CityLink Concession Deed).

1.2 GST

- (a) All amounts referred to in this Schedule are inclusive of GST.
- (b) If the GST rate (in this clause, the "new GST rate") which applies or is imposed by the GST law on taxable supplies made by Project Co in the quarter in respect of which a Charge Toll, Maximum Charge toll, WGT Day Toll or WGT / CityLink Day Toll being set under this Schedule (in this clause, the "relevant quarter") differs from the GST rate (in this clause, the "old GST rate") which applied or was imposed by the GST law on taxable supplies made by Project Co in the quarter preceding the commencement of the relevant quarter (in this clause, the "previous quarter"), then:
 - (i) the Theoretical Toll calculated in accordance with clause 2.2; and
 - (ii) the Maximum Theoretical Toll (as calculated in accordance with clause 2.4);
 - (iii) the WGT Day Toll calculated in accordance with clause 5(b); and
 - (iv) WGT/CityLink Day Toll (as calculated in accordance with clause 5(d),

for the relevant quarter will be adjusted by a fraction comprising of the numerator equal to the sum of the new GST rate (expressed as a decimal number) and one and the denominator equal to the sum of the old GST rate (expressed as a decimal number) and one.

2. Theoretical Tolls

2.1 Initial Theoretical Tolls and Maximum Theoretical Tolls

- (a) The Theoretical Toll for Cars, Heavy Commercial Vehicles and High Productivity Freight Vehicles for a Tollable Section for the quarter ending 31 March 2015 is the amount specified below in relation to the Tollable Section.

| Tollable Section | \$/Car | \$/HCV 6am-8pm | \$/HCV 8pm-6pm | \$/HPFV 6am-8pm | \$/HPFV 8pm-6am |
|--|--------|-------------------|-------------------|--------------------|--------------------|
| West Gate Freeway Section | \$0 | \$13.30 | \$8.87 | \$19.95 | \$13.30 |
| That part of the Freeway comprising the Hyde Street entry and exit ramps east of Williamstown Road | \$2.75 | \$0 | \$0 | \$0 | \$0 |
| West Gate Tunnels (either direction) | \$2.75 | \$0 | \$0 | \$0 | \$0 |
| Where exiting the City Access, between 7am and 9am on a weekday | \$4.40 | \$0 | \$0 | \$0 | \$0 |

- (b) The Maximum Theoretical Toll for a WGT/CityLink Trip for the quarter ending 31 March 2015 is, in relation to:
- (i) Heavy Commercial Vehicles the passage of which on the last Tollable Section or City Link Tollable Section comprising the WGT/CityLink Trip before exiting the Freeway or the Link occurs between 6.00 am and 8.00 pm, \$24.75;
 - (ii) Heavy Commercial Vehicles the passage of which on the last Tollable Section or City Link Tollable Section comprising the WGT/CityLink Trip before exiting the Freeway or the Link occurs between 8.00 pm and 6.00 am, \$16.50;
 - (iii) High Productivity Freight Vehicles the passage of which on the last Tollable Section or City Link Tollable Section comprising the WGT/CityLink Trip before exiting the Freeway or the Link occurs between 6.00 pm and 8.00 am, \$37.13; and
 - (iv) High Productivity Freight Vehicles the passage of which on the last Tollable Section or City Link Tollable Section comprising the WGT/CityLink Trip before exiting the Freeway or the Link occurs between 8.00 pm and 6.00 am, \$24.75.

2.2 Escalation of Theoretical Tolls

The Theoretical Toll for Cars, Heavy Commercial Vehicles or High Productivity Freight Vehicles for a Tollable Section for a quarter subsequent to the quarter ending 31 March 2015 is calculated in accordance with the following formula:

$$\text{Theoretical Toll}_{t+1} = \text{Theoretical Toll}_t \times \text{Index}_t$$

where:

Theoretical Toll_{t+1} is the Theoretical Toll for the Tollable Section to apply to Cars, Heavy Commercial Vehicles or High Productivity Freight Vehicles in the relevant quarter

Theoretical Toll_t is the Theoretical Toll for the Tollable Section which applies to Cars, Heavy Commercial Vehicles or High Productivity Freight Vehicles in the quarter preceding the relevant quarter

Index_t is:

- (a) for a quarter ending on or before 30 September 2016, the greater of:
 - (i) the most recently available CPI during the quarter preceding commencement of the relevant quarter (CPI_{t-1}) divided by CPI for the quarter preceding the quarter for which the most recently available CPI applies (CPI_{t-2}); and
 - (ii) 1.0110650 (that is, 4.5% per annum converted to a quarterly compound rate plus one);
- (b) for a quarter ending after 30 September 2016 and on or before 31 March 2019, the greater of:
 - (i) 1; and
 - (ii) the most recently available CPI during the quarter preceding commencement of the relevant quarter (CPI_{t-1}) divided by CPI for the quarter preceding the quarter for which the most recently available CPI applies (CPI_{t-2});
- (c) for a quarter ending after 31 March 2019 and on or before 31 March 2029, 1.0104597 (that is, 4.25% per annum converted to a quarterly compound rate plus one); and
- (d) for a quarter ending after 31 March 2029, the greater of:
 - (i) 1; and
 - (ii) the most recently available CPI during the quarter preceding commencement of the relevant quarter (CPI_{t-1}) divided by CPI for the quarter preceding the quarter for which the most recently available CPI applies (CPI_{t-2}).

2.3 Theoretical Tolls for Motor Cycles and Light Commercial Vehicles

- (a) The Theoretical Toll for Motor Cycles for a quarter and a Tollable Section is 0.5 times the Theoretical Toll for Cars for that quarter and Tollable Section.
- (b) The Theoretical Toll for Light Commercial Vehicles for a quarter and a Tollable Section is 1.6 times the Theoretical Toll for Cars for that quarter and Tollable Section.

2.4 Escalation of Maximum Theoretical Toll for WGT/CityLink Trips

The Maximum Theoretical Toll for a WGT/CityLink Trip and a HCV or HPFV for a particular quarter subsequent to the quarter ending 31 March 2015 is the product of:

- (a) the Index_t (as defined in clause 2.2 of this Schedule); and

- (b) the Maximum Theoretical Toll for a Trip for Vehicles of the relevant category in relation to the quarter preceding the relevant quarter.

2.5 Rounding

The Theoretical Toll for each Tollable Section and for each category of Vehicle, and the Maximum Theoretical Toll for HCV or HPFV, must be expressed in terms of \$ per Vehicle and be calculated rounded to four decimal places. Any publication of these figures can be expressed rounded to two decimal places (that is, expressed rounded to the nearest cent). For the avoidance of doubt, any rounding of a number ending in a 5 will be rounded up.

3. Toll Setting

3.1 Charge Toll

Project Co shall set a Charge Toll in relation to each category of Vehicle, each Tollable Section and each quarter from and including the quarter in which Project Co first becomes entitled to levy tolls under this Agreement. Only one Charge Toll may be set in relation to a category of Vehicle, a Tollable Section and a quarter. A Charge Toll so set, however, cannot exceed the Theoretical Toll for that Tollable Section with respect to that quarter and that category of Vehicle.

3.2 Maximum Charge Toll

If there has not been a termination of the CityLink Concession Deed or an expiry of the Concession Period (as defined in the CityLink Concession Deed) prior to the expiry of the Term, the Company shall set a Maximum Charge Toll for a WGT/CityLink Trip for a HCV or HPFV and each quarter from and including the quarter in which the Company first becomes entitled to levy tolls under this Agreement. A Maximum Charge Toll so set, however, cannot exceed the Maximum Theoretical Toll with respect to that quarter and that category of Vehicle.

4. Levying Standard Tolls

Subject to clauses 6, 7 and 8 of this Schedule, Project Co may exercise its rights under this Agreement to levy a toll for the use of the Freeway (or a part of it) for the passage of a Vehicle if:

- (a) the toll so levied equals:
- (i) (if the Trip constituted by that use relates to only one Tollable Section) the Charge Toll set in accordance with this Schedule in relation to that Tollable Section, with respect to the quarter during which the Trip occurs and the category of Vehicle which applies to the relevant Vehicle;
 - (ii) (if the Trip constituted by that use relates to more than one Tollable Section) the aggregate of the Charge Tolls set in accordance with this Schedule in relation to those Tollable Sections, with respect to the quarter during which the Trip occurs and the category of Vehicle which applies to the relevant Vehicle; or
 - (iii) (if the Trip constituted by that use is a WGT/CityLink Trip and there has not been a termination of the CityLink Concession Deed or an expiry of the Concession Period (as defined in the CityLink Concession Deed) prior to the expiry of the Term) the amount which when aggregated with the amount of the toll paid by the Vehicle for the use of the relevant City Link Tollable Sections that constituted part of the WGT/CityLink Trip,

does not exceed the Maximum Charge Toll set in accordance with this Schedule with respect to the quarter during which the WGT/CityLink Trip occurs and the category of Vehicle which applies to the relevant Vehicle; or

- (b) the toll so levied is consistent with a detailed tolling strategy the subject of a then current approval of the State (which approval may be conditional and limited), being a strategy which:
- (i) entails levying tolls at levels different from that otherwise permitted under this clause 4 but which in no event exceed:
- A. in relation to a Vehicle of a particular category, a quarter and a particular Tollable Section, the applicable Theoretical Toll; or
- B. in relation to a Vehicle of a particular category, a quarter and a WGT/CityLink Trip, the applicable Maximum Theoretical Toll; and
- (ii) is (if appropriate) designed to ensure that the average weighted toll levied for Vehicles of each particular category passing either on the Freeway or (if the strategy relates to a particular Tollable Section or Tollable Sections only) on the relevant Tollable Section or Tollable Sections, during each week of operation of the strategy does not exceed that which would be levied were the strategy not to apply and tolls were levied under paragraph (a). In calculating that average weighted toll, the weight to be used shall be relevant traffic volumes, as agreed between Project Co and the State. Project Co acknowledges that (without limiting the State's right to refuse or withhold its approval to any proposed strategy) agreement as to relevant traffic volumes during the period that it is proposed that a strategy apply will be a pre-condition to any approval of the strategy by the State.

5. Day Tolls

- (a) In this clause 5 and clauses 7 and 8 of this Schedule:
- (i) **WGT Day Pass** is:
- A. the grant of a right or authority to use any or all Tollable Sections comprising the Freeway for the passage of a particular Vehicle at any time within a period of 24 consecutive hours (but no other period) commencing at the time of commencement of the first use; or
- B. (where consistent with a detailed tolling strategy under clause 5(d)(ii)B of this Schedule (being a detailed tolling strategy that refers to this clause 5(a)(i)B) the grant of a right or authority to use one or more Tollable Sections (as specified in such detailed tolling strategy) comprising the Freeway for the passage of a particular Vehicle at any time within a period of 24 consecutive hours (but no other period) commencing at the time of commencement of the first use.
- (ii) **WGT Day Toll** is the maximum toll for a WGT Day Pass which, for a quarter and a category of Vehicle, is the amount set as such in relation

to that quarter and that category of Vehicle under clause 5(b) of this Schedule.

(iii) **WGT/CityLink Day Pass** is:

- A. the grant of a right or authority to use any or all Tollable Sections comprising the Freeway and all or any of the City Link Tollable Sections for the passage of a particular Vehicle at any time within a period of 24 consecutive hours (but no other period) commencing at the time of commencement of the first use; or
- B. (where consistent with a detailed tolling strategy under clause 5(d)(ii)B of this Schedule (being a detailed tolling strategy that refers to this clause 5(a)(iii)B) the grant of a right or authority to use one or more Tollable Sections comprising the Freeway and all or any of the City Link Tollable Sections (as specified in such detailed tolling strategy) for the passage of a particular Vehicle at any time within a period of 24 consecutive hours (but no other period) commencing at the time of commencement of the first use.

(iv) **WGT/CityLink Day Toll** is the maximum toll for a WGT/CityLink Day Pass which, for a quarter and a category of Vehicle, is the amount set as such in relation to that quarter and that category of Vehicle under clause 5(c) of this Schedule.

(b) Project Co shall set a WGT Day Toll for each category of Vehicle for each quarter from and including the quarter in which Project Co first becomes entitled to levy tolls under this Agreement. A WGT Day Toll so set, however, cannot exceed:

(i) in relation to the quarter ending 31 March 2015, where the category of Vehicle is:

- A. Cars, \$11.28;
- B. Motor Cycles, \$5.64;
- C. Light Commercial Vehicles, \$18.04;
- D. Heavy Commercial Vehicles, \$33.25; or
- E. High Productivity Freight Vehicles, \$49.88; or

(ii) in relation to a quarter to which paragraph (i) does not apply and a particular category of Vehicle, the product of the Index_t (as defined in clause 2.2 of this Schedule) and the maximum WGT Day Toll which Project Co could have set under this clause 5(b) in relation to the preceding quarter and the relevant category of Vehicle (with that maximum WGT Day Toll to be determined on the assumption that the WGT Day Toll set in each preceding quarter was the maximum that could have been set under this clause 5(b)).

(c) If there has not been a termination of the CityLink Concession Deed or an expiry of the Concession Period (as defined in the CityLink Concession Deed) prior to the expiry of the Term, Project Co shall set a WGT/CityLink Day Toll for each category of Vehicle for each quarter from and including the quarter in which Project Co first

becomes entitled to levy tolls under this Agreement. A WGT/CityLink Day Toll so set, however, cannot exceed:

- (i) in relation to the quarter ending 31 March 2015, where the category of Vehicle is:
 - A. Cars, \$25.63;
 - B. Motor Cycles, \$12.82;
 - C. Light Commercial Vehicles, \$52.80;
 - D. Heavy Commercial Vehicles, \$63.94; or
 - E. High Productivity Freight Vehicles, \$95.91; or
 - (ii) in relation to a quarter to which paragraph (i) does not apply and a particular category of Vehicle, the product of the Index_t (as defined in clause 2.2 of this Schedule) and the maximum WGT/CityLink Day Toll which Project Co could have set under this clause 5(c) in relation to the preceding quarter and the relevant category of Vehicle (with that maximum WGT/CityLink Day Toll to be determined on the assumption that the WGT/CityLink Day Toll set in each preceding quarter was the maximum that could have been set under this clause 5(c)).
- (d) Subject to clauses 7 and 8 of this Schedule, Project Co may exercise its rights under this Agreement to levy a toll for the grant of (or agreement to grant) a right or authority to use the Freeway (or a part of it) for the passage of a Vehicle if:
- (i) the grant is of a WGT Day Pass or WGT/CityLink Day Pass in relation to the relevant Vehicle;
 - (ii) it ensures that:
 - A. the amount of the toll does not exceed:
 - 1) in respect of a WGT Day Pass, the WGT Day Toll set in accordance with this Schedule with respect to the quarter in which the day or the time of first use to which the WGT Day Pass relates occurs and the category of Vehicle which applies to the relevant Vehicle; or
 - 2) in respect of a WGT/CityLink Day Pass, the WGT/CityLink Day Toll set in accordance with this Schedule with respect to the quarter in which the day or the time of first use to which the WGT/CityLink Day Pass relates occurs and the category of Vehicle which applies to the relevant Vehicle; or
 - B. the toll so levied is consistent with a detailed tolling strategy the subject of a then current approval of the State (which approval may be conditional and limited), being a strategy which:
 - 1) entails levying tolls at levels different from that otherwise permitted under this clause 5(d) but

which in no event exceed, in relation to a Vehicle of a particular category and a quarter, the maximum WGT Day Toll or WGT/CityLink Day Toll which Project Co could have set under clause 5(b) or 5(c) of this Schedule (as applicable) in relation to that quarter and that category of Vehicle; and

- 2) is (if appropriate) designed to ensure that the average WGT Day Toll or WGT/CityLink Day Toll for Vehicles of each particular category during each week of operation of the strategy does not exceed that which would be levied were the strategy not to apply and WGT Day Tolls and WGT/CityLink Day Tolls were levied under paragraph (ii)A. Project Co acknowledges that (without limiting the State's right to refuse or withhold its approval to any proposed strategy) agreement as to the relevant volumes of WGT Day Passes or WGT/CityLink Day Passes during the period that it is proposed that the strategy apply will be a pre-condition to any approval of the strategy by the State.

6. Shuttle Toll

In respect of the use of the West Gate Freeway Section by a Heavy Commercial Vehicle or a High Productivity Freight Vehicle in any 24 hour period commencing at midnight each day (other than where there is a grant of a WGT Day Pass or WGT/CityLink Day Pass in relation to the relevant Vehicle during that 24 hour period), Project Co may only exercise its rights under this Agreement to levy a toll for the use of such Tollable Section for the passage of such a Vehicle during such 24 hour period which:

- (a) for each of the first four uses by that Vehicle during that 24 hour period, does not exceed the toll allowable for each such individual use under clause 4 of this Schedule; and
- (b) for each of uses five to eight by that Vehicle during that 24 hour period, does not exceed 50% of the toll allowable for each such individual use under clause 4 of this Schedule,

and may not levy a toll for the ninth or any subsequent uses of that Tollable Section by that Vehicle during that 24 hour period.

7. Inaccurate Tolling

- (a) Project Co shall ensure that a toll is not levied both for the use of the Freeway (or a part of it) for the passage of a particular Vehicle and for the grant of, or agreement to grant, a right or authority which applies to that use.
- (b) Notwithstanding the obligation set out in paragraph 7(a), if:
 - (i) any of the following situations arise:
 - A. a toll is levied under clause 4 or 5(d) of this Schedule and the amount of the toll so levied is consistent with the amount which Project Co is then entitled to levy under that clause but

the toll should have been levied under another such clause;
or

- B. more than one toll is levied with respect to the same use, grant or agreement; or
 - C. a toll is levied in circumstances which contravene paragraph 7(a); and
- (ii) the situation outlined in paragraph 7(b)(i) arose as a result of an event or circumstance the occurrence or subsistence of which:
- A. was outside the reasonable control of Project Co (so as to include, for example, a circumstance where a toll under clause 4 of this Schedule was levied as a result of a tag being in a Vehicle on a day or at a time (as applicable) when a WGT Day Pass or WGT/CityLink Day Pass applied to the Vehicle but so as not to include, for example, a circumstance where a toll under clause 4 of this Schedule was levied as a result of a Vehicle passing on the Freeway at a time when a WGT Day Pass or WGT/CityLink Day Pass applies, if there was no tag in the Vehicle); and
 - B. did not constitute or reflect a breach or contravention by Project Co of any law or of any Project Document (other than a breach that might have arisen but for the operation of this clause 7),

then the occurrence of the relevant situation shall not of itself be considered to constitute a failure to have levied a toll in accordance with this Schedule or a breach of the obligations imposed by clauses 4 or 5(d) of this Schedule, or this clause 7.

8. General

- (a) In order to set a Charge Toll, Maximum Charge Toll, a WGT Day Toll and WGT/CityLink Day Toll, Project Co (or its agent) must:
- (i) give the State notice of the relevant toll and the quarter in which Project Co intends that it first apply;
 - (ii) place a notice outlining the relevant toll and the quarter in which Project Co intends that it first apply, in both the Victoria Government Gazette; and
 - (iii) place a notice that outlines, in plain language:
 - A. tolls for Cars in a prominent part of a newspaper circulating throughout Victoria; and
 - B. tolls for all other classes of Vehicles in the notice section of a newspaper circulating throughout Victoria,

and outlines the quarter in which Project Co intends that those tolls first apply, and provide a means by which the public may view these changes.

Subject to clause 8(e), notice so required to be:

- (iv) placed in the Victoria Government Gazette and a newspaper, must be so placed at least five Business Days prior to commencement of the relevant quarter, if it reflects an increase in the relevant toll, or, if it does not reflect such an increase, prior to commencement of the relevant quarter; and
 - (v) given to the State, must be so given at least one month prior to commencement of the relevant quarter, if it reflects an increase in the relevant toll, or, if it does not reflect such an increase, prior to commencement of the relevant quarter.
- (b) A Charge Toll set in accordance with this Schedule in relation to a category of Vehicle, a Tollable Section and a particular quarter, (and a WGT Day Toll or WGT/CityLink Day Toll, in relation to a quarter and, if applicable, a category of Vehicle) shall be deemed to have been so set in relation to all succeeding quarters occurring prior to a quarter in respect of which notice is given and placed in accordance with clause 8(a) of this Schedule indicating a change to the relevant toll.
- (c) No toll or fee may be levied in relation to the Freeway where the Vehicles concerned are Exempt Vehicles or in respect of any use of the Freeway by Exempt Vehicles.
- (d) Subject to clauses 4, 5 and 6 of this Schedule, Project Co shall not, and shall not permit or suffer, a toll to be levied in relation to the Freeway (or any part of it) or for or in connection with the use of anything on the Freeway (or any part of it) other than as permitted under the CityLink Concession Deed.
- (e) In respect of the quarter in which the Date of Tolling Completion occurs, notice required to be published in accordance with clause 8(a) of this Schedule is required to be:
- (i) placed in the Victoria Government Gazette and a newspaper, must be so placed at least 1 day prior to the Date of Tolling Completion; and
 - (ii) given to the State, must be so given at least 5 days prior to commencement of the Date of Tolling Completion.

9. Fees, charges and Toll Administration Fee

9.1 Fees and charges

- (a) If there has not been a termination of the CityLink Concession Deed or an expiry of the Concession Period (as defined in the CityLink Concession Deed) prior to the expiry of the Term:
- (i) Project Co will be entitled to levy or impose fees and charges for a Trip on the Freeway equal to the fees and charges the Company is entitled to charge in relation to the Link under the CityLink Concession Deed;
 - (ii) Project Co will be entitled to levy or impose fees and charges in relation to a Request for Payment or Further Request for Payment equal to the fees and charges the Company is entitled to charge in relation to a Request for Payment or Further Request for Payment under the CityLink Concession Deed;

- (iii) in assessing whether any relevant fee or charge is reasonable having regard to costs properly incurred by Project Co, the parties will have regard to the costs properly incurred by each of the Company and Project Co in offering the particular mechanism or arrangement or seeking to enforce such mechanism or arrangement; and
 - (iv) Project Co will not be entitled to levy or impose a fee or charge in respect of a WGT/CityLink Trip, or a fee or charge associated with a Request for Payment or a Further Request for Payment on a user of the Freeway in relation to which the Company has charged an equivalent fee or charge on that user.
- (b) If there has been a termination of the CityLink Concession Deed or an expiry of the Concession Period (as defined in the CityLink Concession Deed) prior to the expiry of the Term, Project Co will be entitled to:
 - (i) levy or impose fees and charges for a Trip on the Freeway, a customer and account equal to the fees and charges the Company would have been entitled to charge in relation to the Link in relation to a Trip on the Freeway, a customer or an account (as applicable) under the CityLink Concession Deed had the CityLink Concession Deed not been terminated or the Concession Period (as defined in the CityLink Concession Deed) not have expired; and
 - (ii) levy or impose fees and charges in relation to a Request for Payment or Further Request for Payment equal to the fees and charges the Company would have been entitled to charge in relation to the Link under the CityLink Concession Deed had the CityLink Concession Deed not been terminated or the Concession Period (as defined in the CityLink Concession Deed) not have expired.

9.2 Infringement

- (a) Subject to clause 9.2(b):
 - (i) if under the Project Legislation an infringement notice is caused to be served but further proceedings are not taken in respect of the relevant offence (or alleged offence under the Project Legislation), as a result of the payment of an amount sufficient to expiate the notice, the State shall pay to Project Co an amount equal to the "TU Amount" (as determined and re-determined) under clause 9.2 of the Concession Deed (**TU Amount**) within 20 Business Days of that payment;
 - (ii) Project Co shall, however, refund any amount so paid to it in accordance with clause 9.2(a)(i) within 5 Business Days of its being requested by the State to do so if the relevant infringement notice is withdrawn by the enforcement officer under the Project Legislation;
 - (iii) the State and Project Co will adjust for any GST payable in respect of the TU Amount in accordance with the same procedure as set out in clause 9.2(ra) of the CityLink Concession Deed; and
 - (iv) Project Co will not be entitled to TU Amounts in respect of a WGT/CityLink Trip in relation to which the Company has already received TU Amounts.
- (b) If there has been a termination of the CityLink Concession Deed or an expiry of the Concession Period (as defined in the CityLink Concession Deed) prior to the expiry

of the Term, the TU Amount will be the same as it was immediately prior to that termination or expiry, except that:

- (i) the elements of the TU Amount which were subject to indexation under the CityLink Concession Deed will continue to be indexed on the same basis; and
- (ii) the State may make any determination or redetermination in relation to the elements of the TU Amount not subject to indexation, on the same basis that it would have been entitled to make that determination or redetermination under clause 9.2(r) of the CityLink Concession Deed immediately prior to that termination or expiry.

Schedule 29 - Assumed Transport Network Enhancements Schedule

| Project | Scope |
|--|---|
| M80 – West Gate Fwy to Greensborough Bypass Minus Sunshine Ave-Calder Fwy Section | Widening (to 6 or 8 Lanes) |
| M80 - Tullamarine Fwy to Pascoe Vale Rd | New Exit Ramp to Pascoe Vale Rd (2 Lanes) |
| Dingley Arterial West - Warrigal Rd to Westall Rd | New Route (6 Lanes Divided); Includes Duplication of South Rd Extension |
| Tullamarine Freeway - Mickleham Road to M80 | Widening (6 Lanes) |
| Tullamarine Freeway - Melbourne Airport to Mickleham Road | Widening (6 Lanes) |
| Eastern Freeway - North-East Link to Doncaster Rd | Widening (10 Lanes) |
| Eastern Freeway - Doncaster Rd to Springvale Rd | Widening (8 Lanes) |
| CityLink/Tullamarine Widening Project | Widening (8 to 11 Lanes) |
| M80 - Sunshine Ave to Calder Fwy Section | Widening (to 8 Lanes) |
| Calder Freeway - Keilor Park Dr to Melton Hwy | Widening (6 lanes divided) |
| North-East Link | New route (6-8 lane motorway) |
| EastLink - Maroondah Hwy to Dingley Arterial | Widening (8 lanes) |
| Outer Melbourne Ring Road - Ballan Rd to East-West Freeway | New route (4 lane motorway) |
| Outer Western Motorway - OMR to Deer Park Bypass | New route (4 lane motorway) |
| Dingley Arterial - South Gippsland Hwy to South Gippsland Fwy | New route (6 lanes divided) |
| South Gippsland Fwy/Monash Fwy Interchange Ramp | New ramp (south to east) |
| Mornington Peninsula Fwy - EastLink to Springvale Rd | Widening (6 lanes) |
| Western Port Hwy - North Rd to Baxter Tooradin Rd | Duplication (4 lanes divided) |
| Western Fwy - Hopkins Rd to Leakes Rd | Widening (6 lanes) |
| Tullamarine Freeway - Melbourne Airport to OMR | New route (6 lane motorway) |

West Gate Tunnel
Project Agreement

| Project | Scope |
|---|--|
| Melbourne Metro Rail Project | Metropolitan train service between South Kensington to South Yarra |
| Airport Rail Link | Metropolitan train service to airport |
| Western Freeway Connection (M80 to CityLink) | New route (3 lane motorway) |
| Eastern Freeway Extension (Eastern Freeway to CityLink) | New route (3 lane motorway) |
| Western Port Hwy - South Gippsland Hwy to Cranbourne-Frankston Rd (excludes Wedge Rd interchange) | Conversion to motorway (4 lanes) |
| Mornington Peninsula Fwy - Springvale Road to Dingley Fwy | New route (4 lane motorway) |
| Koo Wee Rup Rd, new motorway - Princes Fwy at Pakenham to South Gippsland Highway at Koo Wee Rup | Conversion to motorway (4 lanes) |
| Calder Fwy - Vineyard Rd to Melton Hwy | Widening (6 lanes) |
| OMR - Sunbury Rd to Hume Fwy | New route (4 lane motorway) |
| Western Port Hwy - Cranbourne-Frankston Rd to Graydens Rd | Conversion to motorway (4 lanes) |
| OMR - Princes Fwy to Ballan Rd | New route (4 lane motorway) |
| E6 – M80 to Findon Rd | New route (4 lane motorway) |

Schedule 30 - Subcontractor IP exceptions

This Schedule 30 outlines exceptions or qualifications to the requirements of clause 52 (Intellectual Property Rights) in relation to specific Project Intellectual Property Rights supplied by specific Subcontractors.

1. VicTrack, AusNet and Port of Melbourne – spatial and bathymetry data

- (a) The rights to modify and adapt under clause 52.2 do not apply to spatial data provided by Victorian Rail Track (ABN 55 047 316 805) and AusNet Transmission Group Pty Ltd (ABN 78 079 798 173) that is incorporated into CAD files provided by the Project Co or the D&C Subcontractor.
- (b) Any mark of attribution to VicTrack that is incorporated within the CAD files provided by Project Co or the D&C Subcontractor, or within any copy made by the State of those CAD files, must not be deleted.
- (c) The licence granted by Project Co under clause 52.2 does not apply to bathymetric data provided by Port of Melbourne Operations Pty Ltd that is used by or on behalf of Project Co in preparing the Design Documentation.

2. Commercially available third party software in OMCS

2.1 Definitions

- (a) For the purposes of this Schedule 30, COTS Software means the following commercially available third party software provided by Kapsch Trafficcom Australia Pty Ltd. (ABN: 84 081 653 429) (**Kapsch**) and SICE Pty Ltd (ABN 75 113 609 055) (**SICE**) and incorporated into the Critical Systems:
 - (i) in relation to software provided by Kapsch for the OMCS:

OMCS Software

| Third Party Software | Description | Notes |
|---|---|--|
| VMSphere 6.0 Enterprise Plus | Virtual Hosting Environment (http://www.vmware.com/) | |
| Redhat Enterprise Linux 64-bit v7u2/v7u3. | Linux Operating System (http://www.redhat.com/) | OpenSource - Includes other packages such as apache and C++ compilers. License: http://www.redhat.com/licenses/us.html |
| PostgreSQL v9.5 | PostgreSQL Database server (http://www.postgresql.org/) | OpenSource - Included in Linux distribution License: http://www.postgresql.org/about/licence.html |

| Third Party Software | Description | Notes |
|----------------------|---|--|
| Slony 1-2.2 | Slony Database Replication (http://www.slony.info/) | OpenSource. Installed on Linux server. Used for Postgres Replication. License: BSD (http://pgfoundry.org/projects/slony1/) |
| protobuf v2.4.1 | Google Protocol Buffers (http://code.google.com/p/protobuf/) | Opensource, Installed on Linux Server. License: https://developers.google.com/protocol-buffers/docs/overview |
| iec61850 | Standard for the design of electrical substation automation. (http://www.trianglemicroworks.com/) | Shareware. Installed on Linux Server. |
| DNP3 | Distributed Network Protocol (http://www.trianglemicroworks.com/) | Shareware. Installed on Linux Server. |
| groovy v1.8.5 | Dynamic Language for Java platform (http://groovy.codehaus.org/) | Opensource. Installed on Linux Server. Used for Historian Database. License: Apache 2. http://groovy.codehaus.org/License+Information |
| Swish-e v2.2.3 | Search Engine (http://www.swish-e.org/) | OpenSource. Installed on Linux server. Used for online Help search. License: http://www.swish-e.org/license.html |
| JRE 1.8.0_66 | Java SE Runtime Environment (http://java.sun.com/javase/) | Java virtual machine (JVM) on client. Linux and Windows versions. License: http://www.oracle.com/technetwork/java/javase/terms/license/index.html |
| Jackson 2.7.2 | Jackson is a high-performance JSON processor for Java. (https://github.com/FasterXML/jackson) | License: Apache 2 |
| Hazelcast 3.7.4 | Hazelcast is an open source in-memory data grid based on Java (https://hazelcast.org) | License: Apache 2 |

GIS Software

| Third Party Software | Description | Notes |
|----------------------|-------------|-------|
| | | |

| Third Party Software | Description | Notes |
|----------------------|---|--|
| Apache Ant 1.9.3 | http://www.apache.org/licenses/LICENSE-2.0.html Used for building GIS code. | Apache 2.0 License |
| Boost 1.55.0 | Boost provides free peer-reviewed portable C++ source libraries. (http://www.boost.org) | The Boost Software License specifies the terms and conditions of use for those Boost libraries that it covers. |
| Cairo 1.12.14 | Multi-platform 2D graphics library (http://cairographics.org) | Cairo is free software and is available to be redistributed and/or modified under the terms of either the GNU Lesser General Public License (LGPL) version 2.1 |
| Fontconfig 2.11.0 | Used for font matching to find a closely matching font for programs where the font desired is unavailable. | Open Source. |
| Freetype 2.5.2 | A font rendering library. | FreeType BSD license |
| GDAL 1.9.2 | A library for translating geospatial raster data into different formats. | MIT license http://trac.osgeo.org/gdal/wiki/FAQGeneral#WhattlicensedoesGDALLOGRuse |
| Geos 3.4.2 | GEOS (Geometry Engine - Open Source) is a C++ port of the Java Topology Suite (JTS) (http://trac.osgeo.org/geos/) | GEOS is available under the terms of GNU Lesser General Public License (LGPL). |
| GNU M4 1.4.16 | A Unix macroprocessor. | GNU General Public License v3 |
| icu4c 5.2.1 | ICU is a widely used set of C/C++ and Java libraries providing Unicode and Globalization support for software applications (http://site.icu-project.org/) | ICU is released under a nonrestrictive open source license that is suitable for use with both commercial software and with other open source or free software. |
| Libjpeg 8 | A C library used to read and write JPEG image files. | Distributed under a free software license with acknowledgement. |
| Libpng 1.6.8 | A C library used to handle PNG images. | LibPNG license – free to distribute and use |
| Libsigc++ 2.3.1 | A library for allowing typesafe callbacks in C++ code. | Licensed under LGPL (GNU Lesser General Public Licence v2.1). http://libsigc.sourceforge.net/license.shtml |

| Third Party Software | Description | Notes |
|--|--|---|
| Libtiff 3.8.2 | A library for reading and writing TIFF images. | LibTIFF license http://www.libtiff.org/misc.html |
| Libtool 2.4 | GNU libtool is a generic library support script. (http://www.gnu.org/software/libtool/libtool.html) | Libtool is available under the terms of GNU Lesser General Public License (LGPL). |
| Libxml2 | A C-based XML parsing library. | MIT license http://opensource.org/licenses/mit-license.html |
| libxslt | An XML transformation language library. | MIT license http://opensource.org/licenses/MIT |
| Lxml 3.2.4 | A python library for parsing XML and HTML. | BSD license http://lxml.de/index.html#license |
| Mapnik 2.2.0 | An OpenSource C++/Python toolkit for developing GIS (Geographic Information Systems) applications. (http://mapnik.org) | Licensed under LGPL (GNU Lesser General Public Licence v2.1). |
| Pixman 0.32.4 | A low level pixel manipulation library. | MIT license http://www.pixman.org/ |
| Postgis 2.0.4/2.1.7 | PostGIS adds support for geographic objects to the PostgreSQL object-relational database. (http://postgis.refrations.net) | Licensed under LGPL (GNU Lesser General Public Licence v2.1). |
| PostgreSQL 8.4.11, 9.1.x, 9.4.x or 9.5.x + development libraries | A database server. | OpenSource - Included in Linux distribution License: http://www.postgresql.org/about/licence.html |

| Third Party Software | Description | Notes |
|---|---|---|
| Proj 4.7.0 proj-datumgrid 1.5 | Cartographic Projection Library. (http://trac.osgeo.org/proj/) proj-datumgrid - US, Canadian, French and New Zealand datum shift grids. | PROJ.4 has been placed under an MIT license: http://trac.osgeo.org/proj/wiki/WikiStart#License |
| Python 2.4 to 2.7 | A high level programming language. | Python license http://docs.python.org/2/license.html |
| Symmetric DS 3.6.5/3.8.4 | Symmetric DS is an open source database replication software. (https://www.symmetricds.org/) | License: GPL |
| Zlib 1.2.8 | A data compression library. | Zlib license http://www.zlib.net/zlib_license.html |

Report Software

| Third Party Software | Description | Notes |
|---------------------------------|--|--|
| Redhat Enterprise 7u2/7u3 | Linux Operating System | OpenSource - Includes other packages such as apache and C++ compilers. License: http://www.redhat.com/licenses/us.html |
| Jasper Report Server v6.3 | JasperReports Server is a stand-alone and embeddable reporting server. | License: AGPL |
| Jaspersoft Studio 6.3 | For designing the reports only. JasperSoft Studio is free, open source report designer for JasperReports Server. | License: AGPL |
| PostgreSQL v9.4/v9.5 | PostgreSQL Database server (http://www.postgresql.org/) | OpenSource - Included in Linux distribution License: http://www.postgresql.org/about/licence.html |

(ii) in relation to software provided by Kapsch for the RSS:

| Item | Name | Description | Supplier | System component |
|------|---|------------------|-----------|------------------|
| 1 | Microsoft Windows Server 2012 R2 Standard Edition | Operating System | Microsoft | TSMC MCON |

| Item | Name | Description | Supplier | System component |
|------|---------------------------------|-------------------------------|----------------------|---------------------|
| 2 | Windows 7 professional | Operating system | Microsoft | LCTU |
| 3 | GNU Linux | Operating system | Open source | TSC VDC VR SU |
| 4 | MS SQL Server 2012 Standard SP1 | Database | Microsoft | TSMC MCON |
| 5 | MS SQL Server 2012 Express | Database | Microsoft | LCTU |
| 6 | CARMEN FreeFlow | Optical Character Recognition | Adaptive Recognition | VRC |

(iii) in relation to software provided by SICE for the OMCS:

| OMCS Functional Area | Potential Software Suppliers | Software |
|----------------------|---------------------------------|---|
| AVIDS | Citilog | <p>MediaTunnel:</p> <p>MediaTunnel is a video-based Automatic Incident Detection (AID) system for road tunnels. It provides real time detection of incidents and accidents as well as traffic data.</p> <p>MediaRoad is a video-based Automatic Incident Detection (AID) system for highways and bridges. It provides real time detection of incidents and accidents as well as traffic data.</p> |
| DVMS (CCTV) | Genetec | <p>Omnicast:</p> <p>Video management system that provides organizations of all sizes the ability to deploy a surveillance system that addresses their unique video security needs. Through deep support for a wide range of industry-leading cameras, encoders, and CCTV equipment, the Omnicast system scales and adapts to the changing demands of your security environment.</p> |
| PMCS | Rockwell, SIEMENS or Scheneider | PLC SW tool for PLC programming |

| OMCS Functional Area | Potential Software Suppliers | Software |
|-----------------------|------------------------------|---|
| Operating System | Microsoft | Windows Server (Microsoft) and Microsoft Windows 10 |
| Database | Microsoft | Microsoft SQL server |
| Storage | Dell | SAN Controller |
| Comms Network | CisCo | Software for configuration of switches and firewall |
| antivirus | Symantec | Symantec endpoint protection |
| Backup system | Veritas | Veritas Backup Exec |
| Virtualization | VMWare | VMware provides management and provisioning of virtual machines, continuous workload consolidation across physical servers and technology for virtual machine mobility. |
| MNCS –Coms monitoring | Opmanager | Opmanager: Network performance management. Solutions for managing every aspect of network performance, from network and data center infrastructure to traffic, bandwidth, configuration and beyond. |

- (b) For the purposes of this Schedule 30, **Project Purposes** means the purposes set out in clauses 52.2(d) to 52.2(h) inclusive (other than clause 52.2(g)); and
- (c) For the purposes of this Schedule 30, **Relevant User** means any one of Project Co, a nominee of Project Co, the State or a nominee of the State.

2.2 D&C obligations

In relation to the COTS Software:

- (a) Project Co must procure that the D&C Subcontractor must procure a licence or licences for Project Co or its nominee to all COTS Software that:
- (i) is effective on the earlier of:
- A. that point in time when the COTS Software is installed within any part of a Critical System;

- B. FCC Completion (as defined in the D&C Subcontract) in respect of the OMCS (as defined in the D&C Subcontract); and
 - C. RSS Completion (as defined in the D&C Subcontract) in respect of the RSS (as defined in the D&C Subcontract);
- (ii) grants to any Relevant User (on the basis that they may only be exercised by one Relevant User in relation to each of CityLink and West Gate Tunnel at any given time (i.e. up to two Relevant Users, but only where those Relevant Users are using them in relation to CityLink and West Gate Tunnel separately)) the rights set out in clause 52.2 of the D&C Subcontract, except that for these purposes:
- A. the paragraph between clause 52.2(c) and 52.2(d) of the D&C Subcontract is replaced with the following “a world-wide, perpetual, irrevocable, non-exclusive, royalty-free licence to use (and reproduce and provide online services to the public, each solely as necessary in the ordinary course of use of) the COTS Software for the purposes of:”;
 - B. the licence will permit third parties to use the COTS Software in order to provide services to the Relevant User in connection with any of the Project Purposes; and
 - C. clause 52.2(g) (other infrastructure) of the D&C Subcontract will not apply;
- (b) Project Co must procure that the D&C Subcontractor must:
- (i) use its best endeavours to procure the right for Project Co or its nominee to sub-license and transfer the licence or licences to COTS Software (and the licence will include such rights where procured); and
 - (ii) where it is unable to procure the rights referred to in section 2.2(b)(i), notify the State providing details of the relevant COTS Software and use its best endeavours to procure such alternative rights that permit flexibility as close as possible to the rights referred to in section 2.2(b)(i) (and the licence will include such alternative rights where procured);
- (c) where Project Co is unable to procure the D&C Subcontractor, despite the D&C Subcontractor following the procedure in section 2.2(b), to obtain the right for Project Co or its nominee to transfer the licence or licences to COTS Software, Project Co must (at the State's option) procure replacement licences to that COTS Software for any transferee notified to Project Co by the State at the State's cost, other than where the reason for the transfer is caused or contributed to by Project Co or relevant Subcontractor, in which case the cost (of the replacement licence and procuring it) must be borne by Project Co; and
- (d) without limiting any other warranty in clause 52 or elsewhere in the Deed, Project Co warrants that the licence procured under section 2.2(a) is sufficient to allow for the intended use of the Critical Systems as specified in, or reasonably to be inferred from, the PSR, by each Relevant User on the basis contemplated in section 2.2(a)(ii).

2.3 Acknowledgement

- (a) Subject to section 2.3(b), the State acknowledges that the licence to COTS Software may be subject to specific use metric limitations (such as number of users or processors) and other prohibitions on use as set out in the relevant licence terms provided by the relevant third party licensor of that COTS Software. Subject to:
- (i) the Project Co notifying the State in writing of any such use metric limitation and other prohibitions; and
 - (ii) the D&C Subcontractor having procured a licence sufficient to allow for the intended use of the Critical Systems as specified in, or reasonably to be inferred from, the PSR by each Relevant User on the basis contemplated in section 2.2(a)(ii),
- the State must not use the COTS Software in a manner that breaches such use metrics or other prohibitions.
- (b) The parties acknowledge and agree that:
- (i) nothing in section 2.3(a) derogates from the warranty in section 2.2(d);
 - (ii) for the avoidance of doubt, any limitations or disclaimers of liability or warranties contained in the third party licence terms for the COTS Software do not vary or limit the terms of this Agreement; and
 - (iii) Project Co is not required under this Agreement to deliver the source code for the COTS Software to the State.

3. Kapsch and SICE proprietary software

3.1 Definitions

For the purposes of this Schedule 30:

- (a) **Subcontractor Proprietary Software** means any software the Intellectual Property Rights in which are owned or developed by Kapsch or SICE and that is incorporated into the Critical Systems.
- (b) **Escrow Agreement** means the template Escrow Agreement attached to this Agreement as Schedule 31.
- (c) **Escrow Materials** has the meaning given in the Escrow Agreement.

3.2 D&C obligations

In relation to the Subcontractor Proprietary Software, the Project Co:

- (a) must procure a licence for the State or its nominee to all Subcontractor Proprietary Software that:
 - (i) is effective as at Financial Close;
 - (ii) grants to the State or its nominee the rights set out in clause 52.2 except that for these purposes:

- A. the paragraph between clause 52.2(c) and 52.2(d) is replaced with the following “a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) to: (A) use (and reproduce and provide online services to the public, each as necessary in the ordinary course of use of) the Subcontractor Proprietary Software; and (B) modify, adapt and develop the Subcontractor Proprietary Software and Escrow Materials on release of the Escrow Materials from escrow, for the purposes of:”; and
 - B. clause 52.2(g) (other infrastructure) will not apply;
- (b) is not required under this Agreement to deliver the source code for the Subcontractor Proprietary Software to the State, but must procure the Escrow Materials in escrow with an escrow agent reasonably acceptable to the State on the terms and in the form of the Escrow Agreement; and
 - (c) acknowledges that any restriction on modification, adaptation or development of the Subcontractor Proprietary Software does not prevent the relevant Subcontractor, owner or licensor of the Subcontractor Proprietary Software modifying or further developing that Subcontractor Proprietary Software for or on behalf of Project Co or its nominee.

3.3 Exceptions to clause 52.3 (D&C Subcontractor Material and Relevant Infrastructure)

In relation to the Subcontractor Proprietary Software provided by Kapsch, to the extent that the PSR contemplates training services to be provided by Project Co, then the obligation in clause 52.3 in relation to providing assistance, as that applies to training, is limited to the extent of training services contemplated by the PSR.

3.4 Exceptions to clause 52.5 (Moral Rights)

In relation to the Subcontractor Proprietary Software provided by Kapsch, the text of clause 52.5 is deleted and replaced with the following:

*“If Project Co, in the course of carrying out the Project Activities, makes use of any work or other subject matter in which copyright subsists (**Material**), the Project Co warrants that the State, any of its respective Associates and any person nominated or authorised by the State (including sub-licensees), Project Co and its Associates and any person authorised to do acts comprised in the copyright (**Beneficiaries**) may:*

*(a) (**exercise of rights**): as permitted under this Agreement use, disclose, reproduce, transmit, exhibit, communicate, adapt, publish or otherwise exercise its rights in relation to the Material anywhere in the world in whatever form any of the Beneficiaries thinks fit (including the making of any distortions, additions or alterations to the Material or any adaptation thereof, or to any part of the Material or of any adaptation of the Material in a manner which otherwise may infringe that person's Moral Rights in the Material); and*

*(b) (**no identification**): as permitted under this Agreement use, disclose, reproduce, transmit, exhibit, communicate, adapt, publish or otherwise exercise its rights in relation to the Material or any adaptation thereof (or any part of the Material or of any such adaptation) anywhere in the world*

without making any identification of that person in relation to the Material."

4. Kapsch and Freyssinet documentation

4.1 Definition

For the purposes of this Schedule 30, Restricted Documentation means any Deliverable in the form of a document that is prepared by either Kapsch or Freyssinet Australia Pty Ltd (ABN 15 002 617 736) (**Freyssinet**) and clearly marked as such.

4.2 Exception to clause 52.2

The licence in clause 52.2 does not include a right for the State to disclose Intellectual Property Rights owned by Kapsch or Freyssinet in the Restricted Documentation to third parties for any of the purposes set out in clause 52.2(g) (other infrastructure) without obtaining the prior consent of the owner of those Intellectual Property Rights. Project Co acknowledges that, subject always to clause 53, nothing in this clause prevents any party licensed under clause 52.2 from using, reproducing or disclosing any know how or learnings, any interface specifications or standards in the Kapsch Documentation, or otherwise describing the Critical Systems or the operation of any Critical System to any other third party.

5. Exceptions to clause 52.4 (Indemnities) for Kapsch

- (a) Project Co's liability under clause 52.1 (Warranties) and clause 52.4 (Indemnities) in relation to any Project Intellectual Property Rights or Project Co Material supplied by Kapsch is:
- (i) unlimited in relation to any damages awarded against one or more of the Indemnified Persons;
 - (ii) unlimited in relation to any amounts payable by an Indemnified Person under any agreement entered into by any Indemnified Person to settle a Claim or Liability within the scope of clause 52.4 that is approved by Project Co and the D&C Subcontractor, such approval not to be unreasonably withheld;
 - (iii) capped at an amount, in the aggregate, of \$[not disclosed] in relation to any loss that is loss of tolling revenue; and
 - (iv) capped at an amount, in the aggregate, of \$[not disclosed], with no liability for Indirect or Consequential Loss, in relation to any liability not covered in paragraphs (i) - (iii) above, less any amount paid against the cap under section 5(a)(iii).
- (b) In relation to any Project Intellectual Property Rights or Project Co Material supplied by Kapsch, clause 52.4(c)(i) will apply as though:
- (i) the words "Project Co may (subject to Project Co confirming to the State that the Claim or Liability is the subject of the indemnity in clause 52.4(a) or 52.4(b))" were replaced with "Project Co must, or must procure the relevant Subcontractor does"; and
 - (ii) the words "provided that Project Co" were replaced with the words "and Project Co must ensure that it, or must procure that the relevant

Subcontractor (where the relevant Subcontractor conducts the defence or settlement)".

6. Not Used

7. Direct Interface Parties

7.1 Definitions

For the purposes of this Schedule 30:

- (a) **Direct Interface Party IP** means all Intellectual Property Rights in any of the following:
 - (i) any Direct Interface Party Material; and
 - (ii) any information, ideas, documents, equipment or material of any kind and however embodied, which are supplied, brought to or used by or on behalf of a Direct Interface Party in undertaking its obligations under a Direct Interface Agreement (including each method of working used by or on behalf of the Direct Interface Party in carrying out its obligations under a Direct Interface Agreement) or which are made available to the D&C Subcontractor in accordance with a Direct Interface Agreement by or on behalf of a Direct Interface Party, whether or not owned by a third party, but excluding Third Party Back Office Software.
- (b) **Direct Interface Party Material** means all documentation, information (including data bases and drafts), models, systems, computer software and technology in which Intellectual Property Rights are capable of subsisting which a Direct Interface Party or any of its Associates prepare or use in carrying out its obligations under a Direct Interface Agreement, but excluding Third Party Back Office Software.
- (c) **Rail Interface Works (Yarra Trams)** means the Rail Interface Works being carried out on the Rail Land (Yarra Trams).
- (d) **Rail Land (Yarra Trams)** means the Rail Land leased to Yarra Trams under the Infrastructure Module of the Franchise Agreement – Tram.
- (e) **Yarra Trams** means KDR Victoria Pty Ltd (ABN 42 138 066 074) in its capacity as the franchise operator of Melbourne's tram network.

7.2 Project Co obligations

In relation to the Direct Interface Party IP and the Direct Interface Party Material, Project Co must procure that the D&C Subcontractor procures from each Direct Interface Party other than Yarra Trams:

- (a) a licence that grants to the State the rights set out in clause 52.2 of the Project Agreement; and
- (b) [not used].

7.3 Project Co obligations (Yarra Trams)

In relation to the Direct Interface Party IP and the Direct Interface Party Material of Yarra Trams, Project Co must procure that the D&C Subcontractor, subject to Public Transport Victoria having given its prior written consent to Yarra Trams to the grant of the licences, procures from Yarra Trams the following licences:

- (a) a licence that grants to the State a world-wide, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) for a term which expires no later than the term of the Franchise Agreement – Tram to use, reproduce, modify, adapt, develop, communicate to the public or otherwise exploit (but not commercialise) the Direct Interface Party Material of Yarra Trams, and to exercise all or any of the Direct Interface Party IP of Yarra Trams, for the purposes of:
 - (i) the Rail Interface Works (Yarra Trams); and
 - (ii) the exercise of the rights of the State in accordance with the Project Agreement (including its step-in rights) in respect of the Rail Interface Works (Yarra Trams).
- (b) [not used].

Schedule 31 - Post Close IP Deliverables

| Post Close IP Deliverables | |
|-----------------------------------|--|
| 1. | <p>Kapsch Escrow Deed</p> <p>If Kapsch Trafficcom Australia Pty. Ltd. (ABN: 84 081 653 429) (Kapsch) is to be appointed as a Subcontractor in respect of a Critical System, Project Co delivering to the State original counterparts of each of:</p> <ul style="list-style-type: none"> (a) an escrow agreement substantially in the form set out in Attachment 1 to this Schedule 31 as between Kapsch, the State, Project Co and the D&C Subcontractor (Escrow Deed Kapsch West Gate Tunnel) duly executed by the D&C Subcontractor, Project Co and Kapsch and in a form and substance satisfactory to the State; and (b) an escrow agreement substantially in the form set out in Attachment 1 to this Schedule 31 as between Kapsch, the State, the CityLink Parties and OpCo (Escrow Deed Kapsch CityLink) duly executed by the CityLink Parties, OpCo and Kapsch and in a form and substance satisfactory to the State. |
| 2. | <p>Legal Opinions (Project Co and CityLink Parties)</p> <p>If Kapsch is to be appointed as a Subcontractor in respect of a Critical System, the State receiving a legal opinion given for the benefit of the State in a form and substance satisfactory to it from an Australian top tier law firm acting for Project Co and from an Australian top tier law firm acting for the CityLink Parties as to customary matters for an opinion of this nature including:</p> <ul style="list-style-type: none"> (a) the legal capacity and corporate power of Project Co to enter into and perform its obligations under the Escrow Deed Kapsch West Gate Tunnel and the legal capacity and corporate power of the CityLink Parties to enter into and perform its obligations under the Escrow Deed Kapsch CityLink; (b) the enforceability against Project Co of the Escrow Deed Kapsch West Gate Tunnel and the enforceability against the CityLink Parties of the Escrow Deed Kapsch CityLink; and (c) due execution by Project Co of the Escrow Deed Kapsch West Gate Tunnel and due execution by the CityLink Parties of the Escrow Deed Kapsch CityLink. |
| 3. | <p>Legal Opinion (Kapsch)</p> <p>If Kapsch is to be appointed as a Subcontractor in respect of a Critical System, the State receiving a legal opinion given for the benefit of Project Co and the State in a form and substance satisfactory to it from an Australian top tier law firm acting for Kapsch as to customary matters for an opinion of this nature including:</p> <ul style="list-style-type: none"> (a) the legal capacity and corporate power of Kapsch to enter into and perform its obligations under the Escrow Deed Kapsch West Gate Tunnel and the Escrow Deed Kapsch CityLink; (b) the enforceability against Kapsch of the Escrow Deed Kapsch West Gate Tunnel and the Escrow Deed Kapsch CityLink; and (c) due execution by Kapsch of the Escrow Deed Kapsch West Gate Tunnel and the Escrow Deed Kapsch CityLink. |
| 4. | <p>SICE Escrow Deeds</p> <p>If SICE Pty Ltd (ABN 75 113 609 055) (SICE) is to be appointed as a Subcontractor in respect of a Critical System, Project Co delivering to the State original counterparts of each of:</p> <ul style="list-style-type: none"> (a) an escrow agreement substantially in the form set out in Attachment 1 to this Schedule 31 as between SICE, the State, Project Co and the D&C Subcontractor (Escrow Deed SICE West Gate Tunnel) duly executed by the D&C Subcontractor, Project Co and SICE and in a form |

| | |
|-----------|---|
| | <p>and substance satisfactory to the State; and</p> <p>(b) an escrow agreement substantially in the form set out in Attachment 1 to this Schedule 31 as between SICE, the State, the CityLink Parties and OpCo (Escrow Deed SICE CityLink) duly executed by the CityLink Parties, OpCo and SICE and in a form and substance satisfactory to the State.</p> |
| <p>5.</p> | <p>Legal Opinions (Project Co and CityLink Parties)</p> <p>If SICE is to be appointed as a Subcontractor in respect of a Critical System, the State receiving a legal opinion given for the benefit of the State in a form and substance satisfactory to it from an Australian top tier law firm acting for Project Co and from an Australian top tier law firm acting for the CityLink Parties as to customary matters for an opinion of this nature including:</p> <p>(a) the legal capacity and corporate power of Project Co to enter into and perform its obligations under the Escrow Deed SICE West Gate Tunnel and the legal capacity and corporate power of the CityLink Parties to enter into and perform its obligations under the Escrow Deed SICE CityLink;</p> <p>(b) the enforceability against Project Co of the Escrow Deed SICE West Gate Tunnel and the enforceability against the CityLink Parties of the Escrow Deed SICE CityLink; and</p> <p>(c) due execution by Project Co of the Escrow Deed SICE West Gate Tunnel and due execution by the CityLink Parties of the Escrow Deed SICE CityLink.</p> |
| <p>6.</p> | <p>Legal Opinion (SICE)</p> <p>If SICE is to be appointed as a Subcontractor in respect of a Critical System, the State receiving a legal opinion given for the benefit of Project Co and the State in a form and substance satisfactory to them from an Australian top tier law firm acting for SICE as to customary matters for an opinion of this nature including:</p> <p>(a) the legal capacity and corporate power of SICE to enter into and perform its obligations under the Escrow Deed SICE West Gate Tunnel and the Escrow Deed SICE CityLink;</p> <p>(b) the enforceability against SICE of the Escrow Deed SICE West Gate Tunnel and the Escrow Deed SICE CityLink; and</p> <p>(c) due execution by SICE of the Escrow Deed SICE West Gate Tunnel and the Escrow Deed SICE CityLink.</p> |

West Gate Tunnel
Project Agreement

Escrow Agreement

Attachment 1 - Escrow Agreement

Escrow agreement - [] Project

[#] State
State

[Project Co/CML]
Operator

[D&C Contractor / OpCo] **[State Note: The D&C Subcontractor will only be a party to this document to the extent that this agreement relates to West Gate Tunnel. OpCo will be a party in place of the D&C Contractor for CityLink.]**

Contractor

[Kapsch / SICE entity]
Subcontractor

[Insert Escrow Agent name]
Escrow Agent

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Escrow agreement - [] Project

Date

Parties [] (State)
[Project Co/CML] (Operator)
[] (Contractor) *[State Note: The D&C Subcontractor will only be a party to this document to the extent that this agreement relates to West Gate Tunnel. OpCo will be a party in place of the D&C Contractor for CityLink.]*
[Kapsch / SICE entity] (Subcontractor)
[Insert Escrow Agent name] (Escrow Agent)

Background

A. [Note: relevant background to be inserted.]

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this agreement:

Escrow Fees means the fees set out in Schedule 1.

Escrow Materials means:

- (a) the source code for the Relevant Software;
- (b) a copy of the Relevant Software in a form ready for installation including compiled object code;
- (c) the Proprietary Development Environment;
- (d) documentation relating to the source code, object code or Proprietary Development Environment, including descriptions of code generation, database schemas, and operational and user manuals;
- (e) any pertinent commentary or explanation that may be necessary to render the source code understandable and useable by a trained computer-programming professional to the extent these are available;
- (f) statements of principles of operation, and schematics, all as necessary or useful for the effective understanding and use of the source code; and
- (g) any other materials specified in Schedule 2.

Escrow Agreement

Event of Insolvency means:

- (a) a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
 - (ii) winding up or deregistering a person; or
 - (iii) proposing or implementing a scheme of arrangement, other than a solvent scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Cth);
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;
 - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
 - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), a person is taken to have failed to comply with a statutory demand (as defined in the *Corporations Act 2001* (Cth));
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

GST Law has the meaning in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).

New Release means any version of or addition to the Relevant Software produced by or on behalf of the Subcontractor, or made available by or on behalf of the Subcontractor, from time

Escrow Agreement

to time under or in connection with a Relevant Subcontractor Agreement (whether by way of updates or replacement versions, or additions).

Project Agreement means [include details of WGT Project Agreement/CityLink Concession Deed as applicable].

Proprietary Development Environment means any proprietary programs used in the development environment for the Relevant Software in electronic form, including compilers, workbenches, tools and higher-level (or proprietary) languages employed by the Subcontractor for the development, maintenance, and implementation of the source code, for which there is not a commercially available alternative available to the Operator on reasonable terms through readily known sources other than the Subcontractor.

Relevant Subcontractor Agreement means any agreement between the Subcontractor (or a Related Body Corporate of the Subcontractor) and [either or both of] the Operator (or a Related Body Corporate of the Operator) [and the D&C Subcontractor] relating to the implementation, configuration, maintenance, support or enhancement of the Relevant Software. [Note: words in [] for WGT only.]

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth), and includes in respect of a party to this agreement any entity that (directly or indirectly) controls, is controlled by, or is under common control with that party.

Relevant Software means the software listed in Schedule 2.

Replacement Operator means the State or any nominee of the State.

Road means [insert details of the West Gate Tunnel/CityLink infrastructure as applicable].

1.2 Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly but not severally;
- (c) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

Escrow Agreement

- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) includes in any form is not a word of limitation; and
- (k) a reference to \$ or **dollar** is to Australian currency.

1.3 Obligations apply to employees, agents and subcontractors

Where an obligation is imposed on a party under this agreement, that obligation will be deemed to include an obligation to ensure that no act, error or omission on the part of that party's employees, agents or subcontractors or their employees or agents occurs which will prevent the discharge of that party's obligation.

2. Duration

This agreement is in force until the Escrow Materials are released in accordance with this agreement or this agreement is otherwise terminated.

3. Appointment of Escrow Agent

The Escrow Agent is hereby appointed jointly by the Operator and the Subcontractor and, subject to the terms and conditions of this agreement, is granted full power and authority to act on behalf of each party to this agreement, for the purposes of this agreement.

4. Subcontractor's obligations

4.1 Deposit of Escrow Materials

The Subcontractor must deliver to, and deposit with, the Escrow Agent one copy of the Escrow Materials within 30 days after the date of this agreement.

4.2 Maintenance of Escrow Materials

- (a) The Subcontractor must during the term of this agreement (at the intervals set out in clause 4.2(b)) maintain, amend, modify, update and enhance the Escrow Materials and ensure that the Escrow Materials deposited with the Escrow Agent are kept up to date and if necessary replaced at the request of the Escrow Agent, and accurately reflect the Relevant Software to which the Escrow Materials relate including all New Releases.
- (b) The Subcontractor must perform the activities set out in clause 4.2(a) at least once every 6 months during the term of this agreement and in any event promptly upon any major New Release coming into existence or upon the occurrence of any event referred to in clause 8.2.

4.3 Warranty

The Subcontractor warrants to the Operator that the Escrow Materials are, to the best of the knowledge of the Subcontractor, free from any malicious computer software or data which

Escrow Agreement

would prevent any part of the Escrow Materials from performing their desired function or which would prevent or impede a thorough and effective verification of them.

4.4 Licence

The Subcontractor grants to the Escrow Agent a licence to deal with the Escrow Materials as is necessary to enable the Escrow Agent to comply with its obligations under this agreement.

5. Escrow Agent's obligations

5.1 Custody of Escrow Materials

The Escrow Agent must accept custody of the Escrow Materials on the date of delivery in accordance with clause 4.1 of this agreement and, subject to the terms and conditions of this agreement, must hold the Escrow Materials on behalf of the Operator and the Subcontractor. Title to any physical materials on which the Escrow Materials are stored will pass to the Escrow Agent upon delivery.

5.2 Preservation of Escrow Materials

The Escrow Agent must take all reasonably necessary steps to ensure the preservation, care, maintenance, safe custody and security of the Escrow Materials while in the possession, custody or control of the Escrow Agent, including storage in a secure receptacle and in an atmosphere which does not harm the Escrow Materials.

5.3 Loss or destruction of Escrow Materials

If the Escrow Materials are lost, stolen, destroyed or damaged while it is in the possession, custody or control of the Escrow Agent the Escrow Agent must immediately notify the Operator, the State and the Subcontractor.

5.4 Subcontractor to deposit new copy

Upon receipt of a notice under clause 5.3, the Subcontractor must promptly deposit a further copy of the Escrow Materials with the Escrow Agent.

5.5 Escrow Agent to reimburse

Where the loss, theft, destruction or damage arises out of a breach by the Escrow Agent of its obligations under clause 5.2, the Escrow Agent must reimburse the Subcontractor for the reasonable costs and expenses of replacing the Escrow Materials.

5.6 No responsibility for completeness

The Escrow Agent is not obliged to determine the nature, completeness or accuracy of the Escrow Materials lodged with it.

6. Escrow Fees and expenses

6.1 Invoicing

The Escrow Agent may invoice the Subcontractor for the Escrow Fees at the times set out in Schedule 1.

6.2 Operator to pay fees

The Subcontractor must pay the Escrow Fees within 30 days after receipt of a valid invoice.

6.3 Review of fees

Subject to clause 9.2, the Escrow Fees may be reviewed annually as at each anniversary of the date of this agreement and notice of any increase in fees must be given in writing one month prior to the anniversary date.

6.4 GST

- (a) The Escrow Fees are calculated on a GST-inclusive basis, and any invoice provided by the Escrow Agent must be a tax invoice in the proper form prescribed by the GST Law. Where a party is liable to pay damages in relation to this agreement, that party must indemnify the party to whom the damages are payable for any GST payable by the recipient on those damages.
- (b) If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:
 - (i) any amount payable or consideration to be provided under any other provision of this deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount must be payable by the party providing consideration for that supply (**Recipient**), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST law and payable at the same time and in the same manner as for the Agreed Amount; and
 - (iii) the Supplier must provide a tax invoice (or equivalent documentation which complies with the GST Law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this deed.
- (c) In this clause 6.4 a term defined in the GST Law has the meaning which it has in the GST Law.

6.5 Escrow Agent's expenses

All expenses and disbursements incurred by the Escrow Agent in connection with this agreement will be borne wholly and completely by the Escrow Agent.

6.6 Subcontractor's expenses

Subject to clause 5.5, all expenses and disbursements incurred by the Subcontractor in connection with this agreement will be borne wholly and completely by the Subcontractor.

7. Testing and verification

7.1 State and Operator may test Escrow Materials

Either the State or the Operator (each a **Relevant Testing Party**) or an independent assessor acting on behalf of the Relevant Testing Party (**Inspector**) may, on giving 7 days' notice to the Subcontractor and the Escrow Agent, analyse and conduct tests in relation to the Escrow

Escrow Agreement

Materials to verify that the Escrow Materials have been deposited and maintained in accordance with the requirements of this agreement. The Inspector must permit the Subcontractor to be present for this verification if the Subcontractor wishes.

7.2 Responsibility of Escrow Agent

The Escrow Agent has no responsibility for testing and verification of the Escrow Materials except as specified in clause 7.3.

7.3 Release to Inspector

The Escrow Agent must release the Escrow Materials to the Inspector upon presentation of a copy of the notice issued to the Subcontractor under clause 7.1.

7.4 Access rights

The access granted to the Inspector may include the taking of copies of the Escrow Materials and using copies of the Relevant Software with a computer system for the purpose of testing. The Inspector must execute a confidentiality agreement on reasonable terms, agreeing to keep confidential any information learned by the Inspector through any testing conducted under this clause 7.

7.5 Return of Escrow Materials

At the conclusion of any inspection the Inspector must return the Escrow Materials and/or destroy or erase any copies as appropriate.

7.6 Costs

The cost of any such inspection will be borne by the Relevant Testing Party unless the verification shows that the Escrow Materials do not contain the relevant materials in which case the Subcontractor must reimburse the Relevant Testing Party for its costs of the inspection including any amounts paid to the Inspector or the Escrow Agent.

7.7 Deficiencies

If the Inspector discovers any deficiency in the Escrow Materials, the Relevant Testing Party may give the Subcontractor notice requiring the Subcontractor to correct the deficiency, at the expense of the Subcontractor, within 7 days and in this respect time is of the essence.

8. Release of the Escrow Materials

8.1 Release of Escrow Materials

The Escrow Agent must not release, or allow access to, the Escrow Materials except in accordance with the provisions of this agreement.

8.2 Release to Operator

- (a) Unless ordered by a court not to release the Escrow Materials, and provided that the Escrow Agent has received a copy of the notice under clause 8.2(b) given at least 7 days prior to the notice under this clause 8.2(a), the Escrow Agent must release the Escrow Materials to the Operator upon written notice from the Operator that:
 - (i) an Event of Insolvency has occurred with respect to the Subcontractor;

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- (ii) a Relevant Subcontractor Agreement has been terminated (in accordance with its terms) due to a failure or inability of the Subcontractor to perform or comply with the Subcontractor's obligations to perform implementation, support or maintenance activities or services in relation to the Relevant Software under the terms of the Relevant Subcontractor Agreement or an abandonment by the Subcontractor of such obligations; or
 - (iii) the Subcontractor has ceased, and no Related Body Corporate of the Subcontractor offers, support and maintenance services for the Relevant Software generally for customers in Australia.
- (b) The Operator must give the Subcontractor no less than 7 days' prior written notice of giving any notice to the Escrow Agent under clause 8.2(a).
 - (c) Upon the Escrow Materials being released to the Operator, the Operator must promptly provide a copy of the Escrow Materials to the State (and the State's right to use the Escrow Materials will be determined in accordance with the terms of the Project Agreement).

8.3 Obligations of Escrow Agent

The Escrow Agent will be under no obligation or responsibility to verify or otherwise test the validity of any notice received, or its contents.

9. Termination

9.1 Termination by Escrow Agent

The Escrow Agent may, by giving 3 months prior written notice to the Operator and the Subcontractor, terminate this agreement subject to the pro-rata refund of any advance payment of the Escrow Fees.

9.2 Termination by Operator

- (a) The Operator may terminate this agreement by giving 7 days prior written notice to the Escrow Agent and the Subcontractor where:
 - (i) the Operator has ceased using the Relevant Software (other than where a replacement operator is being appointed to operate the Road and requires the ability to use the Relevant Software for the Road); or
 - (ii) the Operator and the State agree that this agreement should be terminated.

9.3 Joint termination

The Operator, the State and the Subcontractor may jointly terminate this agreement immediately if:

- (a) an Event of Insolvency occurs in relation to the Escrow Agent; or
- (b) the Escrow Agent is in breach of any obligation under this agreement so that there is a substantial failure by the Escrow Agent to perform or observe this agreement.

9.4 New agreement

If this agreement is terminated for any reason, the parties to this agreement (other than the Escrow Agent) must enter into a new escrow agreement on terms and conditions which are the same in all material respects as those out in this agreement, with an alternative escrow agent who is reasonably acceptable to both the State and the Operator within 20 Business Days after the date this agreement is terminated. If the Subcontractor refuses to enter into a new escrow agreement complying with this clause within 20 Business Days of the date this agreement is terminated, the Escrow Agent must release the Escrow Materials to the Operator. Where such an agreement is not entered into within that time period for any other reason then (without limiting any other provision of this agreement), the Subcontractor will hold the Escrow Materials and clause 8.2 will apply as though references to the Escrow Agent were references to the Subcontractor, until such time as an escrow agreement complying with the requirements of this clause is entered into. This clause 9.4 survives termination of this agreement.

10. State Rights During Step-In

10.1 Notification

If:

- (a) the State exercises its right under the Project Agreement to assume total or partial management and control of the whole or part of the works or activities required to be performed by the Operator under the Project Agreement (**Step-In Event**); and
 - (b) the Step-In Event requires the State to use or operate the Relevant Software,
- the Operator must notify the Subcontractor and the Escrow Agent in writing that:
- (c) a Step-In Event has occurred; and
 - (d) the State has ceased to exercise its rights in relation to the Step-In Event.

10.2 State Rights during Step-In

The parties acknowledges and agrees that, where the State has exercised its right in relation to a Step-In Event, then until such time as the Operator notified the Subcontractor under clause 10.1(d) that it has ceased to exercise those rights:

- (a) the State may exercise all rights of the Operator under this agreement, in lieu of the Operator; and
- (b) the Subcontractor and the Escrow Agent will perform their obligations under this agreement (including under clause 8) as though references to the Operator were references to the State.

11. Assignment

- (a) Except as set out in clause 11(b), none of the Subcontractor, the Operator, the Escrow Agent or the Contractor will assign, in whole or in part, any of its rights under this agreement without the prior written consent of all other parties.
- (b) Where the Project Agreement terminates for any reason, the Operator may transfer its rights and obligations under this agreement to a Replacement Operator. The

parties must execute any novation deed reasonably required by the State to effect such a novation.

12. Confidentiality

12.1 Escrow Agent not to disclose

The Escrow Agent must not, except as permitted by this agreement, make public or disclose to any person any information about this agreement or the Escrow Materials.

12.2 Escrow Agent not to copy

The Escrow Agent must not reproduce, or cause to have reproduced, a copy of the Escrow Materials or any part thereof except if the Escrow Agent reasonably believes it is necessary to carry out its obligations under this agreement.

12.3 Survival

The obligations under this clause will survive the termination of this agreement.

13. Compliance with laws

The Escrow Agent must in carrying out this agreement comply with the provisions of any relevant statutes, regulations, by-laws and the requirements of any Commonwealth, State or local authority.

14. Insurance

- (a) The Escrow Agent must:
 - (i) effect and maintain insurance during the term of this agreement and for a period of 12 months after this agreement terminates which, in the Operators' reasonable opinion, is suitable and sufficient to provide both the Operator with appropriate cover against the risk of legal liability to any person arising in connection with the Escrow Materials; and
 - (ii) ensure that each policy of insurance names each of the State and the Operator as an additional insured.
- (b) The Escrow Agent must provide both the State and the Operator with evidence of the terms and currency of insurances required to be effected under clause 14 on the date of this agreement and whenever requested by either the State or the Operator.

15. Applicable law

This agreement will be governed by and construed in accordance with the laws from time to time in force in the State of Victoria and the parties agree that the Courts of that State will have jurisdiction to entertain any action in respect of, or arising out of, this agreement.

16. Variation and waiver

16.1 Variation

This agreement must not be varied either in law or in equity except by agreement in writing signed all parties to it.

16.2 Waiver

A waiver by one party of a breach of a provision of this agreement by another party will not constitute a waiver in respect of any other breach or of any subsequent breach of this agreement. The failure of a party to enforce a provision of this agreement will not be interpreted to mean that party no longer regards that provision as binding.

17. Severability

If, at any time, a provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this agreement; or
 - (b) that provision under the law of any other jurisdiction.
-

18. Notices

18.1 Notice requirements

All communications (including approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands) in connection with this agreement:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as specified in clause 18.2 (or as otherwise notified by that party to each other party from time to time);
- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid express post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 18.2; and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 18.2:
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business

Day after the date of posting by airmail to an address outside Australia;
and

- (iii) in the case of email, the first to occur of:
- A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

18.2 Addresses for notices

- (a) State:
[insert details]
- (b) Operator:
[insert details]
- (c) Subcontractor:
[insert details]
- (d) Escrow Agent:
[insert details]

West Gate Tunnel
Project Agreement

Escrow Agreement

Schedule 1 - Escrow Fees

| Fee Type | Amount | Due Date for Invoice |
|---|-----------------|----------------------|
| [Insert details, e.g. Annual Custody Fee] | [insert amount] | [insert due date] |

West Gate Tunnel
Project Agreement

Escrow Agreement

Schedule 2 - Details of Material to be Held in Escrow

Relevant Software:

Additional materials:

[insert details of any specific materials]

West Gate Tunnel
Project Agreement

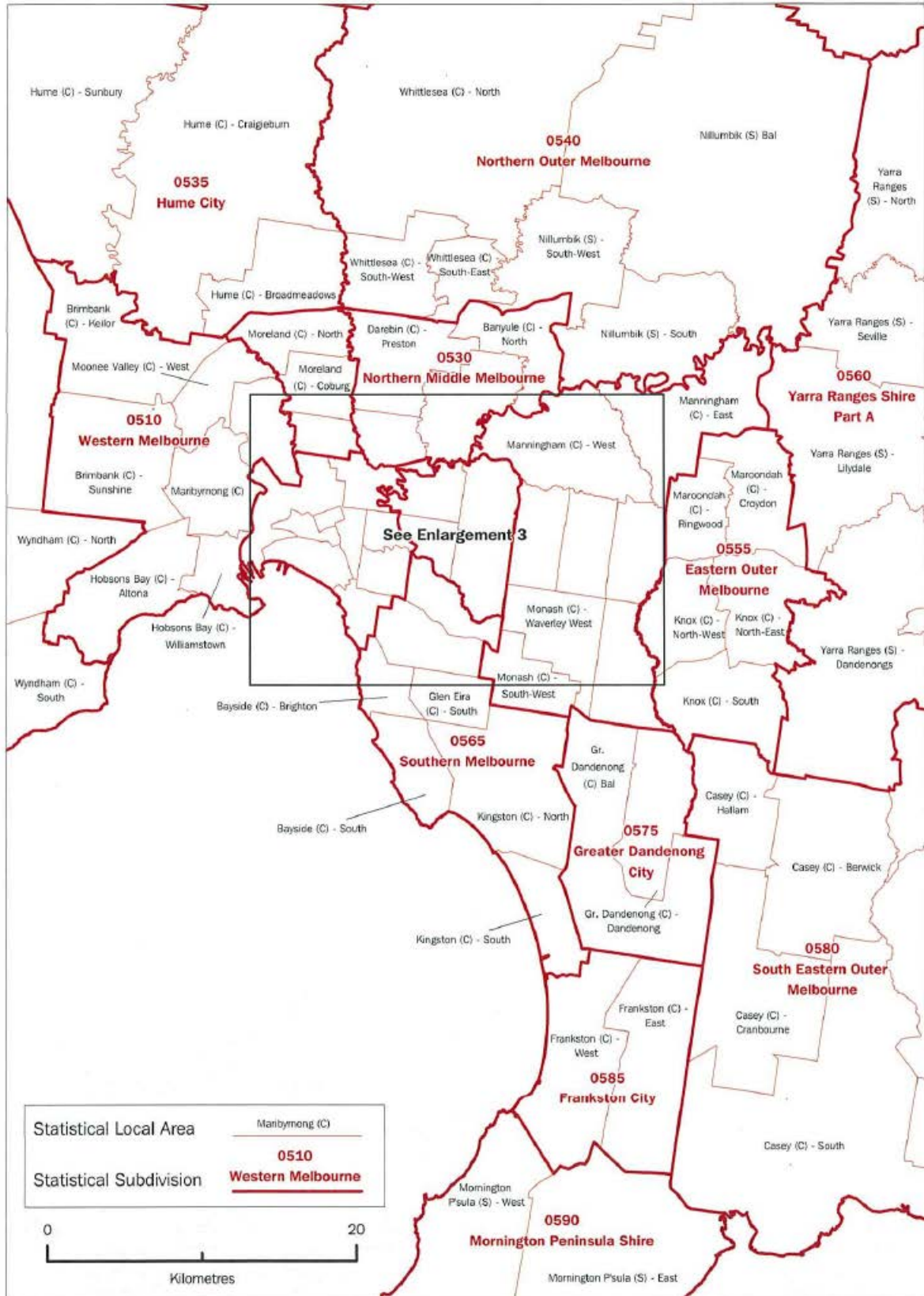
Escrow Agreement

Signed as an agreement.

[Insert execution clauses]

Schedule 32 - Greater Melbourne Area

VICTORIA, Statistical Subdivisions and Statistical Local Areas: Enlargement 2



Schedule 33 - Additional IP Exceptions

Existing Tolling Software means all Third Party Software forming part of the "Tolling System" (as defined in the CityLink Concession Deed) as at the date of this Agreement, together with any update, upgrade or new release of that Third Party Software (including in connection with the Tolling Works), subject to clause 52.2(m) of Schedule 33.

Project Co Material means:

- (a) the Design Documentation;
- (b) the Construction Documentation;
- (c) the Construction Records;
- (d) the As-Built Records;
- (e) the Project Plans and the O&M Manuals;
- (f) any other Deliverable; and
- (g) all other documentation, information (including data bases and drafts), models, systems, computer software and technology in which Intellectual Property Rights are capable of subsisting which Project Co or any of its Associates prepare or use in carrying out the Project Activities,

but excluding any Third Party Back Office Software.

1. Definitions

In this Schedule 33, unless the context otherwise requires:

Available Licence Terms has the meaning given in clause 52.6(b)(i).

COTS Software means computer software, in which the Intellectual Property Rights are owned by a person other than Project Co or a member of the Transurban Group, that is generally commercially available on commercial terms to members of the public who are willing to pay the appropriate licensing fee, other than any software which forms part of the Subcontractor Material, the Existing Tolling Software or the Firmware.

ESEP Project has the meaning given to it in the ESEP Deed.

Existing Tolling Licence has the meaning given in clause 52.2(l)(ii).

Firmware means any computer software permanently embedded within physical assets (including field devices and devices forming part of the RSS) by being recorded in non-volatile memory.

Material Licence Issue has the meaning given in clause 52.2(l)(ii)F.

PSTR has the meaning given to the term "Project Scope and Technical Requirements" by the CityLink Concession Deed.

Third Party Intellectual Property Rights means any Intellectual Property Rights that are not vested in Project Co or any member of the Transurban Group.

Third Party Software means:

- (a) COTS Software; and
- (b) other computer software (not being COTS Software) in which the Intellectual Property Rights are owned by a person other than Project Co or a member of the Transurban Group,

but excluding the Subcontractor Material, the Existing Tolling Software and the Firmware.

52. Intellectual Property Rights

52.1 Warranties

Project Co warrants to the State that:

- (a) **(No infringement or rights):** no Intellectual Property Rights, Moral Rights or other rights of any person will be infringed or breached:
 - (i) by the performance of the Project; or
 - (ii) by:
 - A. use or enjoyment of any Project Co Material or any Relevant Infrastructure (except to the extent such use or enjoyment is in a manner contrary to or beyond what is expressly permitted by the terms of a licence granted or procured under this clause 52); or
 - B. use or exercise of any Project Intellectual Property Rights (except to the extent such use or exercise is in a manner contrary to or beyond what is expressly permitted by the terms of a licence granted or procured under this clause 52),
- by the State, any of its Associates or any person nominated or authorised by the State in connection with this Agreement (including Project Co and its Associates); and
- (b) **(ownership of rights):** it owns, or has the authority to grant the rights granted or effect the assignment made (as applicable) under this clause 52 in respect of, the Project Intellectual Property Rights and neither:
 - (i) the exercise of those rights by the State, any of its Associates or any person nominated or authorised by the State in connection with this Agreement; nor
 - (ii) the possession or use of any materials in which those rights subsist in connection with this Agreement,

will (except to the extent such exercise, possession or use is in a manner contrary to or beyond what is expressly permitted by the terms of a licence granted or procured under this clause 52) give rise to any Liability on the part of the State, any of its Associates or any person nominated or authorised by the State on account of an infringement of any rights of a third party, including to pay any compensation (including any royalty) to any person, or give rise to a right entitling any person to make a Claim against the State, any of its Associates or any person nominated or authorised by the State for any attribution or acknowledgment or rectification in relation to the Project Intellectual Property Rights or any materials in which they subsist.

52.2 Grant of licence

Subject to clause 52.6, Project Co:

- (a) **(grant)**: grants to the State; or
- (b) **(procure of grant)**: without limiting Project Co's obligations under clause 52.5, must procure that each of its Associates who own or are licensed to use the relevant Project Intellectual Property Rights grants to the State; and
- (c) **(all things necessary)**: must do all things necessary to give effect to the grant to the State of,

a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) to use, reproduce, modify, adapt, develop, communicate to the public or otherwise exploit the Project Co Material (and, until the Date of Parliamentary Support (CityLink) but subject always to clause 52.2(l), the "Tolling System" as defined in the CityLink Concession Deed), and to exercise all or any of the Project Intellectual Property Rights, for the purposes of:

- (d) **(Project)**: the Project (including, where this Agreement is terminated for any reason), to complete any Project Activities which have not been:
 - (i) carried out; or
 - (ii) carried out in accordance with the applicable State Project Documents, as at the date of termination;
- (e) **(State Project Documents)**: the exercise of the rights of the State or its Associates in accordance with the State Project Documents (including its step-in rights in accordance with clause 37);
- (f) **(Project Co Material and Relevant Infrastructure)**: the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of the Project Co Material or the Relevant Infrastructure on and from the Expiry Date;
- (g) **(CityLink)**: in the case of the "Tolling System" (as defined in the CityLink Concession Deed), the CityLink Project and the ESEP Project;
- (h) **(interfaces – other than Third Party Software)**: the procurement, funding, financing, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of any thing (including infrastructure, equipment, computer hardware, computer software and computer or telecommunications systems) which interfaces or interoperates with, or which is located (in whole or in part) under, on or above any Project Co Materials or any Relevant Infrastructure, excluding any Third Party Software forming part of the Project Co Materials or Relevant Infrastructure, during and after the Term; and
- (i) **(interfaces – Third Party Software)**: the procurement, funding, financing, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of any computer software interface:
 - (i) between any Third Party Software forming part of the Project Co Materials and any Key External Systems; and

- (ii) existing at the time of Handover between Third Party Software forming part of the Project Co Materials that are handed over to the State as part of Handover,

during and after the Term,

which licence is, subject to clause 52.2(k) and 52.2(l), effective on the later of the date of this Agreement and the date that the relevant Project Intellectual Property Rights come into existence, provided that in respect of:

- (j) Third Party Software, Project Co has no obligation to grant, or to procure the grant of:
 - (i) a 'perpetual' licence to any software that is not offered by the relevant third party licensor on a perpetual licence basis, which Project Co must identify to the State, and disclose the licence term and renewal rights for any such software to the State, as part of the process in clause 52.6(b);
 - (ii) the right to 'modify', 'adapt' or 'develop' any software for which the relevant third party licensor has not provided the source code to Project Co or any member of the Transurban Group, and the reference in this clause 52.2 to these rights in relation to that software is to be read as a reference to the right to configure only that software;
 - (iii) the right to 'communicate to the public' in any manner other than in which Project Co communicates that software to the public during the Term, and the State acknowledges that Project Co may satisfy the requirement to grant a right to communicate the Third Party Software to the public through a more specific use right that permits the State to communicate that software to the public in the manner in which Project Co does during the Term; or
 - (iv) any rights to 'otherwise exploit' the software;
- (k) COTS Software, the obligation on Project Co is only to grant or to procure the grant of:
 - (i) a licence of that COTS Software to the State with effect from, and for the duration of, the State's exercise of its step-in rights in accordance with clause 37, on such terms that permit use of the COTS Software by the State (or its nominee) to the extent required by the State (or its nominee) to exercise those step-in rights, including (where the State or its nominee assumes management and control of the Relevant Infrastructure) to operate the Relevant Infrastructure to the higher of the standard specified in the PSR and that to which Project Co is actually operating it as at the time of the State exercising its step-in rights; and
 - (ii) a licence of that COTS Software to the State with effect from the time that such licence is first required for the State to perform necessary activities as part of handover in accordance with the Separation Plans (as applicable), but in any event with effect from the achievement of Handover, and then in either case on the terms set out in this clause 52.2 (subject to clause 52.6).
- (l) subject to clause 52.2(m), computer software that forms part of the Existing Tolling Software, the obligation on Project Co is only to grant or procure the grant of a licence:

- (i) of that Existing Tolling Software to the State with effect from, and for the duration of, the State's exercise of its step-in rights in accordance with clause 37 of this Agreement or clause 9.11 of the CityLink Concession Deed or clause 9.11 of the ESEP Deed, on such terms that permit use of the Existing Tolling Software by the State (or its nominee) to the extent required by the State (or its nominee) to exercise those step-in rights, including:
- A. where the State or its nominee assumes management and control of the Relevant Infrastructure, to operate the Relevant Infrastructure to the higher of the standard specified in the PSR and that to which Project Co is actually operating it as at the time of the State exercising its step-in rights; and
 - B. where the State or its nominee assumes management and control of any infrastructure under clause 9.11 of the CityLink Concession Deed or clause 9.11 of the ESEP Deed, to operate that infrastructure to the higher of the standard specified in the PSTR and that to which the Company is actually operating it as at the time of the State exercising its step-in rights,

and Project Co warrants that the State will be licensed for such use at such time; and

- (ii) of that Existing Tolling Software to the State with effect from the time that such licence is first required for the State to perform necessary activities as part of:
- A. handover in accordance with the Separation Plans (as applicable), but in any event with effect from the achievement of Handover;
 - B. handover in accordance with any provisions of the CityLink Concession Deed or the ESEP Deed, but in any event with effect from the completion of CityLink Handover; or
 - C. surrender in accordance with clause 3.3 of the ESEP Deed,

and then in any case for each component piece of computer software forming part of the Existing Tolling Software on terms that are no less favourable to the State (having regard to the proposed level of consumption of that computer software by the State or its nominee under the licence compared to the consumption by the Transurban Group) than the terms of the licence obtained by Project Co or such other relevant member of the Transurban Group from the licensor of that component that is in place as at the expiry of 12 months after Financial Close (**Existing Tolling Licence**), provided that:

- D. Project Co warrants that the licences procured by Project Co from the relevant licensor for the State on terms that are no less favourable to the State than the terms of the relevant Existing Tolling Licences, having regard to the proposed level of consumption of that computer software by the State or its nominee under the licence compared to the consumption by the Transurban Group would permit use of the Existing Tolling Software by the State (or its nominee):

- 1) at Handover to the extent required to operate the Tolling System to the higher of the standard specified in the PSR and that to which Project Co is actually operating it as at the time of Handover;
 - 2) at CityLink Handover, to the extent required to operate the "Tolling System" (as defined in the CityLink Concession Deed) to the higher of the standard specified in the PSTR and that to which the Company is actually operating it as at the time of CityLink Handover; and
 - 3) upon the completion of surrender of the ESEP Project in accordance with clause 3.3 of the ESEP Deed, to the extent required to operate the "Tolling System" (as defined in the CityLink Concession Deed) to the higher of the standard specified in the PSTR and that to which the Company is actually operating it as at the time of the completion of surrender of the ESEP Project in accordance with clause 3.3 of the ESEP Deed;
- E. Project Co will disclose the terms of each Existing Tolling Licence to the State within 12 months after Financial Close, providing sufficient details for the State to determine any differences in the terms as against the rights and consents that would have been required under this clause 52.2 and clause 52.5; and
- F. where the State considers, acting reasonably, that the terms of an Existing Tolling Licence disclosed pursuant to clause 52.2(l)(ii)D would prevent (if Project Co obtained a licence from the relevant licensor for the State on terms that are no less favourable to the State than the terms of the relevant Existing Tolling Licences, having regard to the proposed level of consumption of that computer software by the State or its nominee under the licence compared to the consumption by the Transurban Group) use of the Existing Tolling Software by the State (or its nominee) to the extent required by the State (or its nominee) to:
- 1) operate the Relevant Infrastructure to the higher of the standard specified in the PSR and that to which Project Co is actually operating it as at the time of Handover; or
 - 2) operate the "Link", "Works" and "Tolling System" (each as defined in the CityLink Concession Deed) and the Exhibition Street Extension (as defined in the ESEP Deed) to the higher of the standard specified in the PSTR and that to which the Company is actually operating them as at the time of CityLink Handover,

(each a **Material Licence Issue**), then the State may notify Project Co of the Material Licence Issues and the parties must follow the process in clause 52.6(b) for resolution of those notified Material Licence Issues as if the State's notice

constituted a notice of rejection of Available Licence Terms under clause 52.6(b)(ii)B;

- (m) computer software that forms part of the Existing Tolling Software, where and when:
- (i) the terms on which that computer software forming part of the Existing Tolling Software is licensed to Project Co or its Associate (as applicable) are varied or replaced after the the expiry of 12 months after Financial Close; or
 - (ii) that computer software is replaced during the Term with alternative software that is licensed to Project Co or its Associate (as applicable) on terms that differ from those applicable to the replaced computer software,

that modified computer software or replacement computer software will cease to be considered part of the Existing Tolling Software for the purposes of this clause 52.2 and clause 52.2(l) will no longer apply to the relevant software on and from the date that the terms are varied or replaced, or the differing terms come into effect (as applicable) provided that Project Co must use reasonable endeavours to avoid any new or varied terms which materially diminish the rights of the licensee and any new or varied terms must comply with the terms on which Project Co is required to license the relevant software to the State (or its nominee) under this clause 52.2 (including any exceptions agreed through following the process in clause 52.6(b)); and

- (n) Third Party Intellectual Property Rights, the obligation to grant, or procure the grant of a licence may be satisfied, at Project Co's election, by:
- (i) novation or partial transfer to the State of Project Co's (or its applicable Associate's) licence to those Third Party Intellectual Property Rights under which the relevant third party licensor licenses such Intellectual Property Rights to the State; or
 - (ii) Project Co procuring a licence for the State directly from the relevant third party licensor,

which results in the State being granted a licence on terms identical to the terms on which those Intellectual Property Rights are required to be licensed to the State under this clause 52 (including any exceptions agreed in this clause 52 or Schedules 30 or 33, or agreed through following the process in clause 52.6(b)), and where it is to be satisfied through a novation or partial transfer, the State hereby consents to that novation or transfer and agrees to take all reasonable steps (including executing all reasonable documentation) to give effect to that novation or partial transfer.

52.2A Optional further project and interfacing rights

- (a) The State may, at any time during the Term, request that Project Co grant, or procure the grant of a licence to use Project Co Material and Project Intellectual Property Rights:
- (i) for the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of another project involving the transport network or the implementation of infrastructure undertaken by or on behalf of the State within Victoria; or

- (ii) for interfacing between computer software forming part of the Project Co Materials and computer software other than Key External Systems,

in which case the parties will discuss the State's requirements including the terms of the licence, with the grant or procurement of any such licence being subject to the parties executing a separate written commercial licence agreement (including as to the scope, effective date, term, licence fees and recovery by Project Co of any costs associated with conducting the procurement). To avoid doubt, the cost of any such licence has not been included in the Base Case Financial Model.

- (b) Where Project Co is requested to grant or procure a licence under this clause 52.2A it must use its reasonable endeavours to grant or obtain a licence that is:

- (i) consistent with the provisions of clause 52; and
- (ii) on terms and conditions which are commercially reasonable (including costs and fees).

52.3 Project Co Material and Relevant Infrastructure

- (a) Without limiting Project Co's other obligations under this Agreement with respect to the delivery of any Project Co Material or any Relevant Infrastructure, but subject to clause 52.3(b), Project Co will provide, and procure that its Associates provide, all documentation, information and assistance and materials as the State may reasonably require for the State's:

- (i) use or enjoyment of the Works, Project Co Material or Relevant Infrastructure; or
- (ii) use and exercise of the Project Intellectual Property Rights;

in connection with this Agreement (where such use, enjoyment or exercise does not involve the exercise of any Project Intellectual Property Rights in a manner not permitted under this Agreement), including by making any Project Co Material not forming part of the Works or not consisting of computer software available to the State in such form as the State may reasonably require for that purpose.

- (b) Notwithstanding anything to the contrary in this Agreement, including the grant of any licence, Project Co has no obligation to provide the State with:

- (i) access to or use of any computer software during the Term except:
 - A. where the State exercises its step-in rights in accordance with clause 37 and requires access or use as part of exercising those rights, and then:
 - 1) only during the period in which the State requires that access or use as part of exercising those rights; and
 - 2) provided that in relation to any computer software that forms part of system that is used both for the Project and by a member of the Transurban Group to provide services to third parties (as notified by Project Co), the State's rights to use that computer software and system are limited to:
 - a) use in relation to the Relevant Infrastructure;

- b) access to and use of the functionality of that computer software that is used by Project Co or a member of the Transurban Group in relation to the Relevant Infrastructure; and
 - c) access to and use of any data held in that system that relates to the Project or the Relevant Infrastructure,
- and the State must comply with any reasonable terms of access notified by Project Co to protect the confidentiality of, and continuity of services to, such third parties; and
- B. as required to meet its handover obligations under clause 28 in accordance with the Separation Plans (as applicable); or
- (ii) a copy of any computer software other than as required to meet its handover obligations under clause 28 or otherwise in accordance with the Separation Plans (as applicable).

52.4 Indemnities

- (a) **(Intellectual Property Rights, Moral Rights or other rights):** Project Co must indemnify the Indemnified Persons against any Claim or Liability brought against, suffered or incurred by the Indemnified Persons arising in connection with any infringement, violation, alleged infringement or alleged violation by Project Co or any of its Associates or any Indemnified Person of any Intellectual Property Rights, Moral Rights or other rights of any person or any Liability which any one or more of the Indemnified Persons may have to pay compensation (including any royalty) to a third party or make any attribution or acknowledgement or rectification in relation to any Project Intellectual Property Rights, any Project Co Material or any Relevant Infrastructure, in connection with:
 - (i) the Project; and
 - (ii) in the case of the Indemnified Persons:
 - A. using or enjoying the Project Co Material or the Relevant Infrastructure as delivered by or on behalf of Project Co to the State or as modified from time to time (but not to the extent that any Claim or Liability arises from any modification made by the State, the State's Associates or third parties engaged by the State which is not as directed or approved by Project Co) in connection with this Agreement; or
 - B. using or exercising the Project Intellectual Property Rights (except to the extent such use or exercise is in a manner contrary to or beyond what is expressly permitted by the terms of a licence granted or procured under this clause 52).
- (b) **(Breach of warranties):** Project Co must indemnify the Indemnified Persons against any Claim or Liability brought against, suffered or incurred by the Indemnified Persons arising from any breach of the warranties set out in this clause 52.
- (c) **(Indemnities under clause 52.4(a)):** In relation to any Claim or Liability for which an Indemnified Person seeks to be indemnified under clause 52.4(a) or 52.4(b):

- (i) Project Co may (subject to Project Co confirming to the State that the Claim or Liability is the subject of the indemnity in clause 52.4(a) or 52.4(b)) conduct any defence or settlement in connection with any such Claim or in relation to any such Liability, provided that Project Co:
 - A. keeps the State informed of all material steps in relation to the conduct of any defence or settlement;
 - B. consults with, and complies with all reasonable requirements of, the State in relation to such defence or settlement including complying with the Model Litigant Guidelines; and
 - C. ensures that no settlement is made on terms which involve any admission of liability on the part of any Indemnified Person without the prior consent of that Indemnified Person;
 - (ii) the State must use reasonable endeavours to ensure Indemnified Persons provide all cooperation reasonably required by Project Co in relation to such defence; and
 - (iii) to the extent that the Claim or Liability under clause 52.4(a) or 52.4(b) comes to the attention of the State before it comes to the attention of Project Co, the State will notify Project Co of the Claim or Liability.
- (d) **(Interference with use or enjoyment of Project Co Material or the Relevant Infrastructure):** If a Claim or Liability referred to in clause 52.4(a) substantially interferes with the Indemnified Persons' use or enjoyment of any Project Co Material, any Relevant Infrastructure or the use or exercise of any Project Intellectual Property Rights, or the State reasonably believes, in consultation with Project Co, that such Claim or Liability may substantially interfere with such use or enjoyment, Project Co will (at Project Co's option, and without limiting any of the State's other rights under any Project Document), to the extent reasonably practicable:
- (i) replace the Project Co Material or the Relevant Infrastructure or the subject matter of the relevant Project Intellectual Property Right, without additional charge with a non-infringing product or service of at least equivalent functionality and performance, and which otherwise meets all relevant requirements for that Project Co Material or the Relevant Infrastructure in accordance with the Project Documents;
 - (ii) modify the Project Co Material or the Relevant Infrastructure or the subject matter of the relevant Project Intellectual Property Right to overcome the infringement without additional charge and without materially impeding functionality or performance or rendering it non-compliant with any relevant requirements for that Project Co Material or the Relevant Infrastructure in accordance with the Project Documents; or
 - (iii) obtain a licence for the Indemnified Persons to continue use and enjoyment of the Project Co Material or the Relevant Infrastructure or the subject matter of the relevant Project Intellectual Property Right in accordance with the licence granted under clause 52.2 and pay any additional fee required for such licence.
- (e) **(Intellectual Property Rights):** Neither the State's rights nor Project Co's liabilities or obligations, whether under this Agreement or otherwise according to Law, in connection with Intellectual Property Rights, will be limited by the terms of this clause 52.4.

- (f) **(Indemnified Persons):** For the purposes of this clause 52.4 the Indemnified Persons are each of:
- (i) the State;
 - (ii) the State's Associates; and
 - (iii) any person nominated or authorised by the State (including the respective sub-licensees of the State and its Associates) to use any Intellectual Property Rights.

52.5 Moral rights

If Project Co, in the course of carrying out the Project Activities, makes use of any work or other subject matter in which copyright subsists (**Material**), but excluding any Material that is COTS Software or Firmware, Project Co will procure (in the case of Subcontractor Material) or otherwise take all reasonable steps to procure) from every person (including any officer, employee, agent, consultant or Subcontractor of Project Co or any of its Associates) who is an author of that Material a consent which is valid and effective under the *Copyright Act 1968* (Cth) and signed by that person by which (to the maximum extent permitted by Law) that person irrevocably and unconditionally consents to the State, any of its Associates and any person nominated or authorised by the State (including sub-licensees), Project Co and its Associates and any person authorised to do acts comprised in the copyright (**Beneficiaries**):

- (a) **(exercise of rights):** using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material anywhere in the world in whatever form any of the Beneficiaries thinks fit (including the making of any distortions, additions or alterations to the Material or any adaptation thereof, or to any part of the Material or of any adaptation of the Material in a manner which, but for the consent, infringes or may infringe that person's Moral Rights in the Material); and
- (b) **(no identification):** using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material or any adaptation thereof (or any part of the Material or of any such adaptation) anywhere in the world without making any identification of that person in relation to the Material.

52.6 Third Party Materials

- (a) **(Application to Third Party Intellectual Property Rights):** Clauses 52.2 and 52.5 will not apply to any Intellectual Property Rights that are Third Party Intellectual Property Rights if the material the subject of the relevant Intellectual Property Rights (the **Third Party Material**) is:
 - (i) Subcontractor Material, to the extent that an exception or qualification to clause 52.2 or 52.5 is set out in Schedule 30 for that Subcontractor Material;
 - (ii) Firmware, in which case Project Co's obligation is to transfer, or procure that each of its Associates transfer, to the State the rights granted to Project Co or the Associate (as applicable) with respect to that Firmware (and where any owner of the relevant physical asset is permitted to use the Firmware in using that physical asset, this obligation may be satisfied by transferring to the State the physical device on which that Firmware resides); or
 - (iii) Third Party Software (together with any documentation or other material necessary or desirable in order for the State or its nominee to use,

operate and maintain the Third Party Software and which is supplied with that software by the third party licensor), to the extent that alternative terms are determined in accordance with clause 52.6(b).

- (b) **(Exceptions Process):** In relation to any Third Party Material described in clause 52.6(a)(iii), where Project Co considers (acting reasonably) that (despite its, or its Associate's (as applicable) reasonable endeavours to obtain them) the rights for the State in clause 52.2 or form of consents required by the State in clause 52.5 are not available for Project Co or its Associates (as applicable) to procure in respect of that Third Party Material on commercially reasonable terms (including as to price) at the time when Project Co is procuring the licence for the State (which, in the case of COTS Software, may be at any time that Project Co elects in advance of the date on which the relevant rights are required as set out in clause 52.2(k)), then:
- (i) Project Co must notify the State of the terms of the licence, including those relevant to the rights and consents in clause 52.2 and clause 52.5, that are available for Project Co or its Associate (as applicable) to procure in respect of that Third Party Material on commercially reasonable terms (including as to price) (**Available Licence Terms**), and a summary of the steps taken and responses from the proposed licensor regarding the terms on which the relevant Third Party Material is to be licensed in such detail as is reasonably necessary to demonstrate to the satisfaction of the State (acting reasonably) that the rights for the State in clause 52.2 or form of consents required by the State in clause 52.5 are not available for Project Co or its Associates (as applicable) to procure in respect of that Third Party Material on commercially reasonable terms (including as to price);
 - (ii) the State (acting reasonably and in accordance with clause 52.6(b)(v)) must, as soon as reasonably practicable (and in any event within 20 Business Days of the notice from Project Co and provision of the information required under clause 52.6(b)(i) or such alternative period agreed by the parties acting reasonably), notify Project Co of its:
 - A. approval of the Available Licence Terms, in which case Project Co must procure a licence for the State (when required under clause 52.2) on the Available Licence Terms, and the Available Licence Terms will take priority over any requirements in clause 52.2 or 52.5 to the extent of any inconsistency; or
 - B. rejection of the Available Licence Terms, in which case the parties must promptly (and in any event within 5 Business Days) meet to discuss and use their respective reasonable endeavours to agree in writing revisions to the Available Licence Terms that are acceptable to the State and that can be procured by Project Co on commercially reasonable terms;
 - (iii) where the State fails to notify Project Co of its approval or rejection of Available Licence Terms within the period specified in clause 52.6(b)(ii), the State will be deemed to have approved those Available Licence Terms;
 - (iv) where the parties are unable to agree revisions to the Available Licence Terms pursuant to clause 52.6(b)(ii)B within 10 Business Days of the State's notice of rejection then:

- A. where the Available Licence Terms are not commercially reasonable terms the State may, by written notice to Project Co, reject the use of the proposed Third Party Material; or
- B. the State may elect by written notice to Project Co to itself negotiate (together with Project Co) the terms of the licence to the applicable Third Party Material with the relevant third party as soon as reasonably practicable, in which case:
 - 1) Project Co must provide all reasonable assistance requested by the State for the State to do so;
 - 2) the State may not, as part of the negotiation of rights for itself, agree to diminish rights required by Project Co; and
 - 3) if the State notifies Project Co that the State has negotiated terms that are acceptable to it (which will be deemed approved by the State for the purposes of this clause) and procured a right for Project Co to procure a licence on those terms on the State's behalf, Project Co will procure the licence from the relevant third party (when required under clause 52.2) on those terms, subject to the State:
 - a) confirming those terms in writing to Project Co;
 - b) having actually procured sufficient rights for Project Co to procure (at the relevant time) a licence from the relevant third party on those terms on the State's behalf; and
 - c) compensating Project Co for any costs incurred by it to procure those terms in excess of the costs that would have been incurred by Project Co had it procured commercially reasonable terms (including as to price); or
- C. if the State fails to notify Project Co of its rejection or intention to negotiate pursuant to either 52.6(b)(iv)A or 52.6(b)(iv)B within 30 Business Days of the State's notice of rejection under clause 52.6(b)(ii)B then the State will be deemed to have approved the Available Licence Terms; or
- D. if the State has notified Project Co of its intention to negotiate pursuant to clause 52.6(b)(iv)B but does not notify Project Co pursuant to 52.6(b)(iv)B.3) (including confirmation of the terms), within 30 Business Days after the State's notice under clause 52.6(b)(iv)B, the State must immediately (on expiry of the 30 Business Day period) give written notice either:
 - 1) rejecting the use of the proposed Third Party Material, but may do so only if the Available Licence Terms are not commercially reasonable terms; or

- 2) accepting the use of the proposed Third Party Material and the Available Licence Terms, which the State must do if the Available Licence Terms are commercially reasonable terms,

provided that where the State fails to give such written notice then on expiry of the 30 Business Day period it will be deemed to have accepted the use of the proposed Third Party Material and the Available Licence Terms;

(v) for the purposes of this clause 52.6:

A. whether Third Party Material is available on, or the licence to the Third Party Material is on, "commercially reasonable terms" is to be assessed having regard to all relevant matters including:

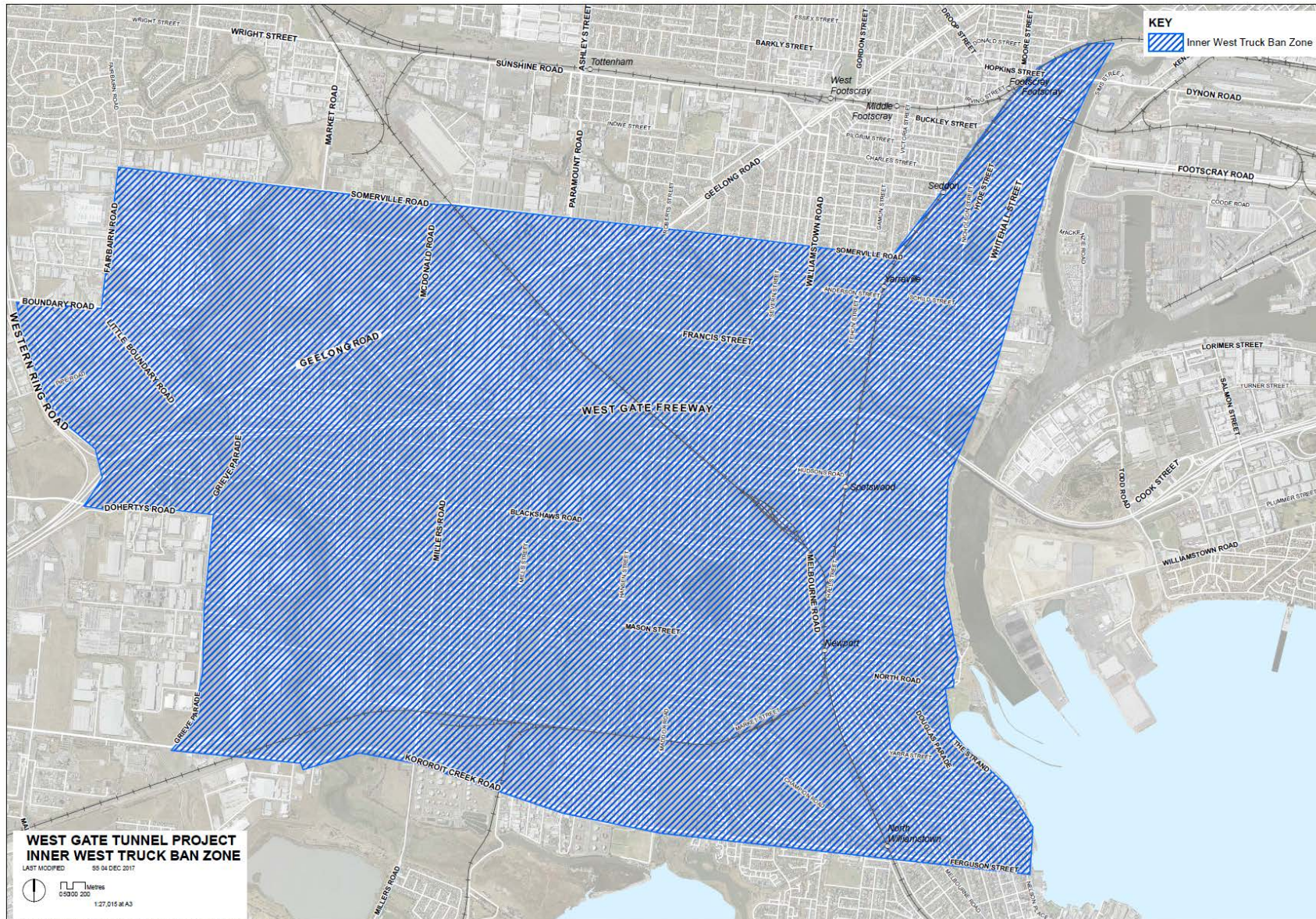
- 1) the nature of the relevant Third Party Material and the applicable third party licensor's standard licence terms;
- 2) the availability of reasonably appropriate alternative vendors for the relevant Third Party Material, and the standard licence terms generally available from the market for that type of Third Party Material;
- 3) the intended use of the Third Party Material; and
- 4) whether the terms would require the State to assume risks in excess of the risks assumed by Project Co or any other Transurban Group Entity in relation to that Third Party Material,

provided that to the extent the proposed licence terms do not permit the State or its nominee to use the relevant Third Party Material in the same or equivalent (having regard to the proposed level of consumption of that Third Party Material by the State or its nominee under the licence compared to the consumption by the Transurban Group) manner as Project Co uses it (or was required to use it) in connection with the Project (and also, in the case of any software forming part of the "Tolling System" as defined in the CityLink Concession Deed, until the Date of Parliamentary Support (CityLink), in the same manner as the Company uses it (or was required to use it) in connection with the CityLink Project or the ESEP Project) those terms will be considered not to be commercially reasonable terms;

B. in relation to price, and without limiting the foregoing, Third Party Material will be taken to be available on "commercially reasonable" terms if the price payable by Project Co in respect of the licence for the State does not materially exceed the price paid or payable by Project Co (or that would be paid or payable by Project Co) for its own licence to use that Third Party Material on the Available Licence Terms (to the extent used in connection with the Project, and with appropriate allowances for inflation); and

- (vi) where the State validly rejects the use of any proposed Third Party Material in accordance with this clause 52.6(b), Project Co must not use that Third Party Material in relation to the Project, and where that Third Party Material is software forming part of the "Tolling System" as defined in the CityLink Concession Deed, until the Company accepts a corresponding restriction under the terms of the CityLink Concession Deed in respect of that Third Party Material must ensure that the Company does not use that Third Party Material in relation to the CityLink Project or the ESEP Project; and
- (vii) any dispute as to whether the State is entitled to reject the use of any proposed Third Party Material under this clause 52.6(b) may, upon no less than 10 Business Days' notice by either party to the other, be referred for determination under clauses 43 to 44.
- (c) **(No State approval):** The State validly rejecting the use of any proposed Third Party Material in accordance with clause 52.6(b) will not relieve Project Co from any of its obligations under this Agreement or any of the Project Documents.
- (d) **(Procurement of licences to Third Party Material):** If the State approves certain Third Party Material being excluded from the subject matter of the licenses and consents granted in clauses 52.2 and 52.5 and instead being licensed to the State on certain terms approved under this clause 52.6, Project Co must grant to the State or procure from the relevant third party a licence for the State (as the case may be) to use that Third Party Material on those terms when required pursuant to clause 52.2.

Schedule 34 - Truck Bans map



Schedule 35 – Minimum Requirements for Toll Road Operator Debt Recovery Arrangements

Minimum requirements

The toll road operator must adopt, and require its staff and contractors involved in debt recovery activities to comply with, written arrangements for debt recovery activities that meet the following requirements:

- (a) The arrangements must apply equally to persons who hold accounts with the toll road operator (**customers**) and persons who do not hold accounts with the toll road operator, or whose accounts are suspended (**non-customers**).
- (b) The arrangements must require compliance with Debt Collection Guidelines published from time to time by the ACCC and/or ASIC.
- (c) The arrangements must identify an independent body to which disputes or complaints can be referred for resolution. Such a body must:
 - (i) be functionally independent of the toll road operator;
 - (ii) be able to make decisions which are binding on the toll road operator; and
 - (iii) operate in accordance with the Australian Government's Benchmarks for Industry-based Customer Dispute Resolution.
- (d) The cost of the independent body referred to in section (c) may be borne by the toll road operator subject to the body maintaining its functional independence.
- (e) The arrangements must incorporate a hardship policy which:
 - (i) applies equally to customers and non-customers;
 - (ii) applies where a person who owes the debt establishes that he or she is experiencing financial hardship due to illness, disability, unemployment, drug or alcohol dependence, domestic violence or other reasonable cause affecting their ability to pay;
 - (iii) sets out the hardship relief available (which must include options for reduction or waiver of the debt, extending time to pay and payment plans (with a payment free period from the date of contact)) and the circumstances in which different forms of relief may be available;
 - (iv) sets out how a person may apply for relief under the policy, including the supporting information that must be provided;
 - (v) provides for the toll road operator to request the enforcement agency to discontinue or suspend action with respect to an infringement notice or court proceedings issued against a person if the person applies for hardship relief in accordance with the hardship policy;
 - (vi) provides for persons suffering financial hardship to be given information about the availability of financial counselling services; and
 - (vii) is made visible by publication on the toll road operator's website and references in requests for payment and further requests for payment, and where practicable in all other debt collection communications or contacts.

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- (f) The arrangements must provide that in respect of a non-customer the toll road operator will not provide credit reporting information about a tolling related debt to a credit reporting agency or otherwise represent that failure to pay that debt may affect a person's ability to obtain credit except to the extent permitted under Part IIIA of the *Privacy Act 1988*.
- (g) The arrangements must provide that, where a further request for payment remains unpaid after the date specified in the request, at least two informal contact attempts must be made by telephone, SMS, email or electronic message if relevant contact details are available.
- (h) The arrangements must provide that, where two informal contact attempts are made and payment or an arrangement for payment is not made within 7 days, a field call may be made or civil debt recovery proceedings commenced (provided that civil proceedings must not be commenced unless a solicitor's letter or final notice has been sent notifying the person that proceedings will be commenced if the debt is not paid within 7 days).
- (i) The arrangements must provide that the toll road operator is not to include marketing communications in correspondence or communications made in the course of its debt collection activities (provided that this is not intended to prevent the offering of incentives to open an account in order to prevent further non-arrangement travel on the toll road operator's tollway).
- (j) The arrangements must prohibit the toll road operator from:
- (i) commencing civil proceedings against a person; or
 - (ii) requesting enforcement of a tolling offence believed to have been committed by a person:
- if the person has a hardship application, or a relevant dispute or complaint pending with the toll road operator. For this purpose:
- (iii) a hardship application is pending if the person is complying with an payment plan or other agreed arrangement;
 - (iv) a dispute or complaint is relevant dispute or complaint if it relates to a trip giving rise to the debt in relation to which civil proceedings are proposed or an alleged tolling offence in relation to which referral to enforcement is proposed; and
 - (v) a relevant dispute or complaint is pending unless it has been finalised by a decision of toll road operator which the person does not refer to the independent complaints and disputes body within 7 days, or by a decision of that independent complaints and disputes body.
- (k) The arrangements must prohibit the toll road operator referring a tolling offence for enforcement if:
- (i) civil debt recovery proceedings have been commenced against the person in relation to the relevant trip; or
 - (ii) the toll road operator has made a request for enforcement of a tolling offence committed by the person in respect of a trip made on the same day on another tollway operated by the toll road operator in Victoria.

Schedule 36 - Separation Principles

1. Definitions

- (a) **Asset Management System (CityLink)** means the asset management system used by or on behalf of the CityLink Parties in connection with CityLink.
- (b) **Burnley ATRC** means the CityLink alternative traffic control room which as at the date of this agreement is to be located in the vicinity of the Burnley tunnel ventilation stack.
- (c) **field device** means in relation to CityLink or West Gate Tunnel a device which is installed on or in close proximity to the road forming part of CityLink or West Gate Tunnel (as the case may be) and is used to monitor traffic conditions on that road, or to communicate information or provide directions to motorists using that road.
- (d) **Project Scope and Technical Requirements** has the meaning given in the CityLink Concession Deed.
- (e) **Single Asset Handover (CityLink)** means the occurrence of surrender in accordance with clause 3.4 of the CityLink Concession Deed on a date that is prior to or after (but not around the same date as) the occurrence of WGT Handover.
- (f) **Standalone Tolling Back Office System** means a computer system which replicates the Tolling Back Office System and which when operating in conjunction with the RSS and the State Operating Environment, operates at the higher of the standard to which the Tolling System was required to perform under the PSR and the standard to which it was operated by or on behalf of Project Co.
- (g) **Standalone Tolling Back Office System (CityLink)** means a computer system which replicates the Tolling Back Office System (CityLink) and which when operating in conjunction with the roadside systems forming part of CityLink and the State Operating Environment, operates at the higher of the standard to which the Tolling Back Office System (CityLink) was required to perform under the Project Scope and Technical Requirements and the standard to which it was operated by or on behalf of CityLink.
- (h) **State Operating Environment** means:
 - (i) computer hardware (whether to be physically located at premises occupied by the State or its nominee, or to be provided to the State or its nominee as a service), which is suitable to be used for the operation of computer software in the nature of the Standalone Tolling Back Office System;
 - (ii) any operating systems (whether provided by the State or its nominee, or to be provided by the State or its nominee as a service) required to operate the computer hardware referred to in sub-paragraph (i), and which are suitable for use with computer software in the nature of the Standalone Tolling Back Office System; and
 - (iii) any other software which does not comprise part of the Tolling Back Office System, and which the parties (acting reasonably) agree is ordinarily required to maintain (including data centre services) or monitor

the performance of the computer hardware referred to in sub-paragraph (i) or the operating systems referred to in sub-paragraph (ii).

- (i) **Tolling Back Office System (CityLink)** means the tolling back office system forming part of the 'Tolling System' as defined in the CityLink Concession Deed.
- (j) **Transition Services (CityLink)** means the transition services to be undertaken by CityLink in accordance with the CityLink Concession Deed.
- (k) **WGT Handover** has the meaning given to 'Handover' in this Agreement.

2. Single Asset Handover (WGT) prior to CityLink Handover

The principles below are to be reflected in the Separation Plans, to be applicable where Single Asset Handover (WGT) occurs prior to CityLink Handover.

2.1 OMCS / Control Rooms

- (a) As part of WGT Handover:
 - (i) the FCC will be handed over to the State for use by the State;
 - (ii) Project Co will make reconfigurations to the OMCS located in the FCC necessary to remove connectivity between the FCC and the CityLink field devices; and
 - (iii) Project Co will be required to:
 - A. undertake such testing of the reconfigured OMCS located in the FCC as is reasonably necessary to confirm that it meets the requirements of the PSR (excluding any connectivity between the FCC and the CityLink field devices); and
 - B. provide to the Handover Reviewer reasonable details concerning the nature and results of that testing.
- (b) The Alternate Traffic Control Room will remain part of CityLink and will be handed back to the State or its nominee as part of Single Asset Handover (CityLink).
- (c) Project Co will (or will procure) the upgrade or replacement of the Burnley ATCR to establish operator technology interfaces, establish connectivity to the CityLink field devices and remove connectivity to the West Gate Tunnel field devices (to the extent required), and to otherwise ensure that the Burnley ATCR meets all requirements that the FCC was required to comply with. The Burnley ATCR will be handed back to the State or its nominee as part of Single Asset Handover (CityLink).

2.2 Tolling Back Office

- (a) Project Co will be required to provide the State with specifications for the State Operating Environment. Those specifications must be limited to what is reasonably necessary to permit the Standalone Tolling Back Office System to operate to the higher of the standard to in which it is required to operate under the PSR and the standard to which it is operated by or on behalf of Project Co, having regard to the reasonably anticipated level of use of the Standalone Tolling System for the West Gate Tunnel by the State or its nominee as compared to the level of use of the Tolling System by the Transurban Group).

- (b) The State must provide to Project Co information about, and access to, the physical premises at which the State proposes to locate the State Operating Environment to the extent necessary to ensure that Project Co is able to comply with its obligations under the Separation Plan.
- (c) The State Operating Environment must meet the specifications referred to in 2.2(a) and any other requirements agreed to and set out in the Separation Plans. The physical premises of the State Operating Environment must be located in Victoria.
- (d) As part of WGT Handover, Project Co will provide to the State the Standalone Tolling Back Office System, procure on the State's behalf the Key External Systems and integrate the Standalone Tolling Back Office System with the Key External Systems in the same manner as the Tolling System is integrated with corresponding systems utilised by or on behalf of Project Co. The parties acknowledge and agree that the Standalone Tolling Back Office System will exclude retail functionality (including functionality that is used to create, maintain and service customer accounts and retail tolling products issued in relation to any toll road).
- (e) Project Co will be required to:
 - (i) undertake such testing of the Standalone Tolling Back Office System (as integrated with the Key External Systems) as is reasonably necessary to confirm that those systems meet the requirements of this Agreement (including the Separation Plans) at WGT Handover; and
 - (ii) provide to the Handover Reviewer reasonable details concerning the nature and results of that testing.
- (f) Without limiting the obligations of Project Co to provide Transition Services, Project Co will not be required to provide any personnel to support the Standalone Tolling Back Office System.
- (g) On subsequent Single Asset Handover (CityLink), as part of CityLink Handover, the CityLink Parties will comply with their obligations under the CityLink Concession Deed, provided that the "Tolling System" (as defined in the CityLink Concession Deed) may be made available to the State by way of implementation within the State Operating Environment.

2.3 Asset Management System

- (a) Project Co will be required to provide the State specifications for the hardware and operating environment into which a replica Asset Management System can be installed. Those specifications must be limited to what is reasonably necessary to permit the replica Asset Management System to operate to the higher of the standard to in which it is required to operate under the PSR and the standard to which it is operated by or on behalf of Project Co, having regard to the reasonably anticipated level of use of the replica Asset Management System for the West Gate Tunnel by the State or its nominee as compared to the level of use of the Asset Management System by the Transurban Group).
- (b) The State must provide to Project Co information about, and access to, the physical premises at which the State proposes to locate the hardware and operating environment into which a replica Asset Management System can be installed. The physical premises must meet the specifications referred to in 2.3(a) and any other requirements agreed to and set out in the Separation Plans. The physical premises must be located in Victoria.

- (c) As part of WGT Handover, Project Co will provide to the State the replica Asset Management System which operates to the higher of the standard to in which the Asset Management System is required to operate under the PSR and the standard to which it is operated by or on behalf of Project Co.
- (d) Project Co will be required to:
 - (i) undertake such testing of the replica Asset Management System as is reasonably necessary to confirm that the systems meet the requirements of this Agreement (including these Separation Plans) at WGT Handover; and
 - (ii) provide to the Handover Reviewer reasonable details concerning the nature and results of that testing.
- (e) Without limiting the obligations of Project Co to provide Transition Services, Project Co will not be required to provide any personnel to support the replica Asset Management System.

3. Single Asset Handover (CityLink) prior to WGT Handover

The principles below are to be reflected in the Separation Plans, to be applicable where Single Asset Handover (CityLink) occurs prior to WGT Handover.

3.1 OMCS / Control Rooms

- (a) As part of CityLink Handover:
 - (i) the Burnley ATCR will be upgraded or replaced to establish operator technology interface, establish connectivity to the CityLink field devices and remove connectivity to the West Gate Tunnel field devices (to the extent required);
 - (ii) the CityLink Parties will be required to:
 - A. undertake such testing of the Burnley ATCR (as upgraded or replaced) as is reasonably necessary to confirm that it meets the requirements for the OMCS prescribed by the Concession Deed; and
 - B. provide to any person engaged in accordance with the CityLink Concession Deed to review the condition of the Burnley ATCR (as upgraded or replaced) (or in lieu of such person, the State) reasonable details concerning the nature and results of that testing;
 - (iii) the CityLink Parties will (or will procure) reconfigurations to the OMCS located in the FCC and the Alternate Traffic Control Room necessary to remove connectivity to the CityLink field devices.
- (b) The FCC will remain part of the West Gate Tunnel and be transferred to the State or its nominee as part of WGT Handover.
- (c) The State will transfer control of the Alternate Traffic Control Room to Project Co and it will form part of the Relevant Infrastructure in accordance with clause 6.10(h) of this Agreement.

3.2 Tolling Back Office

- (a) The CityLink Parties will be required to provide the State specifications for the hardware and operating environment into which a Standalone Tolling Back Office System (CityLink) can be installed. Those specifications must be limited to what is reasonably necessary to permit the Standalone Tolling Back Office System (CityLink) to operate to the higher of the standard to in which it is required to operate under the Project Scope and Technical Requirements and the standard to which it is operated by or on behalf of the CityLink Parties, having regard to the reasonably anticipated level of use of the Standalone Tolling System (CityLink) for CityLink by the State or its nominee as compared to the level of use of the Tolling System by the Transurban Group).
- (b) The State must provide to the CityLink Parties information about, and access to, the physical premises at which the State proposes to locate the hardware and operating environment into which a Standalone Tolling Back Office System (CityLink) can be installed. The physical premises must meet the specifications referred to in 3.2(a) and any other requirements agreed to and set out in the Separation Plans. The physical premises must be located in Victoria.
- (c) As part of CityLink Handover, the CityLink Parties will provide to the State the Standalone Tolling Back Office System (CityLink), including retail functionality but excluding any other functionality not utilised by the CityLink Parties in its Tolling Back Office System (CityLink) at the time of CityLink Handover.
- (d) Without limiting the obligations of CityLink to provide Transition Services (CityLink), the CityLink Parties will not be required to provide any personnel to support the Standalone Tolling Back Office System.
- (e) On subsequent Single Asset Handover (WGT), as part of WGT Handover, Project Co:
 - (i) will provide to the State a Standalone Tolling Back Office System, including retail functionality but excluding any other functionality not utilised by Project Co at the time of WGT Handover; and
 - (ii) without limiting the obligations of Project Co to provide Transition Services, Project Co will not be required to provide any personnel to support the Standalone Tolling Back Office System.

3.3 Asset Management System

- (a) The CityLink Parties will be required to provide the State specifications for the hardware and operating environment into which a replica Asset Management System (CityLink) can be installed. Those specifications must be limited to what is reasonably necessary to permit the replica Asset Management System (CityLink) to operate to the standard to which it was required to operate under the Project Scope and Technical Requirements.
- (b) The State must provide to the CityLink Parties information about, and access to, the physical premises at which the State proposes to locate the hardware and operating environment into which a replica Asset Management System (CityLink) can be installed. The physical premises must meet the specifications referred to in 3.3(a) and any other requirements agreed to and set out in the Separation Plans. The physical premises must be located in Victoria.
- (c) As part of Single Asset Handover (CityLink), the CityLink Parties will provide to the State the replica Asset Management System (CityLink) which operates to the higher

of the standard to in which Asset Management System (CityLink) is required to operate under the Project Scope and Technical Requirements and the standard to which it is operated by or on behalf of the CityLink Parties.

- (d) Without limiting the obligations of the CityLink Parties to provide Transition Services (CityLink), the CityLink Parties will not be required to provide any personnel to support the replica Asset Management System (CityLink).

4. Timetable

- (a) The parties will agree a timetable prescribing a time by which the applicable activities described in this Schedule are to be completed, whether in the Project Management Plan or a Separation Plan (or both).
- (b) The timetable must prescribe a reasonable amount of time for the performance of each obligation having regard to:
 - (i) the nature of each obligation and the time reasonably required to complete it;
 - (ii) the dependencies between obligations;
 - (iii) the time required to ensure that Single Asset Handover (CityLink) or WGT Handover (as applicable) is completed by the time required by the CityLink Concession Deed or this Agreement (as applicable); and
 - (iv) the State obligations being timed in order to facilitate that Project Co is able to complete the Separation Plan Services within 6 months of them commencing.

5. No limitation

Nothing in this document will be taken to limit either party's obligations under this Agreement or the CityLink Concession Deed.

6. CityLink amendments

- (a) The parties agree that these principles have been agreed on the assumption that the CityLink Concession Deed will be amended to reflect the arrangements agreed between the State in relation to clauses 28 and 52 of this Agreement, and the requirements in respect of the Tolling Back Office System and the Asset Management System.
- (b) Should the CityLink Concession Deed not be amended as contemplated, the parties will have regard to this when referring to these Separation Principles in preparing or updating the Separation Plans in accordance with clause 25.10.

Schedule 37 – WGT Legislation Commencement Schedule

1. Project Agreement

With effect from the date of this Agreement until the Project Legislation Commencement Date:

- (a) the definition of “Accident Towing Licence Event” is replaced with the following:
- “Accident Towing Licence Event means where either:**
- (a) *the Minister fails to authorise sufficient licences under the Accident Towing Services Act 2007 (Vic) to enable Project Co to perform its obligations, exercise its rights or carry out its functions under this Agreement (including the towing of vehicles and removal of debris arising out of or in connection with breakdowns and accidents to a Safe Location); or*
- (b) *VicRoads fails to issue a licence authorised by the Minister for the purposes described in paragraph (a) in circumstances where the proposed licensee has met all relevant requirements of the Accident Towing Services Act 2007 (Vic), the Road Management Act 2004 (Vic) and the regulations made under those Acts.”*
- (b) the definition of “Change in Tolling Law” in clause 1 of this Agreement is deleted and replaced with the following definition:
- “Change in Tolling Law means a Change in Law which prevents, hinders or disrupts the ability of Project Co to levy and collect tolls, fees and charges as permitted by the State Project Documents.”**
- (c) paragraph (j) is inserted in the definition of “Compensable Extension Event” as follows:
- “(j) a Claim against Project Co, or a licensee or a lessee under the Relevant Legislation for the Project, for or in respect of an obstruction to the navigation of any river occasioned or alleged to be occasioned by:**
- (i) *the Freeway or its associated structures constructed or being constructed in accordance with the State Project Documents; or*
- (ii) *any construction work carried out in accordance with the State Project Documents.”*
- (d) paragraph (a) of the definition of “Key Risk Event” in clause 1 of this Agreement is deleted and replaced with the following paragraph:
- “(a) each of the following events:**
- (i) *an act or omission of the State which prevents, hinders or disrupts the ability of Project Co or its Associates to levy and collect tolls, fees and charges as permitted by the State Project Documents;*
- (ii) *a date on or prior to the Date of Tolling Completion has not been fixed by Order of the Governor in Council published in the Government Gazette or otherwise in accordance with the Project Legislation, as the day on which tolling of the Freeway is to commence; and*
- (iii) *the Freeway has not been declared to be a road under section 193 of the Relevant Legislation by the Date of West Gate Tunnel Completion, or the declaration is revoked in whole or in part in respect of a part of the*

Leased Area after the Date of West Gate Tunnel Completion without the agreement of Project Co;"

- (e) paragraphs (e) and (f) of the definition of "Key Risk Event" in clause 1 of this Agreement is deleted and replaced with "not used;"
- (f) paragraph (h) of the definition of "Key Risk Event" in clause 1 of this Agreement is deleted and replaced with the following paragraph:
- “(h) each of the following events:
- (i) a Project Specific Change in Mandatory Requirements which is a Change in Tolling Law;
 - (ii) the use of the Freeway by autonomous vehicles (including vehicles without drivers) is permitted, but there is no Change in Law to enable Project Co or its Associates to levy and collect tolls and charges in respect of such use;
 - (iii) Project Co not having the Required Road Management Powers by the Date of West Gate Tunnel Completion or ceasing to have the Required Road Management Powers, except to the extent that Project Co's failure to have, or its reasons for ceasing to have, the Required Road Management Powers are caused or contributed to by Project Co or any of its Associates; and
 - (iv) a Claim against Project Co, or a licensee or a lessee under the Relevant Legislation for the Project, for or in respect of an obstruction to the navigation of any river occasioned or alleged to be occasioned by:
 - (A) the Freeway or its associated structures constructed or being constructed in accordance with the State Project Documents; or
 - (B) any construction work carried out in accordance with the State Project Documents;"
- (g) paragraph (n) of the definition of "Key Risk Event" in clause 1 of this Agreement is deleted and replaced with "not used;"
- (h) a new definition of "Required Road Management Powers" is inserted into clause 1 of this Agreement:
- "Required Road Management Powers means the legislative powers required under the Relevant Legislation, the Road Management Act, the Accident Towing Services Act 2007 (Vic), the Heavy Vehicle National Law Application Act 2013 (Vic), and the Transport Integration Act 2010 (Vic) in order for Project Co to carry out the O&M Activities, which are at least equivalent to the powers provided by the Project Bill."***
- (i) the definition of "Relevant Effect" in clause 1 of this Agreement is deleted and replaced with the following definition:
- "Relevant Effect means an adverse effect on the projected net operating cashflows in connection with the West Gate Tunnel from the date of the occurrence of the Key Risk Event until the Final Expiry Date, the net present value of which exceeds:***

- (a) *in relation to a Key Risk Event described in paragraph (a) of the definition of Key Risk Event, \$[not disclosed] (Indexed);*
 - (b) *in relation to a Key Risk Event described in paragraph (g) of the definition of Key Risk Event, \$[not disclosed] (Indexed);*
 - (c) *in relation to a Key Risk Event described in paragraphs (h)(i) and (h)(ii) of the definition of Key Risk Event, \$[not disclosed] (Indexed);*
 - (d) *in relation to a Key Risk Event described in paragraph (h)(iii) of the definition of Key Risk Event, \$[not disclosed] (Indexed);*
 - (e) *in relation to a Key Risk Event described in paragraph (h)(iv) of the definition of Key Risk Event, \$[not disclosed] (Indexed);*
 - (f) *in relation to a Key Risk Event described in paragraph (s) of the definition of Key Risk Event, \$[not disclosed]; or*
 - (g) *in relation to a Key Risk Event other than an event described in paragraph (a), paragraph (e), paragraph (f), paragraph (g), paragraph (h), paragraph (n) or paragraph (s) of the definition of Key Risk Event, \$[not disclosed] (Indexed)."*
- (j) a new clause 13.2(c) is inserted as follows:
- “(c) **(Responsible road authority):** *The State will use its reasonable endeavours to procure that Project Co has the Required Road Management Powers in connection with the Freeway by the Date of West Gate Tunnel Completion.*”;
- (k) clause 30.6 of this Agreement is deleted;
- (l) clause 31 is deleted and replaced with the following:
- “31 Infringement Reform**
- Project Co must ensure that its civil debt recovery arrangements in respect of tolls and fees imposed in connection with the Freeway comply with requirements set out in Schedule 35.*”
- (m) clause 9.2 of Schedule 28 (Toll Calculation Schedule) is deleted and replaced with ‘Not Used’.

2. Liability

Any entitlements or Liability of the parties that arises pursuant to this Schedule 37 in the period prior to the Project Legislation Commencement Date (whether known or not at the Project Legislation Commencement Date) will not be affected by the commencement of the Project Legislation or the Project Legislation Commencement Date.

West Gate Tunnel
Project Agreement
Schedule 38 – Additional State Contribution Schedule

Schedule 38 –Additional State Contribution Schedule

[not disclosed]

Schedule 39 – Pre-Agreed Modification Schedule

Part A - Positive Pre-Agreed Modifications

| Number | Title of PAM | Agreed Details |
|--------|----------------------------------|--|
| 1 | M80 Interface Works (PAM) | <p>PAM Election Period:</p> <p>The earliest date the PAM can be exercised is 7 January 2019 unless the parties agree in writing to an earlier date.</p> <p>The latest date the PAM can be exercised is 31 January 2019 unless the parties agree in writing to a later date.</p> <hr/> <p>Description and Scope of PAM:</p> <p>The PAM scope is based on:</p> <ul style="list-style-type: none"> • Construction of a new ramp connection over Princes Freeway West and tie in works from the West Gate Freeway to the M80 Ring Road and construction of a new ramp connection over Old Geelong Road and tie in works from the West Gate Freeway to the M80 Ring Road, as defined in the PSR Part K19 • All commissioning works including ITS, carriageway construction, line marking, directional signs and other works required to integrate the M80 works with the Works provided in Attachment B. • Deduction of scope as provided in Attachment B. <hr/> <p>The Scope and Impact due to the PAM are outlined below:</p> <p>The scope and impact resulting from the incorporation of this PAM is detailed in the following sections.</p> <ul style="list-style-type: none"> • Description of any impacts on or changes to the Concept Design, including the urban design proposal; Refer to Section 1 below • Updates to any Part K – Project Co documents, including design reports, Concept Design drawings and urban design; Refer to Section 2 below • Outline of any changes required to Part J Land Availability Plans and required access to construct; and Refer to Section 3 below |

West Gate Tunnel
 Project Agreement
 Schedule 39 - Pre-Agreed Modification Schedule

| Number | Title of PAM | Agreed Details |
|--------|--------------|---|
| | | <ul style="list-style-type: none"> Relevant design provisions associated with this PAM, including departures (Part I), are set out in Part H24 of the PSR <p>Pre-Agreed Modification Amount</p> <p>Pre-Agreed Modification Amount relating to D&C Subcontractor: \$[not disclosed]</p> <p>The above amount includes all D&C Preliminaries and D&C Margin. See Attachment B for breakdown.</p> <p>Pre-Agreed Modification Amount relating to Project Co management and insurance: \$[not disclosed]</p> <p>Total Pre-Agreed Modification Amount: \$[not disclosed]</p> <p>The incremental increase in cost for the Independent Reviewer, Sub-Independent Reviewer and Environmental Auditor and Independent Payment Certifier is not included in the above costs. These costs will be determined in accordance with the Independent Reviewer and Environmental Auditor Deed of Appointment, Sub-Independent Reviewer and Environmental Auditor Deed of Appointment and Independent Payment Certifier Deed of Appointment (respectively), and will be borne by the State.</p> <p>Effect on dates for completion</p> <p>Extension of time to Date for West Gate Tunnel Completion:</p> <p style="padding-left: 40px;">This PAM does not require an extension of time to the Date for West Gate Tunnel Completion.</p> <p>Extension of time to Date for Tolling Completion:</p> <p style="padding-left: 40px;">This PAM does not require an extension of time to the Date for Tolling Completion.</p> <p>Extension of time to Date for Close-Out:</p> <p style="padding-left: 40px;">This PAM does not require an extension of time to the Date for Close-Out.</p> <p>The effect the PAM will have on the Project Activities:</p> <p style="padding-left: 40px;">Maintenance of the West Gate Tunnel or the Off-Freeway Facilities is not effected by this PAM.</p> <p style="padding-left: 40px;">During the D&C Phase, the maintenance area south of Boundary Road is reduced. Refer to amendments to Land Availability Plan in Attachment D.</p> <p>The effect the PAM will have on the carrying out of the O&M Activities and Project Co's ability to carry out O&M Activities in accordance with the performance standards in the PSR (including any change to Asset quantities):</p> <p style="padding-left: 40px;">This PAM has no effect to the O&M Activities and Project Co's ability to carry out the O&M Activities in accordance with the performance standards in the</p> |

West Gate Tunnel
 Project Agreement
 Schedule 39 - Pre-Agreed Modification Schedule

| Number | Title of PAM | Agreed Details |
|--------|--------------|--|
| | | PSR. |
| | | <p>Amendments to the State Project Documents</p> <p>The Project Agreement will be amended as set out in the "M80 PAM Rider" in Attachment B1.</p> <p>The Concept Design including the urban design proposal will be amended as set out in Section 1 below.</p> <p>Part K of the PSR will be amended as set out in Section 2 below.</p> <p>The Land Availability Plans in Part J will be amended as set out in Section 3 below.</p> <p>Relevant design provisions associated with this PAM, including departures (Part I), are set out in Part H24 of the PSR.</p> |

Section 1: Impacts on or Changes to Concept Design, Including Urban Design Proposal

Refer to the following documents in **Attachment B**

- Scope of Works to be removed from current scope
- Scope Omission Drawings
- Interface Commissioning Drawings

Section 2: Draft Updates to Part K Project Co Documents

Refer to **Attachment C**.

Section 3: Changes Required to Part J Land Availability Plans and Required Access to Construct

The changes required to Part J Land Availability Plans is provided in **Attachment D**.

Attachment B: Revisions to Project Documents

1. Scope of Works to be removed from current scope
Refer to document titled "3. Scope of Works to be Removed from Current Scope" in folder "Attachment B" on the USB attached as Annexure A to this Schedule 39..
2. Scope Omission Drawings: Refer to document titled "4. Scope Omission Drawings" in folder "Attachment B" on the USB attached as Annexure A to this Schedule 39.
3. Interface Commissioning Drawings
Refer to document titled "6. Commissioning Scope of Works FINAL Combined Working" in folder "Attachment B" on the USB attached as Annexure A to this Schedule 39.
4. Price and Detailed Cost Breakdown
Refer to document titled "5. Price and Detailed Cost Breakdown" in folder "Attachment B" on the USB attached as Annexure A to this Schedule 39.
5. M80 PAM Rider
Refer to Attachment B1
6. WGT-M80 Interface Agreement
Refer to Attachment B2

West Gate Tunnel
Project Agreement
Schedule 39 - Pre-Agreed Modification Schedule

Attachment B1 - M80 PAM Rider

[not disclosed]

West Gate Tunnel
Project Agreement
Schedule 39 - Pre-Agreed Modification Schedule

Attachment B2 - WGT-M80 Interface Agreement

[not disclosed]

Attachment C - Updated Part K Project Co Documents

1. Summary M80 Interface Program
2. Refer to document titled "1. Summary Program" in folder "Attachment C" on the USB attached as Annexure A to this Schedule 39. Detailed M80 Interface Program

Refer to document titled "2. Detailed Program" in folder "Attachment C" on the USB attached as Annexure A to this Schedule 39.

West Gate Tunnel
Project Agreement
Schedule 39 - Pre-Agreed Modification Schedule

Attachment D - Amendments to Land Availability Plans

Refer to document titled "9. M80 Land Availability Plans Rev 1 171130" in folder "Attachment D" on the USB attached as Annexure A to this Schedule 39).

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Part B - Negative Pre-Agreed Modifications

1. Shared use path - Lynch Road

| Negative Pre-Agreed Modification Number 1 | Description |
|--|--|
| Description | Ongoing maintenance of the shared use path - Lynch Road constructed as part of the Project, including structures, at the locations shown on the plan titled "WDA-WGTP-PMA-01" as attached in Attachment D of the PSR |
| Election Date | 6 months prior to the Date for West Gate Tunnel Completion |
| Pre-Agreed Modification Amount | \${not disclosed] |
| Payment by State/Project Co | The State must provide a valid tax invoice for the Pre-Agreed Modification Amount to Project Co on or after the date of the Pre-Agreed Modification Election Notice. Project Co must pay the State the Pre-Agreed Modification Amount within 30 Business Days of receipt of the valid tax invoice. |
| Amendments to the PSR | Attachment D of the PSR will be amended to remove the plan titled "WDA-WGTP-PMA-01". |
| Amendments to the Maintenance Licence | The Licensed Maintenance Area Plans will be amended to remove those areas relevant to the shared use path constructed as part of the Project, including structures, at the locations shown on the plan titled "WDA-WGTP-PMA-01" as attached in Attachment D of the PSR. |
| Other Amendments | Relevant adjustments to be made to the Base Case Financial Model and Notional Cost Profile, noting that the Pre-Agreed Modification Amount reflects the net present value.. |

2. Maintenance License Plan - shared use path - Newport Rail

| Pre Agreed Modification Number 2 | Description |
|---------------------------------------|--|
| Description | Ongoing maintenance of the shared use path - Newport Rail constructed as part of the Project, including structures, at the locations shown on the plan titled "WDA-WGTP-PMA-02" as attached in Attachment D of the PSR. |
| Election Period | 6 months prior to the Date for West Gate Tunnel Completion |
| Pre-Agreed Modification Amount | \$ [not disclosed] |
| Payment by State/Project Co | The State must provide a valid tax invoice for the Pre-Agreed Modification Amount to Project Co on or after the date of the Pre-Agreed Modification Election Notice. Project Co must pay the State the Pre-Agreed Modification Amount within 30 Business Days of receipt of the valid tax invoice. |
| Amendments to the PSR | Attachment D of the PSR will be amended to remove the plan titled "WDA-WGTP-PMA-02". |
| Amendments to the Maintenance Licence | The Licensed Maintenance Area Plans will be amended to remove those areas relevant to the shared use path constructed as part of the Project, including structures, at the locations shown on the plan titled "WDA-WGTP-PMA-02" as attached in Attachment D of the PSR. |
| Other Amendments | Relevant adjustments to be made to the Base Case Financial Model and Notional Cost Profile, noting that the Pre-Agreed Modification Amount reflects the net present value. |

3. Maintenance License Plan - shared use path - The Boulevard Reserve

| Pre Agreed Modification Number 3 | Description |
|---------------------------------------|--|
| Description | Ongoing maintenance of the shared use path - The Boulevard Reserve constructed as part of the Project, including structures, at the locations shown on the plan titled "WDA-WGTP-PMA-03" as attached in Attachment D of the PSR. |
| Election Date | 6 months prior to the Date for West Gate Tunnel Completion |
| Pre-Agreed Modification Amount | \$(not disclosed] |
| Payment by State/Project Co | The State must provide a valid tax invoice for the Pre-Agreed Modification Amount to Project Co on or after the date of the Pre-Agreed Modification Election Notice. Project Co must pay the State the Pre-Agreed Modification Amount within 30 Business Days of receipt of the valid tax invoice. |
| Amendments to the PSR | Attachment D of the PSR will be amended to remove the plan titled "WDA-WGTP-PMA-03". |
| Amendments to the Maintenance Licence | The Licensed Maintenance Area Plans will be amended to remove those areas relevant to the shared use path constructed as part of the Project, including structures, at the locations shown on the plan titled "WDA-WGTP-PMA-03" as attached in Attachment D of the PSR. |
| Other Amendments | Relevant adjustments to be made to the Base Case Financial Model and Notional Cost Profile, noting that the Pre-Agreed Modification Amount reflects the net present value. |

4. Maintenance License Plan - shared use path - Hall Street and Hyde Street Reserve

| Pre Agreed Modification Number 4 | Description |
|---------------------------------------|--|
| Description | Ongoing maintenance of the shared use path - Hall Street and Hyde Street Reserve constructed as part of the Project, including structures, at the locations shown on the plans titled "WDA-WGTP-PMA-04A" and "WDA-WGTP-PMA-04B" as attached in Attachment D of the PSR. |
| Election Date | 6 months prior to the Date for West Gate Tunnel Completion |
| Pre-Agreed Modification Amount | [\$not disclosed] |
| Payment by State/Project Co | The State must provide a valid tax invoice for the Pre-Agreed Modification Amount to Project Co on or after the date of the Pre-Agreed Modification Election Notice. Project Co must pay the State the Pre-Agreed Modification Amount within 30 Business Days of receipt of the valid tax invoice. |
| Amendments to the PSR | Attachment D of the PSR will be amended to remove the plans titled "WDA-WGTP-PMA-04A" and "WDA-WGTP-PMA-04B". |
| Amendments to the Maintenance Licence | The Licensed Maintenance Area Plans will be amended to remove those areas relevant to the shared use path constructed as part of the Project, including structures, at the locations shown on the plans titled "WDA-WGTP-PMA-04A" and "WDA-WGTP-PMA-04B" as attached in Attachment D of the PSR. |
| Other Amendments | Relevant adjustments to be made to the Base Case Financial Model and Notional Cost Profile, noting that the Pre-Agreed Modification Amount reflects the net present value. |

5. Maintenance License Plan - shared use path and areas of landscaping - Maribyrnong Street

| Pre Agreed Modification Number 5 | Description |
|---------------------------------------|--|
| Description | Ongoing maintenance of the shared use path and areas of landscaping - Maribyrnong Street constructed as part of the Project, including structures, at the locations shown on the plan titled "WDA-WGTP-PMA-06" as attached in Attachment D of the PSR. |
| Election Date | 6 months prior to the Date for West Gate Tunnel Completion |
| Pre-Agreed Modification Amount | [\$[not disclosed]] |
| Payment by State/Project Co | The State must provide a valid tax invoice for the Pre-Agreed Modification Amount to Project Co on or after the date of the Pre-Agreed Modification Election Notice. Project Co must pay the State the Pre-Agreed Modification Amount within 30 Business Days of receipt of the valid tax invoice. |
| Amendments to the PSR | Attachment D to the PSR will be amended to remove the plan titled "WDA-WGTP-PMA-06". |
| Amendments to the Maintenance Licence | The Licensed Maintenance Area Plans will be amended to remove those areas relevant to the shared use path and areas of landscaping constructed as part of the Project, including structures, at the locations shown on the plan titled "WDA-WGTP-PMA-06" as attached in Attachment D of the PSR. |
| Other Amendments | Relevant adjustments to be made to the Base Case Financial Model and Notional Cost Profile, noting that the Pre-Agreed Modification Amount reflects the net present value. |

6. Maintenance License Plan - areas of landscaping - Moonee Ponds Creek

| Pre Agreed Modification Number 6 | Description |
|---------------------------------------|--|
| Description | Ongoing maintenance of the areas of landscaping - Moonee Ponds Creek constructed as part of the Project at the locations shown on the plan titled "WDA-WGTP-PMA-07" as attached in Attachment D of the PSR. |
| Election Date | 6 months prior to the Date for West Gate Tunnel Completion |
| Pre-Agreed Modification Amount | \$(not disclosed) |
| Payment by State/Project Co | The State must provide a valid tax invoice for the Pre-Agreed Modification Amount to Project Co on or after the date of the Pre-Agreed Modification Election Notice. Project Co must pay the State the Pre-Agreed Modification Amount within 30 Business Days of receipt of the valid tax invoice. |
| Amendments to the PSR | Attachment D of the PSR will be amended to remove the plan titled "WDA-WGTP-PMA-07". |
| Amendments to the Maintenance Licence | The Licensed Maintenance Area Plans will be amended to remove those areas relevant to the areas of landscaping constructed as part of the Project at the locations shown on the plan titled "WDA-WGTP-PMA-07" as attached in Attachment D of the PSR. |
| Other Amendments | Relevant adjustments to be made to the Base Case Financial Model and Notional Cost Profile, noting that the Pre-Agreed Modification Amount reflects the net present value. |

7. Maintenance License Plan - shared use path - Railway Place

| Pre Agreed Modification Number 7 | Description |
|---------------------------------------|--|
| Description | Ongoing maintenance of the shared use path - Railway Place constructed as part of the Project, including structures, at the locations shown on the plan titled "WDA-WGTP-PMA-05" as attached in Attachment D of the PSR. |
| Election Date | 6 months prior to the Date for West Gate Tunnel Completion |
| Pre-Agreed Modification Amount | \${not disclosed] |
| Payment by State/Project Co | The State must provide a valid tax invoice for the Pre-Agreed Modification Amount to Project Co on or after the date of the Pre-Agreed Modification Election Notice. Project Co must pay the State the Pre-Agreed Modification Amount within 30 Business Days of receipt of the valid tax invoice. |
| Amendments to the PSR | Attachment D of the PSR will be amended to remove the plan titled "WDA-WGTP-PMA-05". |
| Amendments to the Maintenance Licence | The Licensed Maintenance Area Plans will be amended to remove those areas relevant to the shared use path constructed as part of the Project, including structures, at the locations shown on the plan titled "WDA-WGTP-PMA-05" as attached in Attachment D of the PSR. |
| Other Amendments | Relevant adjustments to be made to the Base Case Financial Model and Notional Cost Profile, noting that the Pre-Agreed Modification Amount reflects the net present value. |

Annexure A - USB containing M80 PAM Attachments B, C and D and WGT-M80 Interface Agreement Schedules 2, 3, 4, 5, and 6

The State and Project Co acknowledge and agree that the contents of the USB attached to this Annexure A contains the attachments referred to in Schedule 39 of the Project Agreement.

| Party | Signature | Name | Date |
|--------------|------------------|-------------|-------------|
| State | | | |
| Project Co | | | |

West Gate Tunnel
Project Agreement
Schedule 40 – Enforcement Payments Schedule

Schedule 40 – Enforcement Payments Schedule

[not disclosed]

West Gate Tunnel
Project Agreement
Schedule 41 – Amendments relating to Parliamentary Support (CityLink)

Schedule 41 – Amendments relating to Parliamentary Support (CityLink)

1. CityLink Amendments

With effect from the date of this Agreement until the Date of Parliamentary Support (CityLink):

- (a) clause 1 of this Agreement is amended to include the following defined terms:

Additional State Contribution Schedule means Schedule 38.

CityLink Commercial Matters letter means the letter from the Minister for Roads and Road Safety and the Treasurer on behalf of the State to the CityLink Parties and Clepco dated on or about the date of Financial Close in relation to “CityLink Commercial matters”.

CityLink Operating Services Agreement means the agreement entitled “CityLink Operating Services Agreement” to be agreed and entered into between the CityLink Parties, Clepco and OpCo as contemplated in to the CityLink Option Deed.

CityLink WGT O&M Base Costs means the actual costs properly and reasonably incurred or which will be properly and reasonably incurred by OpCo or any other Subcontractors (as the case may be) carrying out non-capital works or activities in respect of the Project and during the period of time that a Variation (as defined under the CityLink Concession Deed) is being implemented or the relevant event or effects are subsisting (as applicable) that are directly attributable to the Variation (as defined under the CityLink Concession Deed) or as a consequence of the Variation (as defined under the CityLink Concession Deed), including warranty costs and lifecycle costs but excluding CityLink WGT Revenue Impact, plus a [not disclosed]% margin on such costs.

CityLink WGT Revenue Impact means the net effect on Actual Revenue arising from the CityLink Parties’ subcontractor implementing a traffic measure on the Freeway during the period of time that a Variation (as defined under the CityLink Concession Deed) is being implemented and as a direct result of the Variation (as defined under the CityLink Concession Deed).

Clause 2.4(d) Notice means the notice provided by the Minister for Roads and Road Safety and the Treasurer on behalf of the State to the CityLink Parties on or about the date of Financial Close pursuant to clause 2.4(d) of the CityLink Concession Deed.

CLP Interface Claim means [not disclosed]

CLP WGT Project Documents means each of:

- (a) the CityLink Access Deed;
- (b) the CityLink Operating Services Agreement;
- (c) the WGT Deed of Surrender;
- (d) the FMS Agreement;
- (e) the West Gate Tunnel – CityLink Umbrella Agreement;
- (f) the CityLink Operating Services Agreement Direct Deed between the State, the CityLink Parties and OpCo;
- (g) the Roaming Agreement;
- (h) the Networking Tolling Agreement;
- (i) the CityLink Option Deed; and

(j) *the CityLink Commercial Matters letter.*

Enforcement Payments Schedule means Schedule 40.

Exhibition Street Extension has the meaning given to that term in the ESEP Deed.

Relevant COD Provisions means clauses 15, 16 and 19 of the CityLink Option Deed.

WGT/CityLink Interface Letter means the letter from the Minister for Roads and Road Safety and the Treasurer on behalf of the State to the CityLink Parties and Clepco dated on or about the date of Financial Close in relation to “WGT/CityLink Matters”.

WGT Deed of Surrender means the deed entitled ‘WGT Deed of Surrender’ to be entered into between the State and the CityLink Parties.

(b) a new paragraph (h) is inserted in the definition of “Compensable Extension Event” in clause 1 of this Agreement as follows:

“a CLP Interface Claim;”

and the remainder of the paragraphs in the definition of “Compensable Extension Event” in clause 1 of this Agreement are re-numbered.

(c) paragraphs (p) and (r) of the definition of “Project Documents” in clause 1 of this Agreement are deleted and each replaced with “*not used;*”.

(d) paragraph 10.11(c) to be deleted and replaced with the following:

“The State must procure that the grant of the Lease to Project Co pursuant to clause 6.10(a)(i) will include the CityLink Leased Areas as identified in the West Gate Tunnel Lease Plan.”

(e) a new paragraph 10.11(e) is inserted in this Agreement as follows:

“The State acknowledges and agrees that:

(i) *each CLP WGT Project Document entered into by the CityLink Parties with another Transurban Entity (as defined in the CityLink Concession Deed) meets the requirements of clause 14.10(a)(i) and (ii) and clause 14.10(b)(iii) and (iv) of the CityLink Concession Deed;*

(ii) *the CityLink Parties have satisfied clause 14.10(d)(ii) of the CityLink Concession Deed in respect of the CLP WGT Project Documents; and*

(iii) *each CLP WGT Project Document entered into by Clepco with another Transurban Entity (as defined in the ESEP Deed) meets the requirements of clause 14.7(a)(i) and (ii) and clause 14.7(b)(iii) and (iv) of the ESEP Deed.*

(f) a new paragraph 10.11(g) is inserted in this Agreement as follows:

“(Spot Audit - CityLink Concession Deed): The State must ensure that, in conducting a Spot Audit (under and as defined in the CityLink Concession Deed), there is no disruption to the Works undertaken on Project Land (as defined under the CityLink Concession Deed).”

(g) clause 25.9 of this Agreement is deleted and replaced as follows:

“(a) **(Obligations suspended):** To the extent that:

(i) a Key Risk Event;

- (ii) a State Act of Prevention;
- (iii) an FMS Failure; or
- (iv) a CLP Interface Claim,

prevents or delays Project Co from performing the O&M Activities or otherwise meeting its obligations in accordance with this Agreement, then:

- (iv) the relevant obligations of Project Co will be suspended, but only until the date the Key Risk Event, the State Act of Prevention, FMS Failure or CLP Interface Claim and the consequences of the Key Risk Event, the State Act of Prevention, the FMS Failure or the CLP Interface Claim (as applicable) cease to prevent or delay Project Co from carrying out the relevant obligations; and
 - (v) the failure to carry out such suspended obligations will not be a breach of this Agreement by Project Co, a Major Default or a Default Termination Event.
- (b) **(Obligation to keep Freeway open):** In the case of a Key Risk Event described in paragraph (h) of the definition of Key Risk Event, an FMS Failure or a CLP Interface Claim, clause 25.9 will only suspend Project Co's obligation under clause 25.4 to keep the Freeway open to the extent that the occurrence of the Key Risk Event, FMS Failure or CLP Interface Claim prevents or delays the safe passage of vehicles."

(h) clause 29.5 of this Agreement is deleted and replaced with "not used".

(i) a new paragraph 33(a)(iv) is inserted in this Agreement as follows:

"(iv) amounts received in accordance with the Additional State Contribution Schedule and the Enforcement Payments Schedule, and any amounts received from NewCo."

(j) paragraph 33(b)(i) of this Agreement is deleted and replaced with the following:

"directly or indirectly from payments made by Project Co or NewCo;"

(k) a new paragraph 34.1(ba) is inserted in this Agreement as follows:

"(Mandatory Modification Order – CLP Interface Claim): Notwithstanding this clause 34.1, and without limiting the State's rights under clauses 34.4(b)(iii) and 34.4(b)(iv), if:

- (i) an Event of Default or Project Default has occurred under the CityLink Concession Deed or ESEP Deed or a notice has been given under clause 15.3 of the CityLink Concession Deed or clause 15.1 of the ESEP Deed; or
- (iii) the State has made a Claim for any Liability in connection with a breach of the Project Documents or the ESEP Project Documents (each as defined in the CityLink Concession Deed),

and that Event of Default, Project Default, notice or Claim has arisen as a result of a CLP Interface Claim, the State must, upon Project Co's request, immediately issue a Modification Order to reinstate those parts of CityLink, the CityLink Leased Area and the tolling and other systems used to operate, maintain and toll CityLink and the Exhibition Street Extension in a manner that will remedy the breach to which the Event of Default, Project Default, notice or Claim relates or overcome the consequences of that breach.";

(l) a new paragraph 34.1(bb) is inserted in this Agreement as follows:

“(Mandatory Modification Order – CityLink Variations): Notwithstanding this clause 34.1, and without limiting the State’s rights under clauses 34.4(b)(iii) and 34.4(b)(iv) or Project Co’s rights to claim a Modification, if at any time:

- (i) prior to the Date of Tolling Completion, the State issues a Variation (as that term is defined in the CityLink Concession Deed) which requires a Modification, the State must issue a Modification Order under this Agreement; and
- (ii) on or after the Date of Tolling Completion, a Variation is agreed or determined under paragraph 7.16(d) or 7.16(e) of the CityLink Concession Deed, the State must pay to Project Co the CityLink WGT O&M Base Costs and the CityLink WGT Revenue Impact.

(m) a new paragraph 39.15(b)(xi) is inserted in this Agreement as follows:

“(xi) any amounts payable by the State under clause 39.17 or otherwise in connection with a CLP Interface Claim”;

(n) a new clause 39.17 is inserted in this Agreement as follows:

“39.17 WGT Events

The State must indemnify Project Co and its Associates, Transurban Holdings Limited and Transurban Holdings Trust against any Claim or Liability in connection with:

(a) any:

- (i) *Event of Default or Project Default under the CityLink Concession Deed or ESEP Deed or notice given under clause 15.3 of the CityLink Concession Deed or clause 15.1 of the ESEP Deed; and*
- (ii) *Liability of the CityLink Parties or Clepco to the State or its Associates in connection with a breach of the Project Documents or the ESEP Project Documents (each as defined in the CityLink Concession Deed),*

to the extent that Event of Default, Project Default, notice or Liability has arisen as a result of a CLP Interface Claim;

(b) *any other Liability in connection with a CLP Interface Claim (including the costs of defending that CLP Interface Claim); and*

(c) any:

- (i) *breach by the State of any State Project Documents;*
- (ii) *Project Specific Change in Mandatory Requirements; or*
- (iii) *Modification Order issued by the State,*

*(each a **WGT Event**), which results in the level of support afforded to CityLink being less than the lower of:*

- (iv) *the level of support afforded to CityLink by the Freeway prior to the relevant WGT Event; and*
- (v) *the level of support to CityLink that the State would have been required to afford to CityLink if the Freeway was a ‘Freeway’ for the purposes of clause 2.4(a) of the CityLink Concession Deed.*

West Gate Tunnel
Project Agreement
Schedule 41 – Amendments relating to Parliamentary Support (CityLink)

The State acknowledges that for the purposes of this clause 39.17, the Liability of Transurban Holdings Limited and Transurban Holding Trust may include any loss of value of its interests in any member of the Transurban Group in connection with any of the matters referred to in paragraphs (a) to (c).”;

- (o) clause 42.2(e) of this Agreement is deleted and replaced as follows:

“(Force Majeure Events and Absolute Prevention - CityLink): Subject to clause 42.2(f), in the event:

- (i) that an event as described in Item 8 or 9 of the CityLink Concession Deed Appendix occurs prior to the Date of Parliamentary Support (CityLink) and it is agreed or determined by the CityLink Parties and the State that the event will have, or has had, a Material Adverse Effect (as defined in the CityLink Concession Deed); or*
- (ii) of a State election to acquire the CityLink Project under sub-paragraph 12.8(e)(iv) of the CityLink Concession Deed prior to the Date of Parliamentary Support (CityLink),*

*prior to the Date of West Gate Tunnel Completion (each a **CityLink Event**), Project Co may terminate this Agreement by giving 40 Business Days' notice to the State, in which case a Force Majeure Termination Event will be deemed to have occurred on the date stated in Project Co's notice and clause 42.2(b) will apply.*

- (p) a new clause 42.2(f) is inserted in this Agreement as follows:

“(No exercise of Option): Project Co must not exercise its rights under clause 42.2(e):

- (i) after the expiry of the Option Period under and as defined in the CityLink Option Deed; or*
- (ii) if the State provides a written notice to Project Co pursuant to which the State warrants and undertakes that on and from the date of the notice it will not at any time exercise the Option as defined in and under the CityLink Options Deed.”*

- (q) a new clause 42.5(c) is inserted in this Agreement as follows:

“If a CLP Interface Claim subsists for a continuous period exceeding 12 months, Project Co will be entitled to terminate this Agreement by giving notice to the State. Termination of this Agreement under this clause 42.5(c) will take effect upon the date specified in the notice given in accordance with this clause 42.5(c).”.

- (r) a new clause 46(e) is inserted in this Agreement as follows:

“Project Co holds on trust for Transurban Holdings Limited and Transurban Holding Trust the benefit of each right in the State Project Documents to the extent that such right is expressly stated to be for the benefit of Transurban Holdings Limited or Transurban Holding Trust (as the case may be).

The State acknowledges the existence of such trusts and consents to:

- (i) Project Co exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of Transurban Holdings Limited and Transurban Holding Trust (as the case may be); and*
- (ii) Transurban Holdings Limited and Transurban Holding Trust (as the case may be) exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to the State Project Documents.*

The State must deposit, or cause to be deposited, any amount payable under clause 39.17 into the account nominated in writing by Project Co or Transurban Holdings Limited to the State.

The State consents to the registration of a Security Interest on the Personal Property Securities Register in respect of any Security Interest created under this clause 46(e)."

2. Liability

Any entitlements or Liability of the parties that arises pursuant to this Schedule 41 in the period prior to the Date of Parliamentary Support (CityLink) (whether known or not at the Date of Parliamentary Support (CityLink)) will continue in the period after the Date of Parliamentary Support (CityLink).

West Gate Tunnel
Project Agreement
Schedule 42 – Adjustment Events Schedule

Schedule 42 – Adjustment Events Schedule

[not disclosed]

West Gate Tunnel
Project Agreement
Schedule 43 - NewCo Sub-Lease

Schedule 43 - NewCo Sub-Lease

NewCo Sub-Lease

West Gate Tunnel

West Gate Tunnel Leasehold Co. Pty Ltd (ACN 622 944 709)

NewCo

Transurban WGT Co Pty Ltd (ACN 617 420 023)

Project Co

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Parties

West Gate Tunnel Leasehold Co. Pty Ltd (ACN 622 944 709) of Level 23, Tower One, Collins Square, 727 Collins Street, Docklands 3008 (**NewCo**)

Transurban WGT Co Pty Ltd (ACN 617 420 023) of Level 23, Tower One, Collins Square, 727 Collins Street, Docklands 3008 (**Project Co**)

Background

- A. The background to the Project is set out in the Project Agreement.
- B. As part of the development and implementation of the Project, the State has agreed to grant, and NewCo has agreed to accept, a lease of the Leased Area on the terms and conditions contained in the Lease (NewCo).
- C. NewCo has agreed to grant, and Project Co has agreed to accept, a sub-lease of the Leased Area on the terms and conditions contained in this Sub-Lease.
- D. NewCo has the right to grant this Sub-Lease.

Operative provisions

1. Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Sub-Lease have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Sub-Lease, unless the context otherwise requires:

Agreed Amount has the meaning given in clause 14(a).

Commencement Date means the earlier of West Gate Tunnel Completion and the Date of West Gate Tunnel Completion, or such earlier date as agreed between the parties.

Cost has the meaning given in clause 14(e).

Crown means the Crown in right of the State of Victoria.

Dispute has the meaning given in clause 15.1(a).

Leased Area means the area delineated on the plan attached as Annexure A to the Lease (NewCo), and being limited in height and depth where such limitation is shown on the plan.

Permitted Use means:

- (a) the performance of the Project Activities in accordance with this Sub-Lease and the other Project Documents;
- (b) the storage and location of any plant, equipment, machinery, facilities and vehicles necessary for the carrying out of the Project Activities or any other activities expressly contemplated by the Project Documents, the IRS Agreement or the CityLink Concession Deed;
- (c) the operation, maintenance, repair and tolling of CityLink in accordance with the CityLink Concession Deed or the IRS Agreement; and

- (d) any other purpose permitted by the Project Documents, the CityLink Concession Deed, the IRS Agreement or otherwise agreed by the State.

Price has the meaning given in clause 14(d).

Project Agreement means the document entitled "Project Agreement West Gate Tunnel" between the State and Project Co dated [# insert date].

Project Co Lease means the lease entitled 'Lease' dated on or about the date of this Sub-Lease between the State and Project Co.

Project Co Leased Area has the meaning given to the term 'Leased Area' in the Project Co Lease.

Recipient has the meaning given in clause 14(b)(i).

Rent means \$[not disclosed].

Rent Payment Date means [#].

Representative has the meaning given in clause 15.2.

Reserved Minerals has the meaning given in clause 3.1(a).

Services includes electricity, gas, water, drainage, sewerage and communications services or utilities.

Sub-Lease means this sub-lease and includes all Schedules, Exhibits, Attachments and Annexures to it.

Supplier has the meaning given in clause 14(b).

Term means the term of this Sub-Lease commencing on the Commencement Date and ending on the Expiry Date.

1.3 Interpretation

In this Sub-Lease:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, a word indicating a gender includes every other gender;
- (c) **(Sub-Lease and Schedule references)**: a reference to:
- (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Sub-Lease; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(Sub-Lease as amended)**: a reference to this Sub-Lease or to any other deed, agreement, document or instrument includes a reference to this Sub-Lease or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

- (f) (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) ("**includes**"): "includes" will be read as if followed by the phrase "(without limitation)";
- (j) ("**or**"): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) ("**\$**"): a reference to "\$", AUD or dollar is to Australian currency;
- (m) (**time**): a reference to time is a reference to time in Melbourne, Australia;
- (n) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) (**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;
- (p) ("**may**"): the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Sub-Lease which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Sub-Lease is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Sub-Lease is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) (**remedy or cure**): the use of the word "remedy" or "cure" or any form of such words in this Sub-Lease means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistency

- (a) If there is any conflict or inconsistency between this Sub-Lease and the Project Agreement or the Lease (NewCo) and the Project Agreement, the provisions of the Project Agreement will prevail.

- (b) If there is any conflict or inconsistency between this Sub-Lease and the Lease (NewCo), the provisions of the Lease (NewCo) will prevail.

1.5 Business Day

If the day on or by which anything is to be done in accordance with this Sub-Lease is not a Business Day, that thing must be done no later than the next Business Day.

1.6 Certification

For the purposes of this Sub-Lease, a copy of a document will be regarded as duly certified by Project Co if it is certified as a true copy by a director, secretary or general manager of Project Co.

1.7 Provisions limiting or excluding liability

Any provision of this Sub-Lease which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

2. Delegation

2.1 Not used

2.2 Not used

2.3 Not used

2.4 Not used

2.5 State's rights and obligations

- (a) **(Acknowledgement):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.12 of the Project Agreement in relation to the Lease (NewCo) and this Sub-Lease.
- (b) **(No Claim):** Subject to clause 2.5(c), neither NewCo nor Project Co will be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 2.5(a) and 2.5(b) do not limit any Liability which the State would have had to Project Co under any State Project Document as a result of a breach by the State of a term of the Lease (NewCo) but for these clauses.
- (d) **(No limitation):** The appointment of the Project Proponent (or any authority appointed to replace the Project Proponent under clause 2.5(e)) does not limit the rights or obligations of the State under the Lease (NewCo).
- (e) **(Replacement):** Project Co acknowledges and agrees that the State, at any time by notice to NewCo under the Lease (NewCo) and by notice to Project Co under the Project Co Lease, may appoint another Authority to exercise similar rights and carry out similar obligations to that of the Project Proponent with respect to the Project.

3. Reservations

3.1 Reservations in respect of minerals

- (a) **(Reserved Minerals):** This Sub-Lease is granted, and Project Co acknowledges that the Lease (NewCo) is granted, subject to the reservation to the Crown in respect of the Leased Area and every part of it of all minerals within the meaning of

the *Mineral Resources (Sustainable Development) Act 1990* (Vic) and petroleum within the meaning of the *Petroleum Act 1998* (Vic) (**Reserved Minerals**).

- (b) (**Exercise of rights by the State for the Term**): NewCo must procure that, for the Term, the State will not exercise any right in respect of the Reserved Minerals.

3.2 Reservations in respect of adjoining land

Subject to clauses 3.5 and 10, Project Co acknowledges and agrees that the State has reserved the right for the State, its Associates and any other persons authorised by the State to enter upon the Leased Area to construct, maintain, operate, develop and manage all adjoining land to the Leased Area (other than the Project Co Leased Area), including for service connection of adjoining land to Utility Infrastructure located on the Leased Area.

3.3 Reservations in relation to Utility Infrastructure and other assets of the State, the State's Associates, Authorities and Government Parties

Project Co acknowledges and agrees that, subject to the Road Management Act and to clauses 3.5 and 10:

- (a) (**reservation of infrastructure**): the State has reserved the right of Utility Infrastructure, non-road infrastructure (as defined in the Road Management Act) and any other assets of the State, its Associates, Authorities and Government Parties to remain or be constructed or installed in, on, under, over or through the Leased Area; and
- (b) (**reservation for relevant parties**): for the purpose of exercising the rights referred to in clause 3.3(a) and for the purpose of operating, repairing or maintaining the infrastructure and assets referred to in clause 3.3(a), the State has reserved the right for the State, its Associates, Authorities and Government Parties to enter upon the Leased Area (with or without vehicles or machinery).

3.4 Reservations in respect of public access

- (a) (**Accessible to the public**): Project Co acknowledges and agrees that subject to clause 3.4(b), any provisions of the State Project Documents and Project Co's rights at Law, the Leased Area must be accessible to, and available for unfettered use by, the public at all times, except for those parts of the Leased Area that are specifically identified as "operational areas" on the plan attached as Annexure A to the Lease (NewCo).
- (b) (**No limitation on tolls**): Clause 3.4(a) does not limit any obligation that any member of the public has to pay a toll for use of the Freeway.

3.5 Conditions in reservations - Provisions of Project Agreement apply

- (a) (**Proximate State Work**): Subject to clause 3.5(b) and without limiting any other provision of the Project Agreement, Project Co acknowledges and agrees:
- (i) that the provisions of clause 26.4 of the Project Agreement apply to an exercise of any of the rights referred to in clauses 3.2 to 3.3; and
- (ii) that, under clause 3.5 of the Lease (NewCo), the State acknowledges and agrees that the provisions of clause 26.4 of the Project Agreement apply to an exercise of any of the rights referred to in clauses 3.2 to 3.3 of the Lease (NewCo).
- (b) (**No limitation**): Project Co acknowledges and agrees that clause 3.5(a) does not apply so as to limit or detract from any powers, functions or duties granted to the State or an Authority under the:
- (i) Road Management Act; or

- (ii) Relevant Legislation or other equivalent legislation.

4. Lease and restrictions, functions and duties

4.1 Grant of Lease (NewCo) and Sub-Lease

- (a) **(Lease (NewCo))**: Project Co acknowledges and agrees that the State has granted to NewCo as tenant a lease of the Leased Area for the Term on the terms and conditions set out in the Lease (NewCo).
- (b) **(Sub-Lease)**: NewCo grants to Project Co as sub-tenant a sub-lease of the Leased Area for the Term on the terms and conditions set out in this Sub-Lease.

4.2 Project Co's acknowledgment

Project Co acknowledges this Sub-Lease and Project Co's rights in respect of the Leased Area are subject to:

- (a) **(Lease (NewCo))**: the provisions of the Lease (NewCo);
- (b) **(Project Agreement)**: the provisions of the Project Agreement;
- (c) **(all interests, rights, Easements and reservations)**: all interests, rights, Easements and reservations affecting the Leased Area;
- (d) **(defects)**: any defects, whether latent or patent, in the Leased Area; and
- (e) **(rights reserved under Project Agreement)**: the rights reserved by the State under the Project Agreement, including the step-in rights contained in clause 37 of the Project Agreement.

5. Negation of representations and warranties

Project Co acknowledges and agrees that the State makes no representations (express or implied) and gives no warranties (express or implied):

- (a) **(suitability for purposes)**: that the Leased Area or any other land is now or will remain suitable or adequate for all or any of the purposes contemplated by the Lease (NewCo), this Sub-Lease or in the Project Agreement; and
- (b) **(Project Agreement representations)**: as to the matters specified in clause 47.1 of the Project Agreement,

and all warranties (if any) and representations (if any) implied by Law are, to the extent permitted by Law, expressly negated.

6. Use of the Leased Area

6.1 Permitted use

Project Co must only use the Leased Area for the Permitted Use.

6.2 Compliance with Laws and Approvals

Project Co must comply with all Laws and Approvals from time to time applicable to the Leased Area or the use or occupation of the Leased Area.

6.3 Compliance with notices

Project Co must at its own cost and expense comply with all notices, orders and directions issued or given by an Authority which affect or relate to the Leased Area and the use or

occupation of the Leased Area, regardless of whether the notice, order or direction is addressed to or requires compliance by all or any of the State, Project Co, NewCo or any other person.

6.4 Notices

A party which receives a notice, order or direction from an Authority which affects or relates to the Leased Area or the use or occupation of the Leased Area must promptly give a copy of that notice, order or direction to the other party.

6.5 No nuisance

- (a) **(Project Co's obligations):** Without limiting Project Co's other obligations in accordance with the State Project Documents, during the Term, Project Co must:
- (i) avoid or ensure minimal:
 - A. interference with the passage of people and vehicles;
 - B. obstruction to any property; and
 - C. disruption to operations carried out in the vicinity of the Leased Area (other than the Project Co Leased Area);
 - (ii) prevent or minimise nuisance including any nuisance caused by Pollution, noise, dust, light emission, vibration or disturbance, air pollution, odour on or adjacent to the Leased Area (other than the Project Co Leased Area); and
 - (iii) ensure the safety of people and property in accordance with Best Industry Practices.
- (b) **(Unreasonable levels of nuisance or interference):** To the extent that the levels of nuisance or interference referred to in clause 6.5(a) are not reasonable or are not in the interests of the safety of persons on the Leased Area or any other areas adjacent to the Leased Area (other than the Project Co Leased Area), Project Co must comply with any reasonable direction of the State or the Independent Reviewer and Environmental Auditor to stop or change the manner of using the Leased Area for the Permitted Use.

7. Rent and outgoings

7.1 Payment of Rent

- (a) **(Rent payable in arrears):** Project Co must pay, on each Rent Payment Date, the Rent to NewCo, or to such other party as NewCo may from time to time direct, without demand from NewCo.
- (b) **(Rent not to abate):** The payment of Rent by Project Co will not abate during the Term for any reason.
- (c) Not used.
- (d) **(Debt due and payable):** The parties acknowledge and agree that any Rent that is not received in full, or at all, on any Rent Payment Date will be a debt due and payable from Project Co to NewCo.

7.2 Charges for Services

- (a) **(Payment of Service charges):** In addition to the Rent, on and from the Commencement Date, subject to clause 7.2(b) Project Co must pay all charges (including service charges) for Services to or from the Leased Area, together with

any costs charged or levied by the service provider in respect of the provision or maintenance of the infrastructure, which provides or supplies those Services exclusively to the Leased Area.

- (b) **(Payment of Service charges under Construction Licence):** Project Co is not required to pay charges for Services under clause 7.2(a) between the Commencement Date and the Date of West Gate Tunnel Completion to the extent that Project Co has already paid for such charges in accordance with its obligations under the Construction Licence.

7.3 Separate metering

Project Co must install, or arrange for the installation of, meters at Project Co's own cost and expense for the recording or metering of any of the Services or substances provided or supplied to the Leased Area.

7.4 Shared Services

- (a) **(Apportionment of cost):** Project Co acknowledges and agrees that under clause 7.4 of the Lease (NewCo), where:
- (i) the infrastructure referred to in clause 7.2 provides or supplies Services not only to part of the Leased Area, but also to other land which is owned by, or leased or licensed to, the State or any Authority (other than land the subject of the Project Co Leased Area); and
 - (ii) no separate meter can be installed for recording or metering of any of those Services under clause 7.3,

NewCo must pay or reimburse the State (as the case may be), a proportion of any costs charged or levied by the service provider in respect of the provision or maintenance of that infrastructure, in accordance with clause 7.4(b) of the Lease (NewCo).

- (b) **(Calculation of apportionment):** Project Co acknowledges and agrees that the proportion of the costs referred to in clause 7.4(a), for which NewCo will be liable, will be:
- (i) subject to clause 7.4(b)(ii), in respect of the infrastructure relating to the provision or supply of Services, calculated by reference to the number of outlets for the applicable Service within that part of the Leased Area serviced by that infrastructure, as compared to the total number of outlets for that Service which is serviced by that infrastructure; and
 - (ii) in respect of drainage, calculated by reference to the area of that part of the Leased Area which is serviced by the relevant drain, as compared to the total area of the land which is serviced by that drain.
- (c) **(Certificate of cost):** Project Co acknowledges and agrees that a certificate from the State:
- (i) stating the amount NewCo must pay or reimburse the State (as the case may be) under clause 7.4 of the Lease (NewCo); and
 - (ii) which includes evidence of how the amount contemplated under clause 7.4(c)(i) of the Lease (NewCo) is calculated,

is conclusive evidence of the amount owing at the date of the certificate except in the case of manifest error.

- (d) **(Payment):** Project Co must pay to NewCo any amount owed by NewCo to the State under clause 7.4 of the Lease (NewCo), as notified to Project Co by NewCo.

7.5 Payment by State

Project Co acknowledges and agrees that if NewCo defaults in the payment of any of the costs or charges referred to in clauses 7.2 or 7.4 of the Lease (NewCo), the State may (without limiting any other rights and remedies of the State) pay the costs or charges, and any amount paid by the State will be a debt due and payable from NewCo to the State under the Lease (NewCo), and such amount, as notified by NewCo to Project Co, will be a debt due and payable from Project Co to NewCo.

8. Maintenance and works

8.1 Maintenance

Project Co must maintain the Leased Area and the Relevant Infrastructure in accordance with Project Co's obligations under the Project Agreement.

8.2 Works

- (a) **(Under Project Agreement)**: Project Co may undertake works on or to the Leased Area to the extent that those works form part of or are associated with the Relevant Infrastructure or the Project Activities or are otherwise required or permitted under the Project Agreement.
- (b) **(Other works)**: Except as provided for in clause 8.2(a), Project Co must not undertake works on or to the Leased Area without the State's prior consent.

9. Harm minimisation

Project Co must:

- (a) **(reasonable measures)**: take all reasonable measures to avoid obstructing access to, overloading or otherwise interfering with, obstructing or damaging the Utility Infrastructure or non-road infrastructure (as defined in the Road Management Act);
- (b) **(rights or obligations)**: not, otherwise than in accordance with its rights or obligations under the Project Agreement (including where specified or required under the PSR), damage or destroy anything on the Leased Area; and
- (c) **(inflammable, explosive or volatile)**: not without the State's approval, keep or use inflammable, explosive or volatile materials on the Leased Area.

10. Access

10.1 State's right of access

Project Co acknowledges and agrees that, when and so often as the State reasonably requires during the Term, the State, its Associates or any other persons authorised by the State may enter the Leased Area (with or without vehicles and equipment), including to:

- (a) **(reasonable investigations)**: make reasonable investigations as the State, its Associates or those authorised by the State deem necessary for the purpose of ascertaining whether or not there has been any breach of any of the terms, covenants or conditions expressed or implied in the Lease (NewCo), this Sub-Lease or any other State Project Document;
- (b) **(repairs, alterations and additions)**: carry out any repairs, alterations, additions or other work necessary to comply with the State's obligations under the Lease (NewCo), at Law or under the exercise by the State of any statutory functions;
- (c) **(rights under clauses 3.2 or 3.3)**: exercise any rights under clauses 3.2 or 3.3, and access any works undertaken under those rights once completed;

- (d) **(other powers and rights)**: exercise any other powers and rights of the State under the Lease (NewCo) or any other State Project Document; or
- (e) **(step-in rights)**: exercise the step-in rights contained in clause 37 of the Project Agreement.

10.2 Exercise of rights

NewCo must procure that, in the State exercising its rights under clause 10.1, except in the case of an exercise of the rights contained in clauses 26.4 and 37 of the Project Agreement, the State must comply with clause 13.3 of the Project Agreement.

11. Quiet enjoyment

Other than as a result of the exercise by the State, any of its Associates, Government Parties, an Authority or any other person authorised by the State, of any right of the State, any of its Associates, Government Parties, the Authority or that other person which is expressly or impliedly conferred upon it (including the State's rights contained in clauses 13.3 and 37 of the Project Agreement):

- (a) by the Lease (NewCo) or this Sub-Lease;
- (b) under any other State Project Document; or
- (c) otherwise at Law,

Project Co will and may peaceably possess and enjoy the Leased Area for the Term without any interruption or disturbance from the State or any other person or persons lawfully claiming by, from or under the State.

12. Risk

Except as otherwise expressly provided in the State Project Documents, as between the State, NewCo and Project Co, Project Co accepts all risks (and the cost of such risks) in connection with the use and occupation of the Leased Area.

13. Termination

13.1 Termination of Sub-Lease

This Sub-Lease will automatically terminate on the earlier of the termination of the Lease (NewCo) and the Expiry Date, but may not otherwise be terminated.

13.2 Consequences of termination

Upon termination of this Sub-Lease, the rights and obligations of the parties under this Sub-Lease will cease, except for:

- (a) **(accrued rights or obligations)**: any accrued rights or obligations under this Sub-Lease; and
- (b) **(continuing rights or obligations)**: any rights or obligations which are expressed (either in this Sub-Lease or in any other State Project Document) to continue after termination of this Sub-Lease or any other State Project Document.

13.3 Waiver

If this Sub-Lease is lawfully terminated in accordance with clause 13.1, Project Co waives any right it might otherwise have to pursue a Claim of restitution of any kind, including a Claim of unjust enrichment or quantum meruit, but this clause 13.3 does not affect Project Co's rights under clause 42 of the Project Agreement.

14. GST

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated to include GST, any amounts payable for a taxable supply that are referred to in any other provision of this Sub-Lease are exclusive of any GST (**Agreed Amount**).
- (b) **(GST payable by Supplier):** If GST becomes payable on any taxable supply made by a party (**Supplier**) under or in connection with this Sub-Lease:
- (i) unless the Agreed Amount is expressly stated to include GST, an additional amount will be payable by the party which is the recipient of the taxable supply (**Recipient**), equal to the amount of GST payable by the Supplier on that taxable supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (ii) the Supplier will provide a tax invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Sub-Lease or no later than the time at which the Agreed Amount for that taxable supply is to be provided in accordance with this Sub-Lease. The Recipient is not obliged to pay any amount in accordance with this clause 14(b) unless and until a tax invoice is received by the Recipient in connection with the taxable supply except where the Recipient is required to issue the tax invoice.
- (c) **(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 Sub-Lease (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 14(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:
- (i) the Supplier will issue an adjustment note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (ii) no additional amount will be payable by the Recipient unless and until an adjustment note is received by the Recipient.
- (d) **(Price net of GST):** Any reference in this Sub-Lease to price, value, sales, revenue, profit or a similar amount (**Price**), is a reference to the GST exclusive component of that Price, unless the contrary intention is expressed.
- (e) **(Cost net of GST):** Any reference in this Sub-Lease to cost, expense, liability or other similar amount (**Cost**) of a party, including in the context of an entitlement to recovery, reimbursement or compensation for any Costs of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (f) **(GST Groups):** For the purposes of this Sub-Lease, a reference to GST payable on a taxable supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.
- (g) **(Definitions):** In this clause 14 unless otherwise defined in this Sub-Lease, terms used have the meanings given to them in the GST Law.
- (h) **(Non-monetary consideration):** Where two parties in accordance with this Agreement exchange non-monetary consideration:

- (i) notwithstanding clause 14(b), the additional amount payable on any taxable supply by the Recipient to the Supplier shall be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate; and
- (ii) the parties agree to value the non-monetary consideration on an equal and GST-inclusive basis and swap tax invoices accordingly.

15. Dispute Resolution

15.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute between the parties arising under this Sub-Lease (**Dispute**) must be resolved in accordance with this clause 15 and clause 16.
- (b) **(Procedure):** The procedure that is to be followed to resolve a Dispute is as follows:
 - (i) firstly, the Dispute must be the subject of negotiation as required by clause 15.2;
 - (ii) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i) the parties may agree that the Dispute be referred to an expert for determination in accordance with clauses 15.4 to 15.8 (inclusive) or to arbitration under clause 16; and
 - (iii) thirdly, if:
 - A. the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i) and irrespective of whether the parties failed to meet as required by that clause or whether having so met the parties fail to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 15.2(c)(i);
 - B. the Dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment, or such later date as agreed between the parties; or
 - C. the Dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 15.6(a),then the Dispute must be referred to arbitration in accordance with clause 16.

15.2 Negotiation

- (a) **(Notification):** If a Dispute arises then a party may give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of Project Co and NewCo (**Representatives**).
- (b) **(Contents of Notice):** A notice under clause 15.2(a) must:
 - (i) state that it is a notice under this clause 15; and

- (ii) include or be accompanied by particulars of the matters which are the subject of the Dispute.
- (c) **(Attempt to resolve Dispute):** If a Dispute is referred for resolution by negotiation under clause 15.2(a), then:
 - (i) the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 15.2(a) is received (or such later date as the parties may agree); and
 - (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.

15.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives):** a Dispute which has been referred to the Representatives for negotiation in accordance with clause 15.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i); and
- (b) **(referral to expert):** the parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 15.2(c)(i), that the Dispute be referred to an expert for determination,

then those parts of the Dispute which remain unresolved will be referred to an expert for determination under clauses 15.4 to 15.8. For the avoidance of doubt, a Dispute may only be referred to an expert for determination by agreement of the parties.

15.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts):** Within 7 Business Days after the date on which the parties agree to refer a Dispute to an expert for determination under clause 15.3, Project Co and NewCo must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 15.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person that appears on both lists under clause 15.4(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 15.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on both lists, the party which gave the notice under clause 15.2(a) must procure:
 - (i) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 15.4(a); or
 - (ii) if there is no governing body for the technical or professional discipline the subject of the relevant Dispute or such governing body advises that it will not nominate an expert, 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 15.4(a).

- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** Neither party will be entitled to challenge the appointment of an expert under this clause 15.4 on the basis that the expert does not satisfy the requirements of clause 15.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Sub-Lease will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement):** Once an expert is appointed, Project Co and NewCo must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

15.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

15.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on Project Co and NewCo unless, within 10 Business Days of receipt of the determination, a party gives notice to the other party of its dissatisfaction and intention to refer the matter to arbitration under clause 16.
- (b) **(Amendment to determination):** Upon submission by any party, the expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.

15.7 Liability of expert

- (a) **(Liability of expert):** The parties agree:
 - (i) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (ii) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is a party to the Dispute.
- (b) **(Engagement):** Project Co and NewCo will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

15.8 Costs

Project Co and NewCo must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

16. Arbitration

16.1 Reference to Arbitration

- (a) **(Dispute):** If:
- (i) a Dispute:
 - A. which has been referred to the parties' Representatives for negotiation in accordance with clause 15.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i); and
 - B. the parties do not agree to refer the Dispute to an expert for determination; or
 - (ii) in the case of a Dispute which the parties agree to refer to expert determination under clause 15.3:
 - A. a determination is not made within 30 days of the expert's acceptance of the appointment, or such later date as agreed between the parties; or
 - B. a notice of dissatisfaction is given in accordance with clause 15.6,

then Project Co or NewCo may notify the other that it requires the Dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by the other party of a notice under clause 16.1(a), the Dispute will be referred to arbitration.

16.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 16 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 16.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

16.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the Dispute being referred to arbitration in accordance with clause 16.1(b), the arbitrator or arbitrators will be appointed by the Australian Centre for International Commercial Arbitration.

16.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The parties agree that:
- (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) any arbitration conducted in accordance with this clause 16 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and

- (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 16.4(a)(i) and 16.4(a)(ii).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
 - (i) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 16.4(a) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for oral hearing each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination;
 - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 16.4(d)(ii);
 - (vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (viii) each party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or, where 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 witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each party may only rely upon one expert witness in connection with any recognised area of specialisation.

16.5 Proportionate liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might, in the absence of this clause 16.5, have applied to any Dispute referred to arbitration in accordance with this clause 16.

16.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:

- (i) a Dispute between the parties to this Sub-Lease is referred to arbitration in accordance with this clause 16; and
- (ii) there is some other Dispute also between the parties to and in accordance with this Sub-Lease (whenever occurring),

the arbitrator may, upon application being made to the arbitrator by one or both of the parties at any time before a final award is made in relation to the first-mentioned Dispute, make an order directing that the arbitration be extended so as to include the other Dispute.

- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 16.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

16.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 16.7(b), any award will be final and binding on the parties.
- (b) **(Appeal):** Each party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011 (Vic)* on a question of Law arising in connection with an arbitral award made in accordance with this clause 16.

16.8 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to carry out its obligations in accordance with this Sub-Lease.

16.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

16.10 Interlocutory relief

This clause 16 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.

17. Assignment and subletting

17.1 Restrictions on assignment

Other than in accordance with clause 49 of the Project Agreement, Project Co must not:

- (a) **(interest in Sub-Lease):** assign, novate, transfer, mortgage, charge or otherwise deal with its interest in this Sub-Lease;
- (b) **(Leased Area):** grant leases, subleases and licences over parts of the Leased Area; or
- (c) **(rights or obligations):** assign, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with any of its rights or obligations under this Sub-Lease,

without the prior consent of the State.

17.2 Transfer of interest

If Project Co assigns, transfers, disposes of, parts with possession of, creates or allows any interest in, or otherwise deals with its interest in this Sub-Lease:

- (a) **(transferee to comply with and be bound by Sub-Lease)**: Project Co must, at its own cost, obtain a warranty by deed, from the transferee and any other person nominated by the State (as notified to Project Co by NewCo), in favour of the State, that the transferee will comply with and be bound by the provisions of this Sub-Lease in form and substance approved by the State; and
- (b) **(deed to be executed prior)**: the deed must be executed and delivered to NewCo and the State before the transfer or other dealing takes effect.

17.3 Access to contractors and others

Project Co acknowledges that under clause 17.3 of the Lease (NewCo), the State acknowledges that NewCo may grant access to, and use of, the Leased Area to Project Co, and that Project Co may grant access to, and use of, the Leased Area to its Associates, including the D&C Subcontractor, OpCo and each of their Subcontractors (and any of their employees, servants, agents and contractors), for the Permitted Use.

18. Notices

All communications (including approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands) in connection with this Sub-Lease:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time):

NewCo:

Attention Philip Naulls, Head of Assets, Victoria
Address: Tower One, Collins Square, Level 23, 727 Collins Street, Docklands 3008
Email: PNaulls@transurban.com

Project Co:

Attention David Clements, Program Director, Major Projects Victoria
Address: Tower One, Collins Square, Level 23, 727 Collins Street, Docklands 3008
Email: DClements@transurban.com

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid express post to the address, or emailed (in the form agreed by both parties) to the email address of the addressee in accordance with clause 18(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 18(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business

Day after the date of posting by airmail to an address outside Australia;
and

- (iii) in the case of email, the first to occur of:
- A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

19. Miscellaneous

19.1 Governing law and jurisdiction

- (a) **(Governing Law):** This Sub-Lease is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clauses 15 to 16, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Sub-Lease.

19.2 Entire agreement

To the extent permitted by Law, and in relation to their subject matter, this Sub-Lease and the other State Project Documents to which NewCo is a party:

- (a) **(entire understanding):** embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements):** supersede any prior agreement of the parties.

19.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Sub-Lease.

19.4 Surviving provisions

- (a) **(Surviving clauses):** All provisions of this Sub-Lease which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Sub-Lease will survive the rescission, termination or expiration of this Sub-Lease, including any provision in connection with:
 - (i) the payment of Rent;
 - (ii) the State's rights to set-off and recover money;
 - (iii) confidentiality or privacy;

- (iv) Intellectual Property Rights;
 - (v) any obligation to make any records available to NewCo or the State;
 - (vi) any indemnity or financial security given in accordance with this Sub-Lease; or
 - (vii) any right or obligation arising on termination of this Sub-Lease.
- (b) **(Interpretation):** No provision of this Sub-Lease which is expressed to survive the termination of this Sub-Lease will prevent any other provision of this Sub-Lease, as a matter of interpretation, also surviving the termination of this Sub-Lease.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction in accordance with this Sub-Lease. All rights and obligations in accordance with this Sub-Lease survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Sub-Lease.

19.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Sub-Lease is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right, power or remedy provided by Law or in accordance with this Sub-Lease by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or in accordance with this Sub-Lease.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Sub-Lease operates as a waiver of another breach of that term or of a breach of any other term of this Sub-Lease.

19.6 Consents, approvals and directions

- (a) **(State and NewCo):**
- (i) Project Co acknowledges and agrees that a consent or approval required in accordance with the Lease (NewCo) or this Sub-Lease from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless the Lease (NewCo) or this Sub-Lease expressly provides otherwise.
 - (ii) A consent or approval required in accordance with this Sub-Lease from NewCo may be given or withheld, or may be given subject to any conditions, as NewCo thinks fit, unless this Sub-Lease expressly provides otherwise.
- (b) **(Project Co):** A consent or approval required under this Sub-Lease from Project Co may not be unreasonably withheld or delayed, unless this Sub-Lease expressly provides otherwise.

19.7 Amendments

- (a) **(Agreement):** Except as otherwise expressly provided in this Sub-Lease, this Sub-Lease may only be varied by a deed executed by or on behalf of each party.
- (b) **(Other State Project Documents):** Except as otherwise expressly provided in the State Project Documents, no amendment to any other State Project Document is valid or binding on a party unless made in writing and executed by the State and all other parties to the relevant State Project Document.

19.8 Expenses

Except as otherwise expressly provided in this Sub-Lease or the other State Project Documents, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Sub-Lease.

19.9 Severance

If, at any time, a provision of this Sub-Lease or any other State Project Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Sub-Lease or any other relevant State Project Document;
or
- (b) that provision under the Law of any other jurisdiction.

19.10 Counterparts

This Sub-Lease may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

19.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Sub-Lease or to prejudicially affect the exercise by the State of any right, power or remedy under this Sub-Lease or otherwise, are expressly waived.

19.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Sub-Lease whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 19.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Sub-Lease and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

19.13 No partnership or joint venture

Except as expressly provided in the State Project Documents, nothing contained or implied in this Sub-Lease or any other State Project Document will:

- (a) **(constitution or deeming):** constitute or be deemed to constitute a party as a partner, joint venturer, agent or legal representative of any other party for any purpose; or
- (b) **(creation):** create or be deemed to create any partnership, joint venture, agency or trust between the parties or any of them.

19.14 No agency

Except as expressly permitted or contemplated by the State Project Documents, Project Co must not, in connection with the Project or otherwise, directly or indirectly hold out or permit to be held out to any person any statement, act, agreement, matter or thing indicating that the Project is being carried on or managed or supervised by the State nor may Project Co act as or represent itself to be the servant or agent of the State.

19.15 Indemnities

- (a) **(Continuing liability):** Each indemnity in this Sub-Lease is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Sub-Lease.
- (b) **(Expense not necessary):** It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Sub-Lease.
- (c) **(Payable on demand):** A party must pay on demand any amount it must pay under an indemnity in this Sub-Lease.
- (d) Not used.

19.16 No representation or reliance

- (a) **(No representation):** Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Sub-Lease, except for representations or inducements expressly set out in this Sub-Lease.
- (b) **(No reliance):** Each party acknowledges and confirms that it does not enter into this Sub-Lease 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 Sub-Lease.

19.17 Exclusion of express and implied covenants, powers and provisions

- (a) **(Transfer of Land Act 1958 (Vic) not to apply):** The covenants and powers implied by the *Transfer of Land Act 1958* (Vic) do not apply and will not be implied in this Sub-Lease except to the extent those covenants and powers are included in the covenants and powers contained in this Sub-Lease.
- (b) **(Property Law Act 1958 (Vic) not to apply):** The provisions of section 144 of the *Property Law Act 1958* (Vic) do not apply and will not be implied in this Sub-Lease.

Executed as an agreement.

Executed by Transurban WGT Co Pty Ltd ACN 617 420 023 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by West Gate Tunnel Leasehold Co. Pty Ltd ACN 622 944 709 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

West Gate Tunnel
Project Agreement
Exhibit A - Project Scope & Requirements

PSR

Project Scope & Requirements

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Part A - Introduction

1. General

1.1 Purpose and Interpretation

- (a) The Project Requirements set out the State's minimum requirements for the Relevant Infrastructure and the Project Activities (subject to clause 2.4 of this Agreement and the Agreed Exceptions).
- (b) Subject to clause 2.4 of this Agreement and the Agreed Exceptions, the Relevant Infrastructure and the Project Activities must, as a minimum, comply with:
 - (i) the Project Requirements; and
 - (ii) the Project Scope.
- (c) If there is any inconsistency, ambiguity or discrepancy within or between the Project Requirements and the Project Scope or between the PSR and any other State Project Document, clauses 2.2 to 2.5 of this Agreement will apply.
- (d) Project Co acknowledges and agrees that:
 - (i) the State and its Associates have not made and make no representation, and give no warranty or guarantee and owe no duty of care; and
 - (ii) Project Co bears the entire risk and will not make any Claim against the State for any Liability,in connection with:
 - (iii) the inclusion of the Agreed Exceptions;
 - (iv) whether the Project Scope complies with the Project Requirements; or
 - (v) whether carrying out the Project Activities (including preparation of the Design Documentation) in accordance with the PSR will ensure that Project Co can sufficiently discharge its obligations under the State Project Documents.
- (e) Notwithstanding that specific requirements in the Reference Design may have been incorporated by reference into the Project Requirements, the Reference Design does not form part of the Project Requirements or Project Scope.
- (f) Project Co must:
 - (i) make its own determination of whether the requirements of the State Project Documents are satisfied by complying with the Reference Documents and whether any additional measures are required to enable Project Co to comply with the State Project Documents; and
 - (ii) incorporate all additional measures necessary to enable Project Co to comply with the State Project Documents.
- (g) A glossary of terms is set out in section 6.

2. Reference Documents

2.1 General

- (a) Subject to the Agreed Exceptions, and clause 2.22 of this Agreement, the Relevant Infrastructure and the Project Activities must comply with the requirements of the Reference Documents, unless the Project Requirements specify a different requirement, standard, quality, level of service, quantum or scope, in which case the Project Requirements will prevail. The hierarchy of Reference Documents will be in the following order:
- (i) in relation to Returned Works, the relevant published standards of the Facility Owner;
 - (ii) VicRoads publications and Attachment A;
 - (iii) any relevant published standards of other Victorian government Authorities;
 - (iv) in relation to the Tunnels, the Tunnel Reference Documents;
 - (v) AUSTROADS publications;
 - (vi) the relevant standards, codes and guides of Standards Australia (including AS5100) and Standards New Zealand (or, where an Australian Standard or a New Zealand Standard does not exist, the relevant British standard or international standard);
 - (vii) the standards, codes and guides published by the National Occupational Health and Safety Commission;
 - (viii) Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites, ANZECC/MHNRC; and
 - (ix) all other publications, codes, references, guidelines, manuals and other technical documents which are relevant to the performance of the Project Activities.
- (b) Subject to clause 2.22 of this Agreement, the version (being a number, date or other identifier) of the Reference Document with which Project Co must comply is:
- (i) where
 - A. the version of the Reference Document with which Project Co is to comply is specified in the Project Requirements, that version and not any new, updated or replaced version; and
 - B. the Reference Document relates to the design of the Works, the version which was current as at the date of this Agreement; and
 - (ii) otherwise, the version current at the time the relevant Project Activities are carried out.
- (c) Where a Reference Document set out in sections 2.1(b)(i)A or 2.1(b)(i)B is no longer the most current version of that Reference Document or a new Reference Document is introduced which, if Project Co were to comply with it would cause the Project Activities to be delivered otherwise than in accordance with sections 2.1(b)(i)A or

2.1(b)(i)B (**New Reference Document**), Project Co must provide a notice to the State within 10 Business Days of becoming aware of the New Reference Document.

- (d) Where:
- (i) a Reference Document current at the date of this Agreement with which Project Co would otherwise be required to comply with under section 2.1(b)(ii) is no longer the most current version of the Reference Document or there is a new Reference Document introduced which, if Project Co were to comply with it, would cause the Project Activities to be delivered otherwise than in accordance with, or contemplated by, the Reference Document current at the date of the Agreement; or
 - (ii) any third party's requirements (including a third party's usual requirements) in respect of the O&M Activities or Handover change after the Date of West Gate Tunnel Completion,
- nothing in this Agreement requires Project Co to:
- (iii) comply with the most current version of that Reference Document, new Reference Document or those third party requirements referred to in section 2.1(d)(ii) where it is impossible for Project Co to do so;
 - (iv) replace or materially modify any part of the Relevant Infrastructure earlier than the time it would otherwise be required to be replaced or modified in order to comply with the requirements of the State Project Documents; or
 - (v) comply with the most current version of that Reference Document, new Reference Document or those third party requirements referred to in section 2.1(d)(ii) where compliance would require replacing or materially modifying a part of the Relevant Infrastructure:
 - A. where such replacement or modification would adversely impact on the integrity, consistency or the efficiency of the operation or maintenance of the Relevant Infrastructure or that part of the Relevant Infrastructure; or
 - B. where it would not be reasonable to expect that a reasonable and competent concessionaire maintaining a road similar to the Freeway to Best Industry Practices would do so having regard to the impact on the Relevant Infrastructure or the Project Activities.
- (e) Where an item, approach or option is referred to in a Reference Document and it is expressed in terms such as 'should', 'may be', 'recommended', 'suggested', 'desirable', or 'advisable', the item, approach or option referred to is deemed to be a requirement and must not be varied unless otherwise agreed by the State.
- (f) Where a Reference Document provides for:
- (i) a 'desirable' and an 'absolute' design limit, the desirable design limit is to apply unless other design limits are approved by the State;
 - (ii) the specification of material properties or mix designs for materials, such material properties or mix designs must be specified in the design report and on the drawings in the Certified Design Documentation;
 - (iii) the approval of construction procedures by a superintendent, such procedures must be included in the Construction Documentation submitted in accordance with Part F6;

- (iv) the release of Hold Points by a superintendent, this responsibility must be exercised by the relevant Nominated Authority identified in the Construction Quality Management Plan;
 - (v) the acceptance of non-conforming works or materials by a superintendent, such non-conforming works must be notified as Non-Conformances in accordance with clause 22.3 of this Agreement;
 - (vi) the approval of alternative construction methods or materials by a superintendent, any such methods or materials must be notified to the State and the IREA in the Preliminary Design Documentation, Certified Design Documentation, or as proposed changes to IFC Design Documentation in accordance with Part F5;
 - (vii) the determination of classification of earthworks materials or approval to reduce the frequency of testing of materials, such determinations and approvals must be authorised by a Nominated Authority with the necessary knowledge and experience to verify compliance with relevant standards and specification requirements; and
 - (viii) any other determination, direction, or agreement by a superintendent, such determinations, directions, or agreements must be notified to the State and the IREA in the Preliminary Design Documentation, Certified Design Documentation, or as changes to IFC Design Documentation in accordance with Part F5.
- (g) Where a VicRoads publication requires:
- (i) that the approval of a VicRoads officer be obtained in order to adopt or vary a particular standard, that standard must not be adopted or varied without the prior written approval of the State; and
 - (ii) the payment of any abatement amounts in the VicRoads 750 and 3150 series, such payment will not be required to be paid.
- (h) Project Co must not apply the principles of Extended Design Domain (EDD) as detailed in the VicRoads Supplement to the Austroads Guide to Road Design (Part 2 – Design Considerations) in the development of its design.
- (i) If a requirement in a Reference Document:
- (i) does not impose an obligation on any particular party to meet that requirement, then it will be deemed to impose an obligation on Project Co to meet that requirement; and
 - (ii) would or seeks to impose an obligation on the State or the IREA, then that obligation will be deemed to be imposed on Project Co unless:
 - A. expressly stated otherwise in this Agreement; or
 - B. only the State or the IREA (as applicable) can perform the obligation.

3. [Not Used]

4. General requirements

As a minimum, the Works and Project Activities must be undertaken to cater for:

- (a) the lane configurations, cross sections and clearances specified in Part H1;
- (b) the speeds specified in Part H2;
- (c) the design traffic volumes and vehicle mixes and loadings specified in Part H3;
- (d) the requirements for interchanges and intersections specified in Part H4;
- (e) the requirements for public transport, pedestrian and cyclist facilities specified in Part H6;
- (f) the requirements for freeway ramp metering signals specified in Part H7;
- (g) the urban design requirements in section 15 of Part B;
- (h) the requirements for tolling hardware specified in Part H12; and
- (i) and meet the requirements specified in Attachment C; and

to meet the requirements in Part H13.

5. Project outline

5.1 The Works

The Works include:

- (a) new Freeway carriageways, including:
 - (i) grade separation with all Roads;
 - (ii) traffic lanes and shoulders to the extent specified in Part H1;
 - (iii) all adjustments, reinstatements and improvements necessary to connect the West Gate Freeway and CityLink to the Freeway;
 - (iv) a grade separated freeway to freeway interchange at West Gate Freeway;
 - (v) the Tunnels under Yarraville including all additional infrastructure, plant and equipment necessary to operate the Tunnels safely and efficiently;
 - (vi) a crossing of the Maribyrnong River;
 - (vii) freeway carriageways from the Maribyrnong River crossing to CityLink as specified in Part H1; and
 - (viii) a grade separated freeway to freeway interchange at CityLink;
- (b) upgrades to the West Gate Freeway from the M80 interchange to Williamstown Road, including:
 - (i) grade separation with all Roads;
 - (ii) traffic lanes and shoulders to the extent specified in Part H1;

- (iii) all adjustments, reinstatements and improvements necessary to connect the West Gate Bridge, the Freeway and Princes Freeway West to the West Gate Freeway and M80;
 - (iv) bridge widening and strengthening of existing structures as further described in Part B;
 - (v) pavement works of existing carriageways as further described in Part B; and
 - (vi) a collector distributor carriageway in both directions;
- (c) an arterial road from Wurundjeri Way to Dynon Road (**Wurundjeri Way Extension**), including traffic lanes and shoulders to the extent specified in Part H1;
- (d) grade separated interchanges at:
- (i) M80 (freeway to freeway interchange with West Gate Freeway);
 - (ii) Grieve Parade;
 - (iii) Millers Road;
 - (iv) Williamstown Road; and
 - (v) MacKenzie Road;
- (e) intersection between Wurundjeri Way Extension and the Freeway;
- (f) new ramp connections with the West Gate Freeway and the Freeway (as applicable) at:
- (i) Hyde Street or such other roads to enable connectivity to Hyde Street;
 - (ii) Appleton Dock Road;
 - (iii) Dynon Road; and
 - (iv) Footscray Road east of CityLink;
- (g) all adjustments, truncations, reinstatement and improvements necessary to existing Roads (being works which are necessary as a consequence of, or otherwise arising out of or in connection with, the D&C Activities) including:
- (i) Geelong Road;
 - (ii) Grieve Parade;
 - (iii) Buchanan Road;
 - (iv) Millers Road;
 - (v) Fogarty Avenue;
 - (vi) Williamstown Road;
 - (vii) Hyde Street;
 - (viii) Francis Street;

- (ix) Whitehall Street;
 - (x) Youell Street;
 - (xi) Maribyrnong Street;
 - (xii) MacKenzie Road;
 - (xiii) Sims Street;
 - (xiv) Coode Road;
 - (xv) Footscray Road;
 - (xvi) Docklink Road
 - (xvii) Appleton Dock Road
 - (xviii) Dynon Road;
 - (xix) Dryburgh Street;
 - (xx) Dudley Street;
 - (xxi) Simcock Avenue;
 - (xxii) Hall Street; and
 - (xxiii) Wurundjeri Way;
- (h) works necessary to meet the requirements of Part H13;
 - (i) maintaining and where possible enhancing the existing bicycle and pedestrian facilities impacted by the Works;
 - (j) new bicycle shared path and Veloway requirements as further described in Part H6;
 - (k) all structures over drains, creeks and other water courses within the Leased Area necessary for, or required as a result of, the performance of the D&C Activities, including:
 - (i) all adjustments, reinstatement and improvements to creeks, drainage and other water courses; and
 - (ii) all drainage and flood mitigation and control works;
 - (l) Returned Works (being works which are necessary as a consequence of, or otherwise arising out of or in connection with, the D&C Activities) including where applicable:
 - (i) all adjustments, truncations, reinstatement and improvements necessary to existing Roads, to the extent they are outside the Leased Area;
 - (ii) all adjustments, reinstatement and improvements to the rail transport infrastructure necessary for, or required as a result of, the performance of the D&C Activities (except for any rail transport infrastructure which is removed and is not required to be reinstated as a result of the performance of the D&C Activities) which may include:

- A. Metropolitan and Regional Railway Lines;
 - B. Sunshine to Newport Freight Line;
 - C. ARTC Syd-Adel-Mel Rail Line;
 - D. Engine track between South Dynon locomotive depot and Southern Cross; and
 - E. South Dynon rail lines (including within the Melbourne Freight Terminal) and connections to and within the Port of Melbourne;
- (iii) the protection, repair, replacement, reinstatement, alteration and relocation of Utility Infrastructure necessary for, or required as a result of, the performance of the D&C Activities;
 - (iv) all other Works not in the Leased Area;
 - (v) all Works within the ITS Interface Area ;
 - (vi) the Accommodation Works including:
 - A. all adjustments to existing infrastructure or property, excluding the Works referred to in section 5.1(l)(iii);
 - B. all changes in access arrangements to existing infrastructure and property;
 - C. demolition, clearing and decontamination and adjustment of built features;
 - D. adjustment, re-establishment or making good of all existing buildings whether inside or outside the Construction Areas which are affected in any way by the D&C Activities;
 - E. adjustments to property drainage;
 - F. modifications and reinstatement of Utility Infrastructure to properties; and
 - G. all other property adjustment works necessary to ensure that the access to and egress from or the use of any property (including any building, structure, infrastructure or amenity which is affected by the D&C Activities) is reinstated in accordance with the relevant local council requirements or to at least the same standard and quality that it was prior to Financial Close;
 - (vii) all intersecting Roads;
 - (viii) footpaths and shared use paths on Roads;
 - (ix) any creek, water course or other drainage facility forming part of Melbourne Water's main drainage network;
 - (x) rail structures;
 - (xi) creek embankment works;

- (xii) parks and wetlands areas occupied temporarily for construction purposes;
- (xiii) modifications to sewers, drains and other utilities;
- (xiv) car parking areas occupied temporarily for construction workforce;
- (xv) the State Asset Works;
- (xvi) all structures over drains, creeks and other water courses outside of the Leased Area necessary for, or required as a result of, the performance of the D&C Activities including:
 - A. all adjustments, reinstatement and improvements to creeks, drainage and other water courses; and
 - B. all drainage and flood mitigation and control works;
- (m) all associated Temporary Works associated with sections 5.1(a) to 5.1(l), including:
 - (i) temporary measures necessary to meet the needs of all road, public transport, public area and pathway users during all stages of undertaking the Works;
 - (ii) temporary arrangements to divert and control traffic and to provide public amenity, security and safety during performance of the D&C Activities;
 - (iii) temporary arrangements for people and vehicles to access all property affected by the D&C Activities;
 - (iv) all environmental safeguards and measures necessary to monitor and mitigate environmental effects during performance of the D&C Activities;
 - (v) cleaning, maintenance, repair, replacement and reinstatement, as required, of all areas occupied by Project Co during performance of the D&C Activities;
 - (vi) the maintenance of Roads within the Construction Areas;
 - (vii) site facilities required for performance of the D&C Activities;
 - (viii) temporary infrastructure installed or erected to undertake the Works; and
 - (ix) all temporary measures necessary to open the Freeway; and
- (n) all other physical things and works necessary, or otherwise arising in connection with the matters described in sections 5.1(a) to 5.1(m), including:
 - (i) drainage, earthworks, structures, pavements, noise attenuation and road furniture;
 - (ii) urban design and landscaping features and finishes;
 - (iii) all infrastructure and equipment necessary to operate and maintain the Leased Area and ITS Interface Area and any buildings, maintenance facilities and the Operations Management and Control Systems;
 - (iv) demolition and clearing;
 - (v) decontamination in accordance with this Agreement;

- (vi) all fencing and security measures designed and constructed to prevent either unlawful or accidental access including as a result of legal possession of any land acquired or to be acquired;
- (vii) pavement markings, signs and lighting;
- (viii) ITS, traffic control signals, tolling, roadside devices and ancillary infrastructure required for managed freeways including lane use management signs and freeway ramp signals;
- (ix) items of infrastructure or such items which are otherwise necessary to provide safety;
- (x) all environmental safeguards and measures, having regard to the Environmental Requirements, including those identified in Part H21;
- (xi) all equipment necessary to monitor the operational and environmental performance, and assess the durability of key elements of the Freeway;
- (xii) all measures required in accordance with this Agreement in respect of community consultation, including those identified in Part G;
- (xiii) the provision of facilities for Emergency Services;
- (xiv) all adjustments to any existing Road, footpath, shared use path, open space, landscaped area or street which is affected by the performance of the D&C Activities within the Leased Area;
- (xv) all infrastructure required to connect the Freeway to the surrounding road network to ensure the continuing performance of the surrounding road network during construction and after the Date of West Gate Tunnel Completion;
- (xvi) all infrastructure required to ensure the continuing performance of the pedestrian and bicycle facilities during construction and after the Date of West Gate Tunnel Completion;
- (xvii) all necessary kerb and channel, connections of footpaths, driveways, removal of existing assets, including redundant driveways and pavement works;
- (xviii) all fixtures, fittings and other improvements, on, under, above or adjacent to the Freeway; and
- (xix) any other physical assets, plant, machinery, equipment, improvements, systems, hardware and software necessary to operate, repair and maintain the Relevant Infrastructure.

6. Glossary of Terms

Unless otherwise expressly defined, expressions used in this PSR have the meaning given to them in this Agreement.

In this PSR, unless the context otherwise requires, the terms and phrases set out in Table A.1 have the meaning given in Table A.1.

Table A.1 - Glossary of Terms

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| Action List | means a list containing Tag Identifiers where the associated account status requires the RSS to provide feedback and action at RSS level which is different to signalling that the Transaction is “ok”. |
| AID Incident | means: <ul style="list-style-type: none"> (a) stopped vehicles; (b) vehicles travelling below a configurable designated threshold speed; (c) vehicles travelling in the opposite direction to the designated direction of travel; (d) debris in excess of 0.75 metres in length, 0.75 metres in height and 0.5 metres in depth; (e) pedestrians; and (f) cyclists. |
| Agreed Exception | means an agreed exception as set out in Part I or as otherwise agreed by the State and Project Co in writing. |
| Approved Development | means a development for which planning approval, as at the date of this Agreement: <ul style="list-style-type: none"> (a) has been obtained from or permitted by the relevant Authority; and (b) is publicly available; <p>except to the extent the planning approval is amended after the date of this Agreement and results in a more onerous requirement for compliance with the assessment under section 18.3(g) of Part B, section 13.7(b) of Part C or section 3.2(a)(i)A of Part C.</p> |
| AS5100 | means AS5100 (2004). |
| Asset | means a physical component of the Works and includes each part of that physical component (which is typically divided into components and sub-components). |
| Asset Inventory | has the meaning given in section 5(b)(i) of Part D1. |
| Asset Management System | means a system for management of Assets that complies with this Agreement, including section 5 of Part D1. |
| Automatic Incident Detection System | means the system described in section 2.7 of Part D1. |
| Bus | for the purposes of Part H12A, means a Vehicle having more than 12 seating positions (including that of the driver). |
| Business Management | means the business management strategy to be prepared and updated by Project Co as described in Part F1. |

Strategy

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| Car | for the purposes of Part H12A, is a Vehicle, other than a Motor Cycle, a Light Commercial Vehicle, Heavy Commercial Vehicle or High Productivity Freight Vehicle, even if such a Vehicle is towing a trailer or caravan. |
| Category A Building | means residential dwellings, aged persons homes, hospitals, motels, caravan parks and other buildings of a residential nature. |
| Category B Building | means schools, kindergartens, libraries and other noise-sensitive community buildings. |
| Category 1 Temporary Works | means such Temporary Works as agreed by the State and Project Co, to be Category 1 Temporary Works based on the assessment of risk of the relevant Temporary Works. |
| Category 2 Temporary Works | means such Temporary Works as agreed by the State and Project Co, to be Category 2 Temporary Works based on the assessment of risk of the relevant Temporary Works. |
| City Interchange | means that part of the Freeway that provides direct connections to the arterial roads of Footscray Road, Wurundjeri Way and Dynon Road. |
| CityLink Trip Data | means all data required to be recorded by the Tolling System (as defined in the CityLink Concession Deed) in relation to the passage of Vehicles on CityLink. |
| Closed Circuit Television System | means the system described in section 2.9 of Part D1. |
| Code of Maintenance Standards | means the code of maintenance standards referred to in Part F7. |
| Code of Practice for Road Management Plans | means the Code of Practice for Road Management Plans made under section 28 of the <i>Road Management Act 2004 (Vic)</i> , as amended from time to time. |
| Communication Network | means the collection of routers, switches, optic fibre and necessary accessories which connect together to enable data communication between the ITS equipment and the traffic control rooms. |
| Communication System or CS | means the system described in section 4 of Part D1. |
| Completion and Commissioning Plan | means the plan described in section 2.1(m) of Part F1. |
| Compliance Notice | means a notice issued by Project Co to a User of the Freeway which had made no arrangement for payment of that Trip. |
| Compliance Process | means the process of identifying, and issuing notices to recover (and recovering) tolls, administration charges and other fees and charges due in respect of, No Arrangement Travel. |

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| Condition State 1 and 2 Items | means the condition rating 1 and condition rating 2 of a structural component in accordance with the VicRoads Road Structures Inspection Manual. |
| Condition State 3 and 4 Items | means the condition rating 3 and condition rating 4 of a structural component in accordance with the VicRoads Road Structures Inspection Manual. |
| Construction Communications and Community Engagement Plan | means the plan described in section 2.1(k) of Part F1. |
| Construction Environmental Management Plan or CEMP | means the plan described in section 2.1(i) of Part F1. |
| Construction Management Plan | means the plan described in section 2.1(d) of Part F1. |
| Construction Package | means each construction package as contemplated by the Construction Management Plan and includes the documents as described in section 2 of Part F6. |
| Construction Procedure | means a procedure required to be submitted by a Reference Document including as described in section 2(e) of Part F6. |
| Construction Quality Management Plan | means the plan described in section 2.1(e) of Part F1. |
| Construction Quality Representative | means the person nominated in accordance with section 2.1(e) of Part F1 responsible for ensuring that the requirements of the Construction Quality Management Plan are implemented and maintained. |
| Construction Traffic Management Plan or CTMP | means the plan described in section 2.1(h) of Part F1. |
| Coordinating Road Authority | means the relevant coordinating road authority for that road pursuant to the <i>Road Management Act 2004 (Vic)</i> . |
| COTS | means commercial off the shelf. |
| Customer Service Operator | means a representative of Project Co designated to handle customer service issues. |
| D&C Phase Project Plans | means each of the project plans described in section 2.1 of Part F1. |
| DCN | means a design change notice as referred to in section 2.5(c) of Part F5. |
| Design Explanation | has the meaning given in section 2.4 of Part F5. |

Design Life means, in respect of an Asset, the period commencing on the Date of West Gate Tunnel Completion, or such later date as the Asset is replaced, over which the Asset performs its intended function without replacement, refurbishment or significant maintenance.

Design Management Plan means the plan described in section 2.1(c) of Part F1.

Detailed Design Documentation means the Design Documentation described in Part H25 including the Detailed Design Packages.

Detailed Design Packages means the following Design Documentation:

| Zone-DPK No. | Design document package description | Preliminary design report revision and date |
|---------------------|--|--|
| 202-200 | Civil Works - Section A | B, 24 August 2017 |
| 202-250 | Civil Works - Section B | B, 6 September 2017 |
| 202-300 | Drainage - Section A | B, 2 November 2017 |
| 202-350 | Drainage - Section B | B, 5 October 2017 |
| 202-460 | Bridge 24 Muir Street SUP over WGF | B, 17 November 2017 |
| 202-475 | Retaining Walls and Noisewalls - Section B | B, 30 October 2017 |
| 302-510 | Tunnel Design Criteria Report | B, 24 August 2017 |
| 303-500 | Spaceproofing Permanent Works - North Portal | B, 20 September 2017 |
| 303-505 | Northern Portal Piling and Temporary Works | B, 13 September 2017 |
| 303-572 | TBM Launch Grouting | C, 24 October 2017 |
| 333-900 | North Yarra Main Sewer - Temporary Works | B, 26 October 2017 |

Detection Zone means a region of the Freeway at or around a Toll Point which must be used by a Vehicle seeking to pass that Toll Point.

Diversion Traffic Management Plan or DTMP means the plan described in section 7.4 of Part F7.

Double Incident means: [Not disclosed]

Dudley Street for the purposes of Part H22, has the meaning in section 1(a)(vi) of Part H22.

Dynon Road Extension means the sections of Ramps D1 and D2 between the intersection of Ramps D1 and D2 and Ramps F1 and F2 and the western abutment of the existing Dynon Road bridge over the railway lines.

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| EFC Context Mark | means the identifier for the specific tolling customer contract associated with a Tag which is required under AS4962. |
| Emergency Risk Management Plan | means the plan described in section 2.1(l) and 2.2(j) of Part F1. |
| Emergency Services | means any one or more of Victoria Police, MFB, SES or Ambulance Victoria as the context requires. |
| Enforcement Agency | has the meaning given in the CityLink Concession Deed. |
| Environmental Auditor | means the person described in section 1.9(a)(iv) of Part F1. |
| Environmental Management Framework | means the Environmental Management Framework in the Environmental Effects Statement. |
| Environmental Management Strategy | means the Environmental Management Strategy approved by the Minister for Planning under the Incorporated Document. |
| Environmental Management System | means a system as described in AS/NZS/ISO 14001. |
| Environmental Representative | means the person described in section 8.1(e) of Part F6. |
| Error Rate | means each of the Vehicle Detection Error Rate, Tag Detection Error Rate, Image Capture Error Rate A and Image Capture Error Rate B. |
| Existing Structural Asset | means all: <ul style="list-style-type: none"> (a) WGF Existing Bridges; (b) Other WGF Existing Structural Assets; and (c) Other Existing Bridges. |
| Fire Engineering Brief or FEB | has the meaning given in AS4825:2011. |
| Fire Engineering Report or FER | has the meaning given in AS4825:2011. |
| Footscray Road | for the purposes of Part H22, has the meaning in section 1(a)(iv) of Part H22. |
| Foreign Toll Operators | means any other entity operating a toll road in Australia |
| Freeway (Acoustic) | means the Freeway, excluding any Local Road, and including: <ul style="list-style-type: none"> (a) the sections of the West Gate Freeway between the eastern drip line of the Grieve Parade bridge over the West Gate Freeway and the western drip line of the Geelong Road |

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| | bridge over the West Gate Freeway; |
| | (b) the sections of the West Gate Freeway between the western expansion joint of the bridge over Williamstown Road and the western abutment of the West Gate Freeway bridge over the Williamstown railway line; |
| | (c) the Dynon Road Extension; and |
| | (d) the Wurundjeri Way Extension (Acoustic). |
| Freeway Control Centre or FCC | means the building to be used by Project Co for controlling traffic on the Freeway. |
| Freeway Management System or FMS | means a system which includes a range of ITS devices including LUMS, VMS and ramp metering sites which are operated in coordination to manage the safe and efficient flow of vehicles on freeways. |
| Freeway Operations Manual | means the manual described in section 2.3(c) of Part F1. |
| Further Request for Payment | means a further Request for Payment sent to an Addressee following the sending of a Request for Payment to that Addressee in relation to any or all of the Trips the subject of that Request for Payment. |
| Future Base Traffic Noise Level | means the level of noise due to road traffic: <ul style="list-style-type: none"> (a) for Category A Buildings - using L10 (18 hour) between 6 am and midnight; and (b) for Category B Buildings - using L10 (12 hour) between 6 am and 6 pm, <p>based on:</p> <ul style="list-style-type: none"> (c) the assumption that, if the West Gate Tunnel did not exist, road traffic noise emanating from the West Gate Freeway in 2045 at the receptor points as contemplated under section 18.3(d) of Part B would be 63dBA L10 (18 hour) measured between 6 am and midnight (for Category A Buildings) and 63dBA L10 (12 hour) measured between 6am and 6pm (for Category B Buildings); and (d) the future base traffic volumes in Table H3.6 for the relevant Local Road, <p>as modelled utilising the relevant WGT Noise Model.</p> |
| Future Infrastructure | means the infrastructure specified in Part H13. |
| Groundwater Management Plan | has the meaning given in section 4.1(d) of Part C. |
| Handover Plan | means the plan described in section 2.2(k) of Part F1. |
| Health and Safety Management Plan | means the plan described in section 2.1(j) of Part F1. |

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| Heavy Commercial Vehicle or HCV | for the purposes of Part H12A, means: <ul style="list-style-type: none"> (a) a rigid Truck with three or more axles; (b) an articulated Truck; (c) a Bus; or (d) a two axle rigid Truck having a gross vehicle mass which exceeds 4.5 tonnes, and excludes HPFVs. |
| High Availability | means: <ul style="list-style-type: none"> (a) designed to feature in-built redundancy, reliable failover modes, and effective failure detection and reporting capabilities; and (b) designed to minimise the risk of cascading failure as the result of the failure of any single module or task. |
| High Productivity Freight Vehicle or HPFV | for the purposes of Part H12A, means a Vehicle (including any trailer(s)) which is 26m or great in length. |
| Hold Point | means those points beyond which the stated construction activity must not proceed without the Nominated Authority's approval to proceed. |
| Image | means an image or photograph captured in computerised data format for later identification and classification of Vehicles passing through Detection Zones for the purposes of determining the tolls payable in respect of such passage. |
| Image Capture Error Rate A | means the Image Capture Error Rate A calculated in accordance with section 2.5(b) of Part H12A. |
| Image Capture Error Rate B | means the Image Capture Error Rate B calculated in accordance with section 2.5(c) of Part H12A. |
| Incident Traffic Management Plan or ITMP | means the plan described in section 7.5 of Part F7. |
| Interoperable | means compliant with all interoperability requirements for tolling devices stated in the MOU. |
| Interoperability Process | means the process of exchanging data in relation to Trips and settling payments due to Product Issuers in relation to Trips as contemplated by the MoU, and in accordance with any applicable Roaming Agreement. |
| Inspection and Test Plans or ITPs | means the plans related to inspections and tests that must be conducted at key points in the construction process. |
| Inspection Report | means a Level 3 Engineering Investigation Report or Level 2 Structure Condition Inspection Report prepared in accordance with the VicRoads Road Structures Inspection Manual. The report and data is used as a basis for the assessment of structural management options for either an |

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| | individual structure or to a class of structures. |
| Interface Management Plan | means the plan as described in section 2.1(n) of Part F1. |
| IREA | means the Independent Reviewer and Environmental Auditor. |
| ITS | means intelligent transport system. |
| ITS Interface Area | means the ITS Interface Area described in Part H18. |
| Invalid Tag | means a Tag for which: <ul style="list-style-type: none"> (a) an electronic road tolling system fully complying with AS4962 would be unable to determine the Tag Identifier for the Tag; (b) the issuer of the Tag is not able to be configured in the RSS as being able to accept transactions at the time of travel, due to the issuer not being a party to the MOU at that time or not having an interoperability agreement with the Operator; or (c) the Tag Identifier for the Tag has been placed on a black-list of invalid tags by the Tag issuer. |
| Key State Roads | has the meaning given in section 1 of Part H22. |
| Landscape Management Plan | means the plan as described in section 2.1(o) of Part F1. |
| Landscaping Plan | means the plan as required in accordance with Part H21. |
| Lane Closure Schedule | means Schedule 1 of Part H22. |
| Lane Use Management System or LUMS | means the system described in section 2.3 of Part D1. |
| Lead Verifiers | means the suitably qualified and experienced persons independent of those having direct responsibility for the design identified as 'Lead Verifiers' in the Design Management Plan. |
| Level 2 Structure Condition Inspection | means a Level 2 Structure Condition Inspection undertaken in accordance with the VicRoads Structures Inspection Manual. |
| Level 3 Engineering Investigation | means a Level 3 Engineering Investigation undertaken in accordance with the VicRoads Road Structures Inspection Manual. The engineering investigation generally includes a combination of field investigation and theoretical analysis of a specific issue relevant to an individual structure or to a class of structures. |
| Level of Service of D | has the meaning in the VicRoads document "Supplement to Austroads Guide to Traffic Management, Part 2: Traffic Theory (2015)". |
| Licence Plate | means the physical object attached to a Vehicle which contains the Licence Plate Identifier. |
| Licence Plate | means the combination of Licence Plate Number and State of |

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| Identifier or LPI | Registration for a Licence Plate. |
| Licence Plate Number or LPN | means the sequence of letters and digits displayed on a Licence Plate that uniquely identifies a Vehicle. |
| Light Commercial Vehicle or LCV | for the purposes of Part H12A, means a two axle rigid Truck having a gross vehicle mass which exceeds 1.5 tonnes, but does not exceed 4.5 tonnes. |
| Local Roads | <p>means:</p> <p>(a) the sections of:</p> <ul style="list-style-type: none"> (i) Grieve Parade; (ii) Millers Road; (iii) Williamstown Road; (iv) Hyde Street; (v) MacKenzie Road; (vi) Simcock Avenue; and (vii) Dynon Road, <p>which extend 100 metres from the interchange of the relevant road with the Freeway (Acoustic) (but excluding the Freeway (Acoustic)); and</p> <p>(b) the section of Footscray Road between the intersection of Footscray Road and Ramps F1 and F2 and the Sims Street loop intersection with Footscray Road.</p> |
| Maintained Off-Freeway Facility | <p>means the:</p> <p>(a) Assets;</p> <p>(b) areas; and</p> <p>(c) Assets located in the areas,</p> <p>described in the Maintenance Principles and such other Assets or areas as agreed by the State and Project Co.</p> |
| Maintenance Area Plan | means the plan relating to the Maintenance Area as described in section 9 of Part E. |
| Maintenance Manual | means the manual described in section 2.3(b) of Part F1. |
| Maintenance Principles | means the maintenance principles contained in Part H17 . |
| Maintenance Traffic Management Plans | means the plans described in section 7.6 of Part F7. |

or **MTMP**

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| Major Events | means the events listed in Schedule 2 of Part H22. |
| Major Incident | means an event that to the actual knowledge of Project Co or its Associates: (a) involves serious personal injury, death, or significant damage to or destruction of the Freeway or any other property in connection with the Project; or (b) involves or creates significant damage to the Environment. |
| Major Structures | means major structures of the Relevant Infrastructure and includes road and rail bridges and pedestrian bridges over the Freeway and Roads, and structures associated with tunnel portals. |
| MFB | means the Metropolitan Fire Brigade. |
| Minor Structures | means the minor structures of the Relevant Infrastructure and includes pipe and box culverts across waterways, sign gantry structures and timber or similar structures for any shared use path across waterways. |
| MOU | means the agreement entitled "Memorandum of Understanding (MOU) - Electronic Toll Collection" dated 30 October 2009 between Roads and Maritime Services and various operators of toll roads in Australia, as amended, supplemented or replaced from time to time. |
| Motor Cycle | for the purposes of Part H12A, means a two wheeled Vehicle (an includes such a Vehicle even if it has a trailer, fore car or side car attached). |
| M80 | for the purposes of Part H22, has the meaning in section 1(a)(iii) of Part H22. |
| National Environment Protection Measures | means the measures made by the National Environment Protection Council under section 14 of the <i>National Environment Protection Council Act 1994</i> (Cth), as amended from time to time. |
| Navigational Area | means the Navigational Area as set out in section 5.14 of Part B. |
| No Arrangement Travel | means the use of a tollway by a Vehicle that occurs without there being a valid arrangement with a Product Issuer for the payment of tolls and administration charges arising from such usage. |
| No Arrangement User | means any User who uses the Freeway and such use constitutes No Arrangement Travel. |
| Nominated Authority | means the person nominated in the Construction Quality Management Plan with the authorisation to release each Hold Point. |
| Notice of Intention to Proceed | has the meaning given in section 2.4(h) of Part F5. |
| OD Route | means a route determined by the VicRoads published document "Supplement to Austroads Guide to Traffic Management, Part 2: Traffic Theory (2015)". |

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| O&M Phase Management Plan | means the plan described in section 2.2(a) of Part F1. |
| O&M Phase Project Plans | means each of the project plans described in section 2.2 of Part F1. |
| O&M Safety Audit Report | has the meaning given to it in the Australian Standards. |
| OMCS Back Office | means the non-roadside computer systems, servers and operator interface terminals that are used for the TMCS, PMCS, and CS. |
| On Board Unit or OBU | means a device in a Vehicle using the Freeway which is used for communication with the Roadside Equipment and which is Interoperable (being, unless otherwise agreed by the parties in accordance with this Agreement, a Tag). |
| Operational Redundancy Management System | means the system described in section 2.10 of Part D1. |
| Operations Communications and Community Engagement Plan | means the plan described in section 2.2(h) of Part F1. |
| Operations Environmental Management Plan or OEMP | means the plan described in section 2.2(f) of Part F1. |
| Operations Health and Safety Management Plan | means the plan described in section 2.2(g) of Part F1. |
| Operations Management and Control Systems or OMCS | means the system described in section 1 of Part D1 and includes each system that is to be included in the OMCS as set out in section 1.2(a)(v) of Part D1. |
| Operations Quality Management Plan | means the plan described in section 2.2(i) of Part F1. |
| Operations Traffic Management Plan | means the plan described in section 2.2(e) of Part F1. |
| Operations Workplace Relations Management Plan | means the plan described in section 2.2(c) of Part F1. |
| Operator. | means the entity which operates the RSS for and on behalf of Project Co. |
| Other Existing Bridges | (a) means, subject to paragraph (b): (i) Ramp R6 over Ramp R2; |

- (ii) Ramp F3 – Footscray northbound entry ramp, from pier H0 to H10 (inclusive) (as depicted on the as-constructed drawings titled “Melbourne City Link Project Western Link”);
 - (iii) CityLink to Footscray Rd exit ramp (southbound), from pier G0 to G11 (inclusive) (as depicted on the as-constructed drawings titled “Melbourne City Link Project Western Link”);
 - (iv) Western Link (northbound) from pier N50 to N61 (inclusive) and pier N66 to N70 (inclusive) (as depicted on the as-constructed drawings titled “Melbourne City Link Project Western Link”);
 - (v) Western Link (southbound) from pier S53 to S61 (inclusive) (as depicted on the as-constructed drawings titled “Melbourne City Link Project Western Link”);
 - (vi) Footscray Road Bridge over Moonee Ponds Creek;
 - (vii) Footscray Road over Appleton Dock Rail from pier FN6 to FN9 (inclusive); and
 - (viii) Cherry's Main Drain.
- (b) Where pier numbers are identified in paragraph (a) and as a result of the development of the Design Documentation in accordance with this Agreement, the extent of the structural modifications (including bridge widening) on the relevant bridges that are required to be carried out is greater than indicated by those pier numbers, the relevant pier numbers set out in paragraph (a) are extended accordingly.

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| Other WGF Existing Structural Assets | means all existing culverts and retaining walls (each as defined in the VicRoads Road Structures Inspection Manual) found along the West Gate Freeway which will form part of the Relevant Infrastructure or Returned Works. |
| Over-height Vehicle System | means the system described in section 2.6 of Part D1. |
| Payment Card Industry Data Security Standard (PCI DSS) | means the Payment Card Industry Data Security Standards as issued by the Payment Card Industry Security Standards Council as amended from time to time. |
| Performance Management Plan | means the plan described in section 2.2(b) of Part F1. |
| Performance Metric | means the performance metric for the TBO as set out in Table D2.1. |
| Plant Management and Control System or PMCS | means the system described in section 3 of Part D1. |
| PMF | means the probable maximum flood which is determined using the |

greater of:

- (a) 2100 conditions; or
- (b) in accordance with Melbourne Water usual requirements.

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| Port of Melbourne | has the meaning given to the term Port in the Port Land Deed. |
| Port Transaction Land | has the meaning given in the Port Land Deed. |
| Pre-Agreed Modification | means a Modification specified in the Pre-Agreed Modification Schedule. |
| Preliminary Design Documentation | means the Design Documentation described in section 2.2 of Part F5. |
| Preparatory Works | means any works identified in section 2.8(c) of Part F5. |
| Princes Freeway | for the purposes of Part H22, has the meaning in section 1(a)(ii) of Part H22. |
| Product Issuer | means a provider of tolling services to customers in connection with the use of, or entitlement to use, an Australian toll road. |
| Project Delivery Management Plan | means the plan as described in section 2.1(b) of Part F1. |
| Project Requirements | means all of the requirements for the performance of the Project Activities as set out in Exhibit A, other than the Project Scope. |
| Project Scope | means Part K. |
| Proposed Development | means a development that as at the date of this Agreement: <ul style="list-style-type: none">(a) is the subject of a planning permit application or planning scheme amendment; and(b) is publicly available, except to the extent the planning approval is amended after the date of this Agreement and results in a more onerous requirement for compliance with the assessment under section 18.3(g) of Part B, section 13.7(b) of Part C or section 3.2(a)(i)A of Part C. |
| Proposed Leased Area Plans | means the plans identified in section 2 of Part J. |
| Public Transport Interface Parties | means each of: <ul style="list-style-type: none">(a) the Rail Interface Parties;(b) Public Transport Victoria; and(c) any operator of bus services in the vicinity of the Relevant Infrastructure. |

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| Ramp | includes those ramps specified in section 7 of Part A. |
| Rated Trip | means a Trip for which tolls, fees and charges have been calculated in accordance with section 3.4 of Part D2. |
| Readily Accessible | means Assets or parts of Assets that are able to be accessed for inspection, refurbishing or replacing without having to undertake significant works which: <ul style="list-style-type: none"> (a) may cause damage to or destruction of the Asset of which it is a part; or (b) may significantly affect the operation of the Asset. |
| Reference Design | means the design prepared for the West Gate Tunnel and provided for information to Project Co. |
| Reference Documents | means those documents described in section 2.1(a)(i) to 2.1(a)(ix) of Part A. |
| Relevant D&C Requirement | means the following requirements: <ul style="list-style-type: none"> (a) any standard, level of service or scope set out in the Concept Design; (b) capacity; (c) durability; (d) aesthetics of visible features; (e) whole of life performance; (f) functional performance; (g) safety; (h) security; (i) community amenity; (j) community benefits; and (k) user benefits, as required by this PSR. |
| Relevant Period | means a calendar day. |
| Residual Design Life | means, in respect of an Asset (excluding Returned Works), the remaining Design Life of that Asset at the Expiry Date. |
| Relevant Road Authority | means either the Responsible Road Authority or the Coordinating Road Authority with responsibility for that particular function as set out under the RMA (as applicable). |
| Request for | means a request for payment within the meaning of section 42(1)(a) or sections 42(1)(b) and 43(1) of the Project Legislation, as the case may |

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| Payment | be. |
| Responsible Road Authority | means: <ul style="list-style-type: none"> (a) in respect of CityLink, CityLink Melbourne Limited; (b) in respect of private roads, the Facility Owner; and (c) in respect of all other roads, the responsible road authority for that road pursuant to the <i>Road Management Act 2004</i> (Vic). |
| RMS Traffic Modelling Guidelines | means the New South Wales Roads and Maritime Services document entitled 'Traffic Modelling Guidelines'. |
| Road Management Act or RMA | means the <i>Road Management Act 2004</i> (Vic) as amended from time to time. |
| Road Management Plan | means the plan described in section 2.2(d) of Part F1. |
| Roadside Equipment | means the devices installed on gantries on or over the Freeway as well as the equipment within technical shelters and cabinets necessary to perform detection of Vehicles and OBUs, OBU communication and electronic imaging of Vehicles. |
| Roadside Keys | means the codes used for transacting with AS4962 compliant Tags. |
| Roaming Agreement | means an agreement between Project Co or its nominee and a Product Issuer enabling the use of the Product Issuer's tolling products on a tollway on an interoperable basis as contemplated by the MOU. |
| Roadside System (RSS) | means the roadside system as described in section 1 of Part H12A. |
| RSS Reference Time | means the common reference time to which all components of the RSS are synchronised. |
| Significant Utility Infrastructure | means the North Yarra Main Sewer and the 220kv transmission line along the West Gate Freeway. |
| Stabling Area | has the meaning given in section 20 of Part B. |
| State of Registration | means the identification of the registration authority under which a Licence Plate is issued, as recognised in the MoU. |
| Survey Plan | means the survey plan as described in section 6 of Part E |
| System and Traffic Incident Response Requirements | means the requirements set out in Part H19. |
| Tag | means an electronic transponder fitted to a vehicle that is capable of completing a dedicated short range communications transaction with an electronic reader. |

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| Tag Detection Capability | has the meaning given in section 2.4(a) of Part H12A |
| Tag Detection Error Rate | means the Tag Detection Error Rate calculated in accordance with section 2.4(b)(ii) of Part H12A. |
| Tag Identifier | means the identifier reported by a Tag which uniquely identifies the Tag within the scope of a specific EFC Context mark. |
| Tag Transaction | means an interaction between RSS and the Tag whereby the RSS attempts to obtain the information required by AS4962 (or the MOU, or any other Australian Standard related to electronic road tolling or electronic road tolling devices applicable to that Tag) from that Tag, including to determine that it is a Valid Tag. |
| Tag Transaction Error | means a Tag Transaction for which the RSS does not obtain the information required by AS4962 from that Tag, or does not determine whether or not the Tag is a Valid Tag. |
| Tolling Back Office (TBO) | means the tolling back office system required under section 3 to 9 of Part D2. |
| Tolling Node Point | means a location on the Freeway at which dual-redundant electrical power and dual-redundant communications services are provided as necessary to facilitate the operation of the Roadside Equipment and to ensure that the RSS meets all of the requirements of this PSR (including Part H12A), and containing or comprising all associated connections and infrastructure required to enable the use of those services (including the infrastructure described in section 3.3(b)(iii) of Part H12A). |
| Toll Point | means a point on the Freeway nominated for the purposes of tolling, relative to one or more Detection Zones. |
| Tolling System | means the RSS and the TBO (together with the OBU's). |
| Tolling Works | <p>means the:</p> <ul style="list-style-type: none"> (a) design of the TBO; (b) development of the TBO; (c) implementation of the TBO; (d) integration of the TBO with the RSS; (e) to the extent applicable, migration of in-flight and static customer data onto the TBO; and (f) performance of acceptance tests for the TBO (including user acceptance testing, regression testing and post-implementation testing), <p>to the extent required to ensure that the TBO meets the requirements of section 7 of Part D2 and, for the avoidance of doubt, does not include the delivery or construction of any aspect of the RSS.</p> |
| Traffic Data System | means the system described in section 2.5 of Part D1. |

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| Traffic Incident | means any unplanned event which: <ul style="list-style-type: none"> (a) prevents or is likely to prevent the Freeway or any relevant part of it from being open to the public for the safe, continuous and efficient passage of vehicles; or (b) otherwise requires an urgent response to provide access to the Freeway by Emergency Services. |
| Traffic Management and Control System or TMCS | means the system described in section 2 of Part D1. |
| Traffic Management Liaison Group or TMLG | means the group established in accordance with section 7.4 of Part F6. |
| Traffic Noise | means noise due to road traffic emanating from: <ul style="list-style-type: none"> (a) the Freeway (Acoustic); and (b) Local Roads. |
| Traffic Noise (O&M) | Traffic Noise other than to the extent such noise is: <ul style="list-style-type: none"> (a) due to road traffic which exceeds the traffic volumes or vehicle mixes set out in section 2 of Part LH3 of the PSR (D&C) in respect of any road or part of a road which does not form part of the Freeway; or (b) as a result of a physical change in: <ul style="list-style-type: none"> (i) any road or part of a road referred to in paragraph (a) after the Date of West Gate Tunnel Completion; or (ii) any Returned Works after the relevant time of Handback, <p style="margin-left: 20px;">greater than it would otherwise have been based on the:</p> <ul style="list-style-type: none"> (iii) traffic volumes and vehicle mixes set out in section 2 of Part LH3 of the PSR (D&C) for the relevant road; or (iv) performance of any noise attenuation measures on any Returned Works as at Handback, (as applicable). |
| Traffic Representative | means the management representative appointed in accordance with section 7.1 of Part F6. |
| Transaction | has the meaning given in section 2.10(a) of Part H12A. |
| Trip | has the meaning in the Toll Calculation Schedule. |

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| Truck | for the purposes of Part H12A, means a Vehicle other than a Bus which has a cab-chassis construction and a gross vehicle mass which exceeds 1.5 tonnes. |
| True Positive | means a verified correct determination of a detected condition. |
| Tunnel | means the part of the Freeway which is fully covered for a continuous length between the tunnel portals. This includes both the driven and cut and cover sections of a tunnel and includes all cross passages. |
| Tunnel Air Monitoring System | means the system described in section 14 of Part C. |
| Tunnel Information Signing System | means the system described in section 2.2 of Part D1. |
| Tunnel Portal Barrier System | means the system described in section 2.8 of Part D1. |
| Tunnel Reference Documents | means: <ul style="list-style-type: none"> (a) AFAC, Fire Safety Guidelines for Road Tunnels, 2001; (b) AS 1530 Methods for fire tests on building materials, components and structures; (c) AS 2118 Automatic fire sprinkler systems; (d) AS 2149.1 Fire hydrant installations; (e) AS 4825 Tunnel fire safety; (f) AS/NZS 1158.5 Lighting for roads and public spaces – tunnels and underpasses; (g) AS4825, Tunnel fire safety; (h) Austroads, Guide to Road Tunnels, 2010; (i) British Tunnelling Society and The Institution of Civil Engineers, Specification for tunnelling, third edition, 2010; (j) CIE No. 31 - International Commission of Illumination Publication; (k) CIE No. 61 - International Commission of Illumination Publication. Tunnel entrance lighting; (l) CIE No. 88 - International Commission of Illumination Publication. Guide for the lighting of road tunnels and underpasses, 2004; (m) ISO 1996 Acoustics – Descriptions, measurement and assessment of environmental noise; (n) International Tunnelling Insurance Group; A Code of Practice for Risk Management Tunnelling Works, 2006; |

- (o) PIARC Fire and Smoke Control in Road Tunnels 1999
PIARC, Current practice for risk evaluation for road tunnels, 2012;
- (p) PIARC, Road Tunnels: Vehicle emissions and air demand for ventilation, 2012R05EN;
- (q) PIARC, Systems and equipment for fire and smoke control in road tunnels, 2007;
- (r) RMS R84 Continuous Reinforced Concrete Base; and
- (s) SafeWork Australia Guide for Tunnelling Work 2013.

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| Undrained | means that the underground structure permanent works are designed as watertight, such that there will be no discernible ingress of groundwater into the permanent works or any effect on the groundwater table in the long term. |
| Unplanned Traffic Event | has the meaning given in section 5(a) of Part H22. |
| Urban Design Concept | means Part K5. |
| Urban Design Requirements | means the requirements set out in Part H20A and Part H20B. |
| Urban Design Review Panel | means a panel to review the development of urban design and landscape elements of Design Documentation and comprising, amongst others, qualified urban design and landscape representatives from the State and Project Co, as approved by the State and Project Co. |
| Valid Tag | means a Tag which is not an Invalid Tag. |
| Variable Message Signing System | means the system described in section 2.4 of Part D1. |
| Vehicle | means a vehicle which is used or intended to be used on a highway or in a public place and which has its own motive power (other the human or animal power) but does not include: <ul style="list-style-type: none"> (a) a vehicle intended to be used on a railway or tramway; or (b) a motorised wheel chair capable of a speed of not more than 10 kilometres per hour which is used solely for the conveyance of a person who is injured or has disabilities. |
| Vehicle Class | means any class or category of Vehicle that is used to determine the toll that is required to be paid in respect of the use of that Vehicle on the Freeway. |
| Vehicle Detection Capability | means the mechanism used by the RSS to detect vehicles passing through a Detection Zone for the purposes of tolling. |
| Vehicle Detection Error Rate | means the Vehicle Detection Error Rate calculated in accordance with section 2.2(b) of Part H12A. |

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| Vehicle Metadata | means information concerning a specific Vehicle and which is used to identify the Vehicle, including make, model, colour, body shape, category, purpose of use, weight, axle count, and fuel type. |
| Vehicle Registered Operator Information | means information concerning the owner of a vehicle as recorded by VicRoads, which may be in the form of the name and address of the owner of the vehicle or may be in the form of a VicRoads Identifier Token which is able to be de-referenced by an authorised agency of the State to obtain the name and address of the owner of the vehicle. |
| Vehicle to Infrastructure | means electronic communication between vehicles and roadside infrastructure for the purposes of communication operational, performance and safety information. |
| Veloway | means the Footscray Road cycle only path from chainage AC-0 to AC-2560. |
| VicRoads Identifier Token | means a token provided by VicRoads to a toll road operator as a means of identifying the registered owner of an interstate-registered vehicle without providing name and address information, and which can then be provided to an authorised agency of an interstate road authority to obtain name and address information or arrange for the sending of compliance notices to the registered owner. |
| VicRoads Managed Motorways Framework | means the VicRoads published document "Managed Motorways Framework, Network Optimisation & Operations Rationale and Technical Requirements" as amended, supplemented, varied or replaced from time to time. |
| VicRoads Primary and Secondary TMC | means both the VicRoads Traffic Management Centres that operate as the main and back-up traffic management centres. |
| VicRoads Traffic Management Centre or TMC | means the VicRoads centre which controls, coordinates and manages freeway and arterial road operations for the Victorian network. |
| V/Line Stabling Removal Works | has the meaning given in section 20(e)(i) of Part B. |
| Work Breakdown Structure | means the subdivision of a project into discrete work elements that can be used for project planning and delivery. |
| West Gate Freeway | for the purposes of Part H22, has the meaning in section 1(a)(i) of Part H22. |
| WGF Existing Bridges | means: <ul style="list-style-type: none"> (a) Kororoit Creek Bridge; (b) Grieve Parade; (c) Millers Road; (d) Newport Rail Line; (e) Williamstown Road (eastbound); and |

(f) Ramp R11 over West Gate Freeway.

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| WGT Noise Models | means the models used for traffic noise predictions in the design of noise barriers (including noise walls) and other noise attenuation devices as included in the Certified Design Documentation. |
| WGT O&M Noise Map | has the meaning given in section 18.4 of Part B. |
| Work Lot | means any part of the work constructed or manufactured under essentially uniform conditions in a continuous operation and which is essentially homogeneous with respect to material properties, general appearance and construction or manufacturing process. |
| Workplace Relations Management Plan | means the plan described in section 2.1(g) of Part F1. |
| Worksite Environmental Management Plans or WEMPs | means a worksite environmental management plan described in section 8.2 of Part F6. |
| Worksite Traffic Management Plan or WTMP | means a worksite traffic management plan in accordance with section 7 of Part F6. |
| Wurundjeri Way | for the purposes of Part H22, has the meaning in section 1(a)(v) of Part H22. |
| Wurundjeri Way Extension (Acoustic) | means the Wurundjeri Way Extension from Dynon Road to the point at which the elevated section of the road ties into Wurundjeri Way south of Dudley Street. |

7. Ramps

Table A.2 - Ramps

| Ramp Number | Ramp Name |
|-------------|--|
| R1 | Princes Freeway to M80 Ring Road |
| R2 | Princes Freeway to Geelong Road |
| R3 | Princes Freeway to eastbound collector-distributor carriageway |
| R5 | M80 Ring Road to eastbound collector-distributor carriageway |
| R6 | M80 Ring Road to eastbound main carriageway |
| R7 | M80 Ring Road to Princes Freeway |
| R9 | Westbound main carriageway to M80 Ring Road |
| R10 | Westbound collector-distributor carriageway to Princes Freeway |

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|--------------------|---|
| R11 | Geelong Road to Princes Freeway |
| R12 | Westbound collector-distributor carriageway to westbound main carriageway |
| G1 | Grieve Parade eastbound entry ramp |
| G2 | Grieve Parade westbound exit ramp |
| M1 | Millers Road eastbound exit ramp |
| M2 | Millers Road eastbound entry ramp |
| M3 | Millers Road westbound exit ramp |
| M4 | Millers Road westbound entry ramp |
| W1 | Williamstown Road eastbound exit ramp |
| W2 | Williamstown Road eastbound entry ramp |
| W3 | Williamstown Road westbound exit ramp |
| W4 | Williamstown Road westbound entry ramp |
| A1 | Eastbound collector-distributor carriageway to eastbound main carriageway |
| A2 | Westbound main carriageway to westbound collector-distributor carriageway |
| H1 | Hyde Street eastbound exit ramp |
| H2 | Hyde Street westbound entry ramp |
| P1 | MacKenzie Road eastbound exit ramp |
| Ramp Number | Ramp Name |
| P2 | MacKenzie Road westbound entry ramp |
| P3 | Appleton Dock Road exit ramp |
| P4 | Footscray Road westbound entry ramp, west of Appleton Dock Road |
| F1 | Footscray Road eastbound exit ramp |
| F2 | Footscray Road westbound entry ramp, east of CityLink |
| F3 | Footscray Road northbound entry ramp to CityLink |
| F4 | CityLink exit ramp to Footscray Road |
| C1 | West Gate Tunnel exit ramp to CityLink |
| C2 | West Gate Tunnel entry ramp from CityLink |
| D1 | Dynon Road eastbound exit ramp |

D2

Dynon Road westbound entry ramp

Diagram A.1

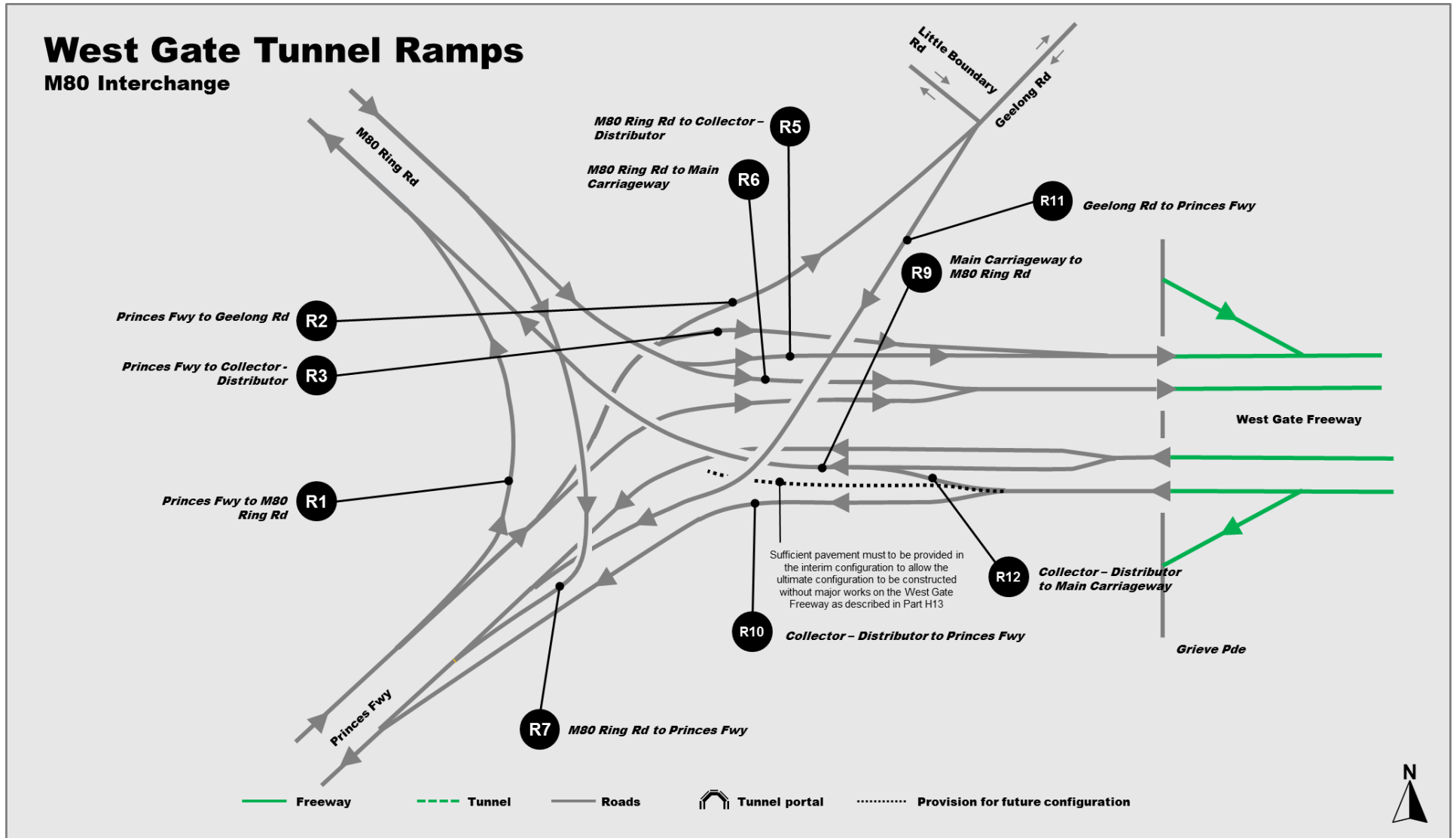


Diagram A.2

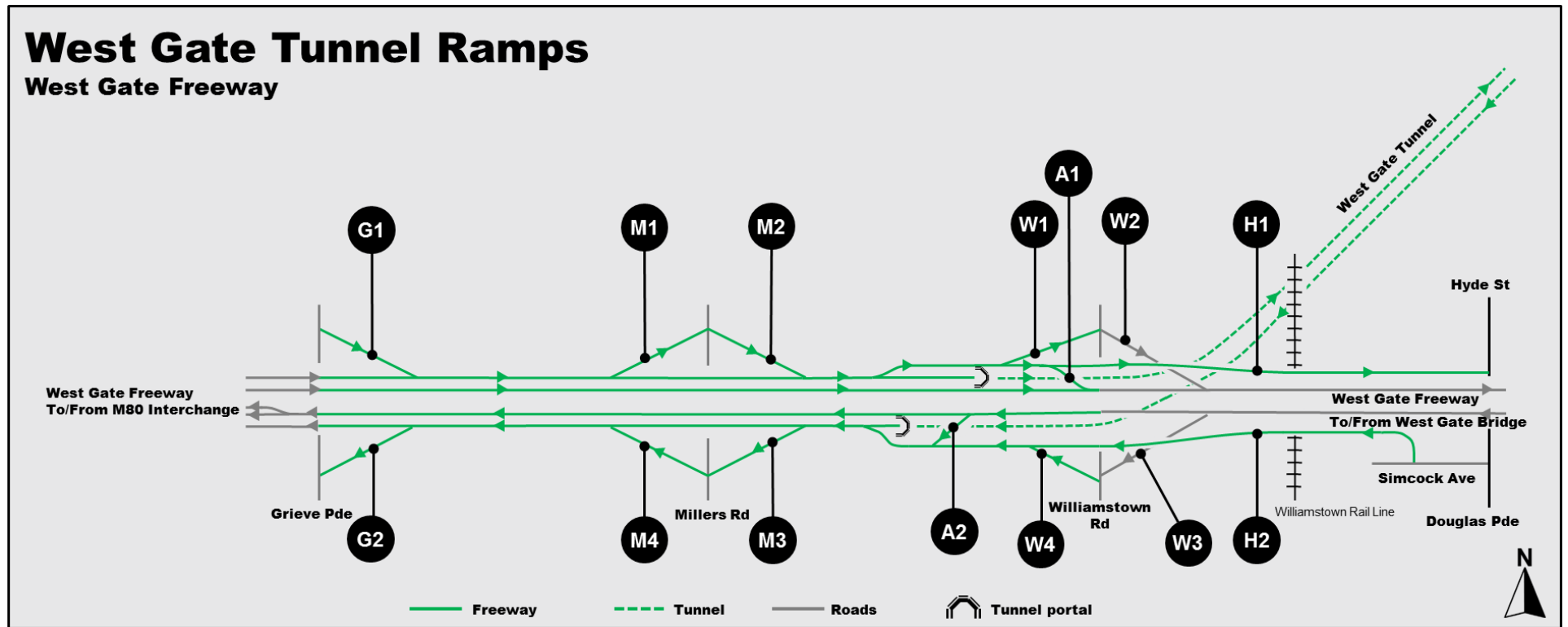
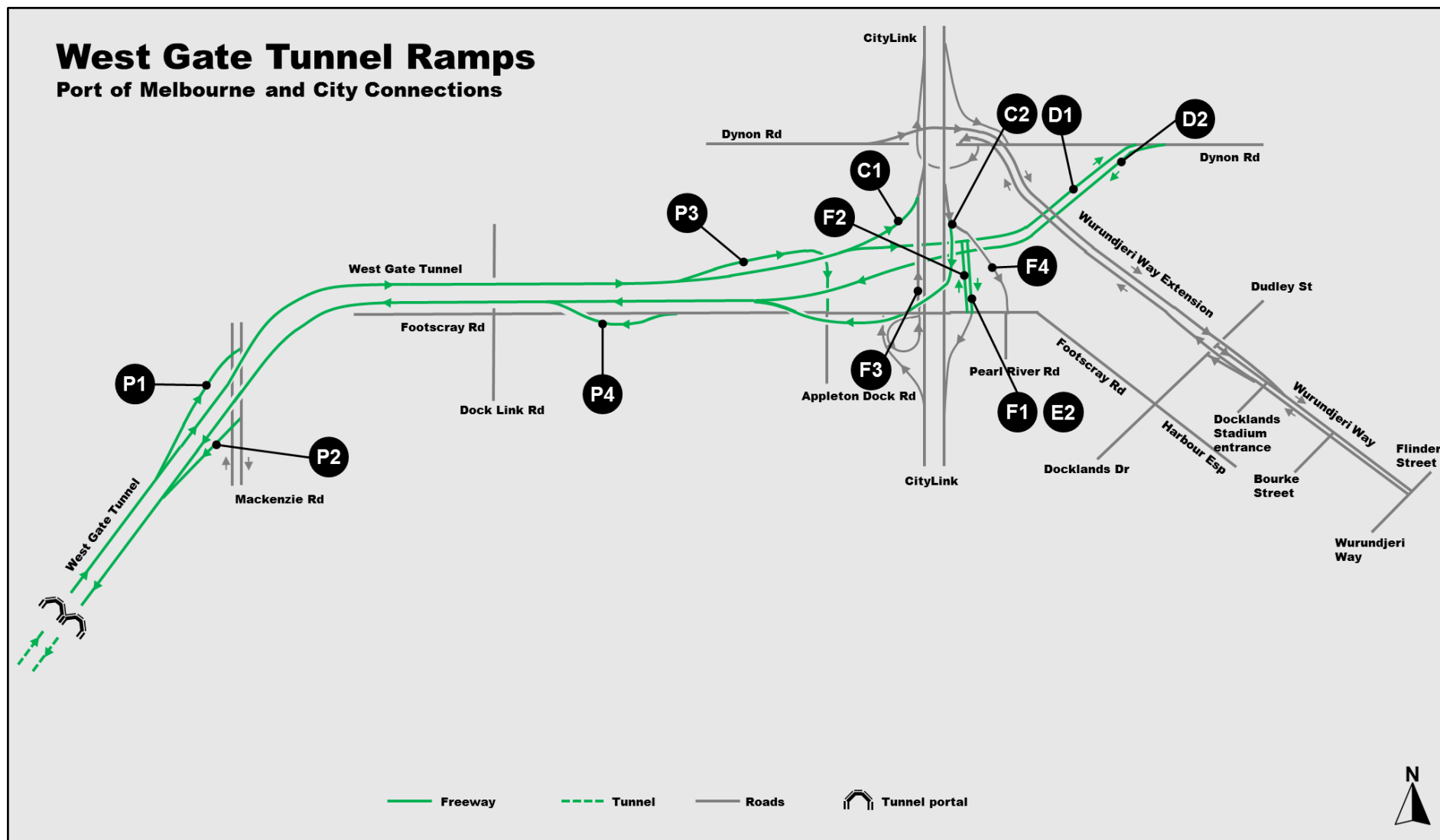


Diagram A.3



Part B - Road and Bridge Requirements

1. Design life and residual design life

1.1 Design life

- (a) Subject to sections 1.1(d) and 3, each new Asset or new part of an existing Asset must have a minimum Design Life that meets the requirements specified in Table B.1.
- (b) When an Asset is replaced, the replacement Asset must meet the Design Life requirement of the Asset it has replaced.
- (c) If an Asset can be classified in more than one Asset description in Table B.1 then the higher Design Life must apply to that Asset.
- (d) The Design Life requirements in Table B.1 do not apply to Temporary Works and such Temporary Works must have a minimum Design Life which is the greater of:
 - (i) the period for which the relevant Temporary Works are required for the purposes of the Project until removed; and
 - (ii) the minimum Design Life for the relevant Temporary Works as required to comply with any applicable Standard.

Table B.1 – Asset Design Life Requirements

| Asset Description | Design Life Requirement |
|---|-------------------------|
| Tunnel and underpass structures, supports and structural linings | 100 years |
| Bridges ¹ and roadway support structures including underpasses | 100 years |
| Reinforced embankments, retaining walls, including reinforced soil walls | 100 years |
| Other Major Structures ¹ including above ground structures of the vent outlets | 100 years |
| Drainage elements that are not Readily Accessible | 100 years |
| Buildings, including ventilation buildings | 50 years |
| Sign support structures and other roadside furniture | 50 years |
| Noise barriers (including noise walls) and other noise attenuation devices | 40 years |
| Architectural features and claddings (and supporting structures) | 50 years |

| Asset Description | Design Life Requirement |
|---|-------------------------|
| Drainage elements that are Readily Accessible for refurbishment including building drainage and sedimentation and detention ponds | 20 years |
| Lighting | 20 years |
| Pavement Tunnels (excluding surface course) | 100 years |
| Pavement for the Freeway including Ramps on or in the Leased Area, and the West Gate Freeway (from Grieve Parade to Kororoit Creek) (excluding surface course) | 40 years |
| Pavement freeways (not including pavement for the Freeway and the West Gate Freeway (from Grieve Parade to Kororoit Creek) including Ramps outside the Leased Area (excluding surface course) | 30 years |
| Pavement other roads (excluding surface course) | 20 years |
| Pavement surface course – dense graded asphalt | 15 years |
| Pavement surface course – open graded asphalt | 8 years |
| Shared use path, Veloway and footpath pavements | 20 years |
| Minor Structures (excluding sign gantry structures) | 30 years |
| Mechanical and electrical equipment | 20 years |
| Traffic Management and Control Systems | 7 years |
| Fire protection systems | 20 years |
| Fencing | 15 years |
| Note ¹ Excludes replaceable elements such as bearings and expansion joints which must have a Design Life in accordance with AS 5100. | |

1.2 Residual Design Life

- (a) Subject to section 3, each Asset must have a Residual Design Life of at least the following:

- (i) for pavement surface courses (dense graded asphalt), the greater of:
 - A. the required Design Life less the O&M Phase; and
 - B. five years;
- (ii) for pavement surface courses (open graded asphalt), the greater of:
 - A. the required Design Life less the O&M Phase; and
 - B. three years;
- (iii) for boundary fencing, the greater of:
 - A. the required Design Life less the O&M Phase; and
 - B. 10 years;
- (iv) for the Traffic Management and Control Systems, five years;
- (v) for Freeway pavement, the greater of:
 - A. the required Design Life less the O&M Phase; and
 - B. 15 years; and
- (vi) for any other Assets, the greater of:
 - A. the required Design Life less the O&M Phase; and
 - B. 50 percent of the Design Life requirement.

2. Design Life of Assets not readily accessible

Where an Asset is not Readily Accessible, it must satisfy the Design Life requirements of the Asset of which it forms a part.

2.1 Durability assessment

A durability assessment must be undertaken during the design of all buried and submerged structures, including foundations, based on the measured soil and groundwater aggressiveness at the relevant part of the Site and submitted as part of the Design Documentation.

3. Existing Assets

3.1 Bridges, culverts and retaining walls

- (a) Project Co must (as a minimum):
 - (i) undertake a Level 3 Engineering Investigation of all Existing Structural Assets excluding retaining walls;
 - (ii) undertake a Level 2 Structure Condition Inspection of all retaining walls forming part of the Existing Structural Assets; and
 - (iii) undertake both durability and fatigue assessments for all WGF Existing Bridges and Other Existing Bridges, assuming a design life of 100 years from the date of construction of the relevant WGF Existing Bridge or Other

Existing Bridge (as the case may be) as indicated by the date plates, or in the absence of date plates, from the date of the as-constructed drawings.

- (iv) For the purpose of fatigue assessments undertaken in accordance with this section 3.1(a)(iii), the data in Table H3.4 may be used to calculate future AADT and HV%; and
- (v) prior to the commencement of any construction on or impacting any Existing Structural Assets prepare and provide to the State and the IREA:
 - A. an Inspection Report relating to each Level 3 Engineering Investigation or Level 2 Structure Condition Inspection carried out in accordance with section 3.1(a)(i) and 3.1(a)(ii); and
 - B. a report relating to each durability and fatigue assessment carried out in accordance with section 3.1(a)(iii).
- (b) Without limiting section 3.1(d), Project Co must design and construct any widening, strengthening or upgrade to each Existing Structural Asset to take into account the current condition of the relevant Existing Structural Asset and, as a minimum:
 - (i) rectify all Condition State 3 and 4 Items identified in the relevant Inspection Report applicable to that Existing Structural Asset prepared in accordance with sections 3.1(a)(i) and 3.1(a)(ii); and
 - (ii) for WGF Existing Bridges and Other Existing Bridges, rectify all defects identified as necessary to meet the criteria in the relevant durability and fatigue assessments undertaken in accordance with section 3.1(a)(iii).
- (c) Project Co must plan, carry out and complete all new works, widening works and strengthening works so as to not adversely affect the standard, quality, level of service, condition or load carrying performance of existing assets, including the Existing Structural Assets.
- (d) In the case of Returned Works comprising Existing Structural Assets, Project Co must, in addition to the requirements of section 3.1(b), (as a minimum):
 - (i) in relation to all WGF Existing Bridges:
 - A. replace all bearings and expansion joints and provide that permanent jacking points are provided to enable the future replacement of the new bearings; and
 - B. apply new steelwork protective coatings to all existing steelwork in accordance with VicRoads Standard Specifications for Roadworks and Bridgeworks, and
 - (ii) in relation to all Other Existing Bridges:
 - A. replace all bearings and expansion joints; and
 - B. apply new steelwork protective coatings to all existing steelwork in accordance with VicRoads Standard Specifications for Roadworks and Bridgeworks,

to the extent that the relevant Inspection Report prepared in accordance with section 3.1(a)(v)A identifies those components as requiring rectification or remediation, and

- C. provide permanent jacking points to enable the future replacement of bearings where the replacement of bearings is required under section 3.1(d)(ii)A,

prior to Handback of the relevant Returned Works.

- (e) Project Co must undertake regular monitoring of all Condition State 1 and 2 Items identified in the Inspection Reports prepared in accordance with section 3.1(a).
- (f) At least twelve months prior to the Expiry Date Project Co must:
 - (i) ensure that an independent Level 3 Engineering Investigation of all Existing Structural Assets (excluding retaining walls) within the Leased Area is undertaken;
 - (ii) ensure that an independent Level 2 Structure Condition Inspection of all retaining walls within the Leased Area is undertaken; and
 - (iii) procure the preparation of and provide a copy of the Inspection Reports relating to the investigation and inspections carried out in accordance with sections 3.1(f)(i) and 3.1(f)(ii); and
 - (iv) rectify all Condition State 3 and 4 Items identified in the Inspection Reports prepared in accordance with section 3.1(f)(iii) prior to Handover.
- (g) Project Co acknowledges and agrees that compliance with the requirements in sections 3.1(a) to 3.1(d):
 - (i) may not by itself, result in satisfaction by Project Co of its obligations under clause 5.3 and 5.4 of this Agreement;
 - (ii) does not limit Project Co's obligations under clause 5.3 and 5.4 of this Agreement; and
 - (iii) are Project Co's minimum requirements in respect of the Existing Structural Assets.

3.2 Other existing Assets

- (a) All existing pavements on the West Gate Freeway from Kororoit Creek to Williamstown Road (including Ramps) are to be replaced with new pavement in accordance with this Agreement.
- (b) All existing drainage servicing the West Gate Freeway from Kororoit Creek to Williamstown Road must be removed. All new drainage must comply with the requirements of this Agreement.
- (c) All pavement and drainage which forms part of the Returned Works from Kororoit Creek to the M80 and the Princes Freeway in accordance with the extent of works set out in Table B.2 must have a Design Life in accordance with Table B.1 and otherwise comply with the requirements of this Agreement.
- (d) All existing noise barriers (including noise walls) and other noise attenuation devices on the West Gate Freeway from the M80 interchange to Williamstown Road (including Ramps) are to be removed. All new noise attenuation devices must comply with the requirements of this Agreement.

Table B.2 - Extents of pavement and drainage at the M80 interchange.

| Location | Extent of work |
|-----------------|---|
| Princes Freeway | <p>Pavement</p> <p>The extent of works is east of Chainage DB-3700 for the outbound carriageway and Chainage EB-300 for the inbound carriageway.</p> <p>Drainage</p> <p>The extent of works is east of Chainage DB-2920 for the outbound carriageway and Chainage EB-220 for the inbound carriageway.</p> |
| M80 | <p>Pavement</p> <p>The extent of works is east of Chainage MB-1365 for the outbound carriageway and Chainage CB-160 for the inbound carriageway.</p> <p>Drainage</p> <p>The extent of works is east of Chainage MB-1365 for the outbound carriageway and Chainage CB-140 for the inbound carriageway.</p> |
| Geelong Road | <p>Pavement and Drainage</p> <p>The extent of works is west of Chainage HB-2140 for the outbound carriageway and Chainage JB-840 for the inbound carriageway.</p> |

3.3 No Design Life requirement

For the avoidance of doubt, the requirements of section 1 do not apply to the Existing Structural Assets, other than to any new part of an Existing Structural Asset.

4. Structures

4.1 Structural requirements

Project Co must ensure that:

- (a) vertical clearances under structures comply with section 5.8;
- (b) the traffic design loading for all new structures carrying road traffic is SM1600;
- (c) all existing structures on the Freeway that will carry traffic to and from the Tunnels are to have a minimum traffic design loading of 75% of SM1600. For the avoidance of doubt this does not include existing structures at the M80 interchange unless those structures are widened as part of the Works;
- (d) except as defined in sections 4.1(f), 4.1(g) and 4.1(h), the traffic design loading for widened existing structures carrying road traffic is:
 - (i) SM1600 for the new widened part of the structure, including the interface, if the widened part is greater than 2.4m in widened width;

- (ii) 75% of SM1600 for the new widened part of the structure, including the interface, if the widened part is equal to or less than 2.4m in widened width; and
 - (iii) 75% of SM1600 for the existing part of the structure;
- (e) the traffic design loading for the existing structure of the Grieve Parade Bridge over the West Gate Freeway is 75% of SM1600;
- (f) subject to section 4.1(c), in the event that the Williamstown Road Bridge is widened as part of the Works the traffic design loading is:
 - (i) SM1600 applied to the widened portion only plus existing lanes loaded to the higher of T44/L44 loading and the 68 tonne B-Double vehicle as defined in relevant Reference Documents, if the widened part of the structure is greater than 2.4m in widening width; and
 - (ii) the higher of T44/L44 loading and the 68 tonne, B-Double vehicle as defined in relevant Reference Documents, if the widened part is equal to or less than 2.4m in widened width;
- (g) the traffic design loading for widened CityLink structures carrying road traffic is:
 - (i) SM1600 applied to the widened portion only plus existing lanes loaded to the higher of T44/L44 loading and the 62.5 tonne B-Double vehicle as defined in relevant Reference Documents, if the widened part of the structure is greater than 2.4m in widening width;
 - (ii) SM1600 applied to one line of wheel loads (applied to widened portion only) plus existing lanes loaded to the higher of T44/L44 loading and the 62.5 tonne B-Double vehicle as defined in relevant Reference Documents, if the widened part of the structure is equal to or less than 2.4m but greater than 1.0m in widened width; and
 - (iii) the higher of T44/L44 loading and the 62.5 tonne, B-Double vehicle as defined in relevant Reference Documents, if the widened part is equal to or less than 1.0m in widened width;
- (h) in the event that Dynon Road Bridge is widened the traffic design loading is:
 - (i) SM1600 applied to the widened portion only plus existing lanes loaded to the higher of T44/L44 loading and the 68 tonne B-Double vehicle as defined in relevant Reference Documents, if the widened part of the structure is greater than 2.4m in widened width; and
 - (ii) the higher of T44/L44 loading and the 68 tonne, B-Double vehicle as defined in relevant Reference Documents, if the widened part is equal to or less than 2.4m in widened width;
- (i) the traffic design loading for any new substructure of the Geelong Road overpass (Ramp R11) is 75% of SM1600 and the existing capacity of the existing superstructure and substructure of the Geelong Road overpass (Ramp R11) must not be reduced as a result of the performance of the D&C Activities;
- (j) the design loading for shared user path bridges provides for maintenance vehicles;
- (k) new and existing structures carrying road traffic must have approach slabs;
- (l) the use of bearings and transverse expansion joints is minimised;

- (m) there are no longitudinal expansion joints;
- (n) all conduits are concealed;
- (o) expansion joints on new or widened bridges within 300m of residential properties must have:
 - (i) a surface flush with the pavement; and
 - (ii) either:
 - A. a finger or overlapping joint type to minimise traffic noise effects; or
 - B. a suitable type joint for small movement range joints to minimise traffic noise effects,

for the full width of the structure;
- (p) in addition to the requirements of AS5100, any piers (including existing piers) within the clear zone must be designed and / or protected to prevent collapse of the bridge and minimise damage to the pier from a maximum permissible loaded heavy vehicle travelling at the road operating speed which collides with the pier or pier protection system at any and all possible angles;
- (q) all structures meet the requirements of section 15;
- (r) a risk assessment is carried out in accordance with:
 - (i) VicRoads - Policy on Bridge Public Safety Barrier;
 - (ii) VicRoads - Policy on Reducing Risk of Throwing Objects from Overpass Structures; and
 - (iii) VicRoads - Guidelines - Risk Assessment for Reducing Risk of Throwing Objects from Overpass Structures,

as applicable, for:

 - (iv) all new structures designed to accommodate pedestrian access, to determine whether treatments are required to prevent or deter people throwing objects onto the areas below; and
 - (v) all new structures that cross over freeways, key arterial roads, access roads to the Port of Melbourne, watercourses and rail lines, to determine whether treatments are required to prevent people causing self-harm;
- (s) all new and widened structures include:
 - (i) in relation to structures designed to accommodate pedestrian access over freeways, key arterial roads, access roads to the Port of Melbourne and rail lines, such measures to prevent pedestrians throwing objects onto the areas below;
 - (ii) in relation to other structures which are designed to accommodate pedestrian access (not referred to in section 4.1(s)(i)), such measures to prevent or deter pedestrians throwing objects onto the areas below where these are determined to be necessary by the risk assessment carried out in accordance with section 4.1(r); and

- (iii) treatments to prevent people from causing self-harm where these are determined to be necessary by the risk assessment carried out in accordance with section 4.1(r);
- (t) design drawings for each new structure include full details of:
 - (i) fixtures, fittings, railings and access provisions to enable safe inspection and maintenance; and
 - (ii) fixtures, fittings, bracing or Temporary Works required to ensure safe transport and erection of structural components;
- (u) Certified Design Documentation for bridges includes details that demonstrate integration of and compliance with the following requirements at bridge abutments:
 - (i) access for future maintenance of abutments and bearings;
 - (ii) connection to off-structure storm water drainage provisions;
 - (iii) drainage provisions for the abutment sill beam and for the subsurface drainage behind the abutment;
 - (iv) connection to off-structure service conduits;
 - (v) treatments to ensure the stability and maintainability of batters adjacent to abutment wingwalls and fenderwalls; and
 - (vi) driven or bored piles must not be used as visible elements of bridge piers and abutments;
- (v) hydrant points on structures are provided at locations agreed with Emergency Services; and
- (w) notwithstanding the provisions of VicRoads BTN2014/002;
 - (i) chamfers be provided on precast square piles in accordance with VicRoads standard section 614;
 - (ii) chamfers and fillets must be formed and cast integrally with the concrete member; and
 - (iii) there must be no cutting or grinding of chamfers.
- (x) when carrying out the load assessment for reinforced concrete elements of existing bridges with a B1 exposure classification, checks for stress limits as specified in clause 8.6.1 of AS5100.5 are not required to be completed, provided that:
 - (i) the reinforcement steel of the relevant reinforced concrete elements of the existing bridges have a strength less than 350MPa; and
 - (ii) the relevant reinforced concrete elements are checked at Serviceability Limit State (as defined in AS5100) to 0.3mm crack width at the surface of the members.

4.2 Earthquake design requirements

Project Co must ensure that:

- (a) new bridges are designed for earthquake loads in accordance with AS5100;

- (b) it plans, carries out and completes all new works, widening works and strengthening works so as to not adversely affect the ability of WGF Existing Bridges and Other Existing Bridges to withstand earthquake loads;
- (c) subject to sections 4.2(b) and 4.2(d), WGF Existing Bridges and Other Existing Bridges are not required to be strengthened for earthquake loads; and
- (d) all new widened sections of WGF Existing Bridges and Other Existing Bridges are designed for earthquake loads in accordance with AS5100.

4.3 Bridge importance levels and classifications

- (a) For the purposes of sections 4.2(a) and 4.2(d), design in accordance with AS5100 must be determined using the following parameters:
 - (i) Type III bridge classification applies to any bridge that is located on any of the following routes:
 - A. West Gate Freeway – M80 to Williamstown Road (inclusive);
 - B. West Gate Tunnel – Northern Tunnel Portal to CityLink (inclusive); and
 - C. West Gate Tunnel – Northern Tunnel Portal to (and including connections to) the Port of Melbourne (inclusive);
 - (ii) the classification for all other bridges must be determined by Project Co in accordance with CI 14.3.2 of AS 5100; and
 - (iii) Project Co must make an appropriate assessment of all other design parameters.

5. Road Geometric Design

5.1 Grades

- (a) Grades must be minimised to maximise the traffic throughput of the Freeway including having regard to the Freeway being a key freight route.
- (b) The Ramps as set out in Table B.3 must not exceed the maximum upgrades and downgrades specified in Table B.3.
- (c) The upgrade in the Tunnels must not exceed 4.0%.
- (d) The maximum continuous length of carriageway within the Tunnels with an upgrade greater than 3% must be less than 600m.
- (e) Vertical geometry proposed must enable truck operating speeds to be no less than 60km/h for a 19m semi (42.5t) 12L diesel carrying a maximum load (7.5kW/tonne). Truck performance modelling using industry standard software must be used to demonstrate compliance and be submitted as part of the Design Documentation.
- (f) The upgrade at ramp meters must not exceed 3.0% at the stop line and for at least 30m from both sides of the stop line.

Table B.3 – Maximum Ramp gradients

| Ramp | Ramp description (exit from Freeway / entry to Freeway) | Maximum Grade (%) ¹ |
|------|--|--------------------------------|
| H1 | Hyde Street Exit | +3.0 |
| H2 | Hyde Street Entry | +3.0 |
| P1 | MacKenzie Road Exit | +3.7 |
| P2 | MacKenzie Road Entry | +3.0 |
| P3 | Appleton Dock Road Exit | -2.5 |
| P4 | Appleton Dock Road (Footscray Road) Entry | +3.2 |

Table Notes:

¹ Positive values denote maximum upgrades and negative values denote maximum downgrades for the relevant Ramp.

5.2 Interchanges and Intersections

- (a) Intersections and interchanges, including connections to the Freeway and other freeways, must allow for:
- (i) the safe passage of vehicles at the speeds identified in Part H2 and the volumes identified in Part H3 and meet the requirements of Part H5;
 - (ii) the interchange and intersection control identified in Part H4;
 - (iii) the safe passage of cyclists and pedestrians including people with disabilities; and
 - (iv) safe access to public transport stops.
- (b) The Works must be designed to cater for the design vehicles identified in Table B.4.

Table B.4 - Design vehicles

| Element | Design Vehicles | |
|---------------------------|---|--|
| | Single Lane Turns | Multiple Lane Turns |
| Basic intersection layout | AUSTROADS 19m Semi trailer ¹ | For up to and including three lanes: One AUSTROADS 19m semi trailer and two cars turning side by side For turn movements greater |

| Element | Design Vehicles | |
|---|--|--|
| | Single Lane Turns | Multiple Lane Turns |
| | | than three lanes: Two AUSTRROADS 19m semi trailer and two cars turning side by side |
| Intersection layout for access to the Port of Melbourne | AUSTRROADS B-Triple (35.4m) ¹ | B-Triple (35.4m) and B-Double (26m) turning side by side including the combinations of the B-Triple on the inside and outside lane |
| Lane widening on curves | AUSTRROADS B-Double (26m) | |
| Table Notes: | | |
| ¹ intersection turning speed 5km/h to 15km/h | | |

- (c) Roadside furniture must be located 500mm clear of the swept path of an AUSTRROADS 25m semi-trailer and must not be within 500mm behind the face of kerb and channel.
- (d) A minimum horizontal curve radii of 750m must be maintained when the design speed is of 110km/h.
- (e) The minimum length of auxiliary lanes required for entry ramps with two lanes at the nose is 800m.

5.3 Provision for Future Infrastructure

The design of the Works must meet the requirements of Part H13.

5.4 Sight distance

The design of the Works must incorporate the sight distance parameters identified in Table B.5.

Table B.5 - Sight distance requirements

| Location | Reaction Time (seconds) | Coefficient of Deceleration | |
|---------------|-------------------------|-----------------------------|--------|
| | | Cars | Trucks |
| Tunnels | 2.0 | 0.46 | 0.29 |
| Surface roads | 2.0 | 0.36 | 0.29 |

5.5 Sun glare

The design of the Works must minimise the impact of the sun on drivers exiting the Tunnels.

5.6 Lane requirements

- (a) The design of the traffic lanes must be in accordance with Part H1 and where required, including appropriate widening for vehicle tracking.
- (b) Ramp lane widths must be 3.5 metres and, where required, include appropriate widening for vehicle tracking.

5.7 Cross sectional requirements

Shoulder, emergency stopping lane and lane widths, must be as identified in Table H1.1 and provide the required sight distances set out in section 5.4.

5.8 Vertical clearances

The minimum vertical clearances must be as identified in Table B.6 or, for locations not listed in Table B.6, in accordance with VicRoads usual requirements.

Table B.6 - Vertical clearances

| Location | Minimum vertical clearance (m) |
|---|---|
| Tunnels | 4.9 ¹ |
| Passenger rail lines | 5.75 |
| Freight rail lines | 7.1 ² |
| OD Route 5 | Refer Part H14 |
| Over the Maribyrnong River | 3.15 above the high water mark for the Navigational Area. |
| Williamstown Road | 5.9 |
| Grieve Parade ramps (Ramps G1 and G2) | 5.9 |
| Williamstown Road ramps (Ramps W1, W2, W3 and W4) | 5.9 |
| Millers Road underpass to the Freeway | 5.5 ³ |

| Location | Minimum vertical clearance (m) |
|----------|--------------------------------|
|----------|--------------------------------|

Note:

¹ An additional 200mm above the minimum vertical clearance must be provided for the protection of soft infrastructure including lighting and electronic signage from flapping tarpaulins, ropes, loose loads.

² Refer to Part H13 for vertical clearance requirements on the Newport to Sunshine Freight Line.

³ Vertical clearance must be no less than 5.5 metres and, with regard to the Concept Design, increase the vertical clearance where possible during detailed design.

5.9 Over-dimensional and over-mass vehicle routes

The Works must be designed to allow for over-dimensional and over-mass vehicle routes along the routes described in Part H14 where they fall within the Project Area.

5.10 Single lane freeway merge entry ramp with 80km/h posted speed

Except for the West Gate Freeway and associated collector-distributor carriageways, for all freeway entry ramps entering freeways with a posted speed of 80km/h, the merge distance identified in Figure V11.6 of the VicRoads Supplement to AUSTRROADS Guide to Road Design – Part 4C may be modified from the stated arrangement of 140m / 80m / 100m to a 100m / 70m / 80m arrangement, subject to provision of appropriate sight distance to meet the applicable requirements.

5.11 Two lane freeway merge entry ramp with 80 km/h posted speed

Except for the West Gate Freeway and associated collector-distributor carriageways, for all freeway entry ramps entering freeways with a posted speed of 80 km/h, the merge distance identified for the right hand lane in Figure V11.9 of the VicRoads Supplement to AUSTRROADS Guide to Road Design – Part 4C may be modified from the stated arrangement of tapering over 310m to tapering over 250m, subject to provision of appropriate sight distance to meet the applicable requirements.

5.12 Entry ramp nose sight distance with 80km/h posted speed

Except for the West Gate Freeway and associated collector-distributor carriageways, for all freeway entry ramps entering freeways with a posted speed of 80 km/h, the sight distance to the entry ramp nose must comply with the requirements of section 7.4 of AUSTRROADS Guide to Road Design – Part 4C – Interchanges and the VicRoads Supplement to AUSTRROADS Guide to Road Design – Part 4C does not apply.

5.13 [Not disclosed]

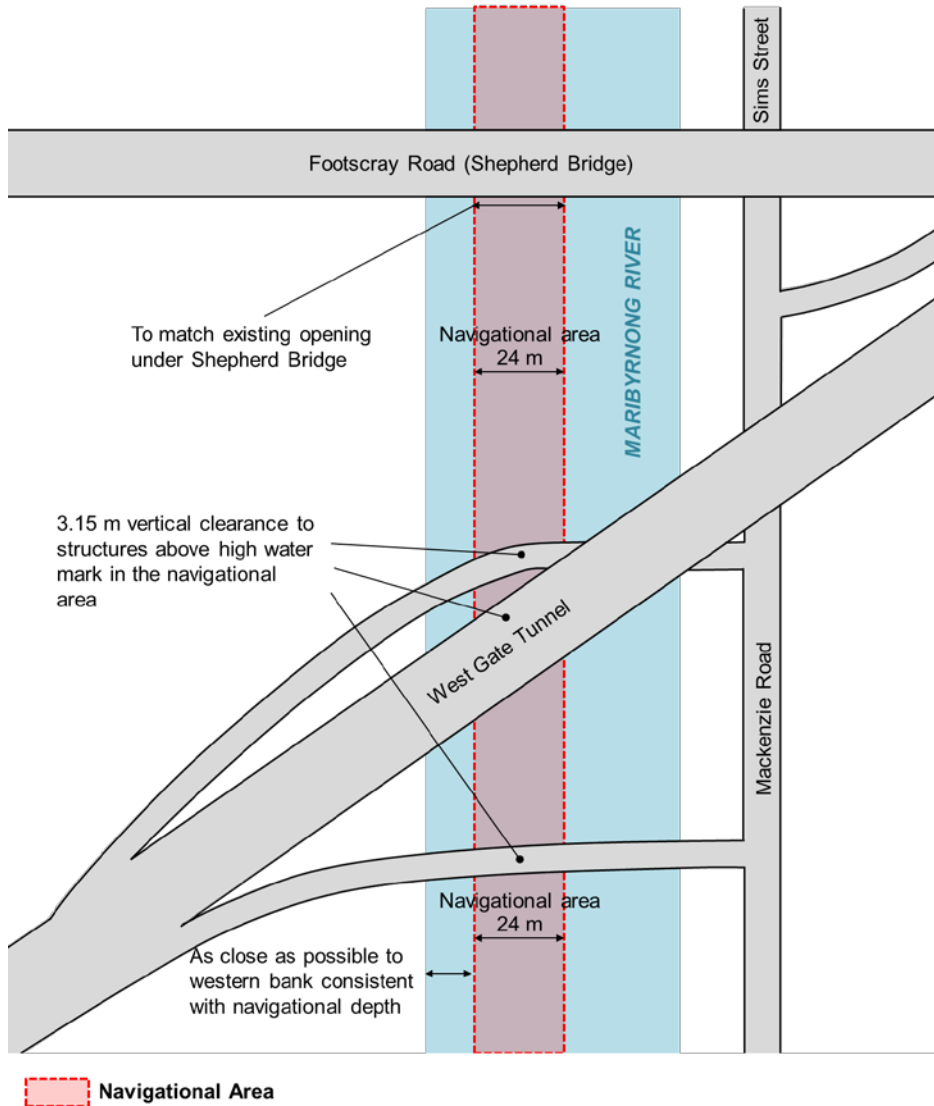
5.14 Maribyrnong River boating Navigational Area

Provision must be made for a clear Navigational Area on the Maribyrnong River. The Navigational Area as shown in Diagram B.2 must:

- (a) be at least 24 metres in width;

- (b) have a vertical clearance from the high water mark to the underside of bridge structures as per Table B.6;
- (c) be located as close as possible to the western bank consistent with navigational depth; and
- (d) have a horizontal alignment to match the existing opening under Shepherd Bridge.

Diagram B.2 - Maribyrnong River Navigational Area



6. Drainage and flood control

6.1 General

- (a) Drainage and flood control systems must:
 - (i) comply with the requirements of Part H21;
 - (ii) minimise scour and siltation;

- (iii) prevent the water generated from a PMF event from entering into the Tunnels;
- (iv) for new drainage works, separate cross drainage from road network drainage systems unless written approval is obtained from the relevant Facility Owner that separate cross drainage is not required;
- (v) cater for existing drainage systems and flow paths with no additional impact on properties or infrastructure; and
- (vi) meet the requirements of Part H13.

6.2 Road network drainage

All road network drainage, except in the Tunnels, must be designed for a 10 year ARI event or, where there is no gravity outlet, for a 100 year ARI event.

6.3 Cross drainage

Freeway cross drainage, except in the Tunnels, must be designed such that flooding in a 50 year ARI event is confined to the low side shoulder.

6.4 Subsurface drainage

A subsurface drainage system must be provided for all road pavements (including at pavement widening joints) and behind all bridge abutments and retaining walls.

6.5 Drainage pipes and pits

- (a) Drainage pipes must be:
 - (i) reinforced concrete and rubber-ring jointed, or other equivalent products approved by the State; and
 - (ii) visually inspected using CCTV for the full length between pits after completion of earthworks to subgrade level and before commencement of pavement construction.
- (b) Any Defects identified by the visual inspection of drainage pipes must be rectified by removal and replacement before pavement construction commences.
- (c) Drainage pits installed in Returned Works must comply with the usual requirements of the Facility Owner.

6.6 Drainage pits

Drainage pits within the shoulder or emergency stopping lane must:

- (a) be provided with a grate meeting Load Class E in accordance with AS3996-2006 Access Covers and Grates;
- (b) avoid the intrusion of pits and grates into any traffic lane; and
- (c) be trafficable for cyclists.

7. Shared use paths and footpaths

Without limiting the requirements of Part H6:

- (a) the clear path width (handrail to handrail) of new pedestrian and shared use path structures must be at least three metres;
- (b) the clear path width of new pedestrian and shared use paths must be at least three metres;
- (c) the clear path width (handrail to handrail) of the Veloway must be at least four metres;
- (d) the width of all existing paths must be maintained; and
- (e) unless otherwise agreed by the State or the relevant Facility Owner, shared use path and Veloway pavements must be reinforced concrete.

8. Traffic barriers

- (a) Subject to sections 8(c) and (d), barriers must:
 - (i) provide continuous cross median protection along the Freeway;
 - (ii) provide for ease of maintenance of the barrier system and the area surrounding the barrier system;
 - (iii) provide a traffic barrier performance level as determined by a site specific risk assessment in accordance with the Reference Documents and on the Freeway achieve at least the minimum performance levels provided in Table B.7 and Table B.8 (as applicable); and
 - (iv) protect against significant hazards including retaining walls, noise walls, gantries, vertical abutments, watercourses, buildings, drop offs and cross median protection.
- (b) Any:
 - (i) bridge barriers and bridge approach barriers on the overpasses of the Newport to Sunshine Freight Line; and
 - (ii) bridge pier protection barriers,
 must meet the requirements of section 8(a).
- (c) Except for barriers set out in section 8(b), section 8(c) does not apply to barriers which are existing at Financial Close unless a traffic running lane and barrier are in closer proximity than that which existed at Financial Close.
- (d) The barrier system (or similar) must, as a minimum:
 - (i) meet the requirements of Part H8; and
 - (ii) make provision for, and allow, emergency access / egress at strategic locations in accordance with the Emergency Services usual requirements. The provision for emergency access / egress must be provided in the median barriers and separation barriers between each interchange and must meet a minimum barrier test level of TL3.
- (e) Concrete traffic barriers must conform to the requirements of sections 610 and 620 of the VicRoads Standard Specifications for Roadworks and Bridgeworks.

- (f) Subject to providing the minimum performance levels as required under section 8(a)(iii), off-structure traffic barriers located within the West Gate Freeway sections of the Leased Area which are not for the purposes of rail or pier protection may be cast in place using slipforming methodology, provided that:
- (i) a trial 40 metre length section of the relevant barrier is constructed and certified by the IREA as complying with the Project Requirements (and such certification will be deemed to be an approval by the "superintendent" under section 610.40 of the VicRoads Standard Specifications for Roadworks and Bridgeworks);
 - (ii) construction of the relevant barrier does not commence until 7 days after the certification provided by the IREA under section 8(f)(i); and
 - (iii) the minimum performance levels as required under section 8(a)(iii) for slipform barriers are demonstrated to be:
 - A. in accordance with the requirements of NCHRP 350; and
 - B. as recommended for acceptance by the AUSTRROADS Safety Barrier Assessment Panel,

which will constitute approval under VicRoads Road Design Note 06-04 for use only in the locations permitted by this section 8(f).
- (g) Any trial section of the barrier construction is not to be carried out on any road within the Project Area.

Table B.7 - Traffic Barriers On-Structure

| Location ³ | Minimum Barrier Performance Level ¹ |
|---|--|
| Structures including approaches ² over or adjacent to railways. Dyvon Road bridge ⁵ Structures including approaches ² , over or adjacent to roads where one of the roads has traffic volumes greater than 40,000 vehicles per day. | High ⁴ |
| Structures including approaches ² over or adjacent to other roads, watercourses, buildings, drop offs, or other significant hazard. | Medium ⁴ |
| <p>1. As defined by VicRoads Bridge Technical Note 2005-006-V2.0.</p> <p>2. Bridge approach barriers may be divided into sections of differing performance level. Some sections may have a performance level less than that identified. Any such reduction must be supported by a site specific risk analysis. The section abutting the bridge must be of the performance level identified and must not be less than 50% of total length of the bridge approach barrier. Sections must only abut another section with a barrier performance level one level lower or higher. Sections must be no less than 5m long.</p> <p>3. Where a footpath or shared use path is within 2m of a traffic running lane, the barrier must be between the path and the traffic running lane, where practical.</p> | |

| Location ³ | Minimum Barrier Performance Level ¹ |
|-----------------------|---|
| 4. | To be barrier and railing type with maximum through visibility. |
| 5. | To be provided on both sides of the bridge, to no lesser extent than that shown in the Concept Design and to include safe transitions in accordance with the Reference Documents and as determined by a site specific risk assessment. The final arrangement must also meet all safety requirements for the intersection of Ramp D2 with Dynon Road bridge. |

Table B.8 - Traffic Barriers Off-Structure

| Location | Minimum barrier test level ¹ |
|---|---|
| Median barriers separating carriageways with traffic in opposing directions ² | TL5 ⁶ |
| Median barriers separating carriageways with traffic in opposing directions with median widths greater than four metres | TL4 ⁶ |
| Separation barriers for carriageways with traffic running in the same direction ³ | TL4 ⁶ |
| Barriers separating traffic from shared use paths where they are adjacent to carriageways ² | TL3 ⁶ |
| Within Tunnels ^{2,5} | TL4 ⁶ |
| Barriers separating traffic from noise walls where they are adjacent to residential property | TL3 ⁶ |
| Barriers protecting gantry legs where legs are within 1.0m of edge of pavement | High ^{4,6} |

¹ As defined by NCHRP 350 and as recommended for acceptance by the AUSTRROADS Safety Barrier Assessment Panel

² Barriers must be F shaped reinforced concrete barriers

³ Barriers must not have a dynamic deflection greater than 0.5m

⁴ Minimum barrier performance level as defined by VicRoads Bridge Technical Note 2005-006-V2.0

⁵ Barrier design at Tunnel cross passages must ensure traffic is not exposed to barrier end hazards.

⁶ To the extent these barriers are concrete they must have minimum reinforcement in accordance with AS5100 other than to the extent that these barriers are provided in accordance with sections 8(f) and 8(g)

9. Pavement, surfacing and line marking

- (a) All shoulder and auxiliary lane pavements must be constructed using the same pavement composition as the adjacent traffic lanes.
- (b) New shoulder and emergency stopping lane pavements must be designed to meet the traffic volumes of the adjacent traffic lanes.
- (c) Dense graded asphalt must be used as the surface course across the full pavement width at a minimum of 100m before the stop line on approaches to ramp terminal intersections, freeway ramp signal sites and on arterial and local Roads affected by the Works.
- (d) Other than within the areas addressed in section 9(c) and except in relation to the Tunnels, open graded asphalt must be used as the surface course across the full pavement width of the Freeway at all other locations.
- (e) Open graded asphalt must not be used in the Tunnels. Stone mastic asphalt is accepted for use within the Tunnels.
- (f) Design of road pavements must be in accordance with the usual requirements of the relevant Facility Owner and subject also to meeting the Design Life requirements and the requirements of Part H3 as applicable.
- (g) For all locations where open graded asphalt is required, the lip of kerb abutting the low side of pavements must be flush with the underside of the open graded asphalt. The lip of kerb abutting the high side of pavements must be flush with the top of the open graded asphalt.
- (h) The pavement and surface of new or upgraded footpaths, shared use paths and shared use bridges must comply with the usual requirements of the Facility Owner.
- (i) Where existing pavement is affected by pavement marking alterations that require removal and reinstatement or an alternative pavement marking arrangement, resurfacing will be required over the extent of the affected area to ensure a blemish-free surface for final pavement marking. Any such resurfacing must be of the same type as the existing surfacing, unless otherwise agreed with the relevant Facility Owner.
- (j) The Freeway carriageway, Ramps and Road pavements must be designed to meet the Design Life requirements.
- (k) The ride quality of all finished roadways (which form part of the Relevant Infrastructure), including bridges, must not exceed the roughness limits as specified in Table B.9.
- (l) From the Date of West Gate Tunnel Completion until the Expiry Date, the requirements of section 9(k) and Table B.9 do not apply and the ride quality for each Lane, excluding any shoulders, must not exceed the roughness limits specified in Table B.10 and must be measured at intervals not exceeding two years, and:
 - (i) the mean IRI_{qc} value will be calculated as the mean per:
 - A. 2 kilometre section per Lane; or
 - B. Lane for each Ramp;
 - (ii) where the mean IRI_{qc} calculated under section 9(l)(i) exceeds the relevant mean IRI_{qc} threshold set out in Table B.10, Project Co must:

- A. where the exceedance is caused by a pavement defect, rectify that defect within six months after the date of the relevant measurement being made or such longer period as agreed by the State (such agreement not to be unreasonably withheld or delayed);
 - B. where the exceedance is not caused by a pavement defect (such as a settlement issue) and the exceedance is not able to be remedied within 6 months, investigate and develop a remediation or rectification plan which includes both interim and long term treatments to address the exceedance having regard to:
 - 1) any impact of such exceedance and such treatments on the safety of Users, users of the transport network or any other persons;
 - 2) any loss or damage to third party property that may be caused by the exceedance or such treatments;
 - 3) any disruption to Users and to users of the road network that may be caused by any such exceedance or such treatments; and
 - 4) any periods of planned maintenance or repair work scheduled to be undertaken by Project Co; and
- (iii) where more than two 100m segments of pavement per 1 kilometre section per Lane measured under this section 9(l) exceeds the relevant Maximum IRI_{qc} threshold value set out in Table B.10, Project Co must:
- A. where the relevant exceedance is caused by a pavement defect, rectify that defect within three months after the date of the relevant measurement being made or such longer period as agreed by the State (such agreement not to be unreasonably withheld or delayed); and
 - B. where the relevant exceedance is not caused by a pavement defect (such as a settlement issue), investigate and develop a remediation or rectification plan which includes both interim and long term treatments to address the exceedance, having regard to:
 - 1) any impact of such exceedance and such treatments on the safety of Users, users of the transport network or any other persons;
 - 2) any loss or damage to third party property that may be caused by the exceedance or any such treatments;
 - 3) any disruption to Users and to users of the road network that may be caused by any such exceedance or such treatments; and
 - 4) any periods of planned maintenance or repair work scheduled to be undertaken by Project Co;
- (iv) where Project Co carries out rectification or works to remedy any exceedance in accordance with sections 9(l)(ii) or 9(l)(iii) Project Co must

retest the relevant Lane or Ramp to demonstrate compliance with the required IRI_{qc} threshold value set out in Table B.10; and

- (v) where the IRI value for any 100m segment of pavement measured under this section 9(l), including where such measurement is used in the calculation of a mean IRI_{qc} value, is invalid as a result of:
 - A. a survey vehicle issue (including as a result of the acceleration or braking of a survey vehicle), the relevant 100m segment of pavement must be retested; or
 - B. a survey vehicle traversing over an expansion joint or bridge approach, the relevant portion of the measurement which was invalid may be excluded for the purposes of demonstrating compliance with the requirements of this section 9(l).

(m) Project Co must:

- (i) submit any remediation or rectification plan required under section 9(l)(ii) or 9(l)(iii) to the State for acceptance (such acceptance not to be unreasonably withheld having regard to the matters set out in section 9(l)(ii)B or 9(l)(iii)B as applicable) within 30 Business Days of the completion of the relevant pavement condition survey report or such longer period as agreed by the State (such agreement not to be unreasonably withheld or delayed); and
- (ii) comply with the relevant approved remediation or rectification plan.

Table B.9 – Maximum Roughness Limits as at the Date of West Gate Tunnel Completion

| Road | Maximum Individual IRI _{qc} (m/km/lane) for any 100 m segment | Maximum Mean IRI _{qc} (m/km/lane) per Work Lot |
|---|--|---|
| Freeway carriageways and the following Roads: | 2.00 | 1.40 |
| (a) West Gate Freeway | | |
| (b) CityLink | | |
| (c) M80 | | |
| (d) Princes Freeway | | |
| Freeway ramps and the following Roads: | 2.30 | 1.60 |
| (a) Grieve Road | | |
| (b) Millers Road | | |
| (c) Williamstown Road | | |
| (d) Hyde Street | | |
| (e) Footscray Road | | |
| (f) MacKenzie Road | | |
| (g) Dynon Road | | |
| (h) Wurundjeri Way | | |

| Road | Maximum Individual IRI _{qc} (m/km/lane) for any 100 m segment | Maximum Mean IRI _{qc} (m/km/lane) per Work Lot |
|-------------------|--|---|
| (i) Sims Street | | |
| (j) Dudley Street | | |
| All other Roads | 2.70 | 2.00 |

Table B.10 – Roughness Limits after the Date of West Gate Tunnel Completion

| | Maximum Individual IRI _{qc} (m/km/lane) for any 100 m segment | Maximum Mean IRI _{qc} (m/km/lane) per 2km section |
|--|--|--|
| Lanes (excluding any shoulders) | ≤ 2.9 ¹ | ≤ 2.2 |
| Ramps which form part of the Freeway (excluding any shoulders) | ≤ 3.6 | ≤ 2.6 |
| ¹ No more than two 100 metre segments per lane per 1 km section | | |

10. Settlement

- (a) Settlement must not exceed the following limits in comparison with the design gradeline/profile:
- (i) structures:
 - A. for all Minor Structures (including waterway crossings, sign gantry structures), total settlement must be no more than 20mm;
 - B. for all Major Structures, bridge piers and abutments, total settlement must be no more than 15mm;
 - C. subject to section 10(a)(i)D, maximum differential settlement must be no more than 10mm at all structures; and
 - D. maximum differential settlement (during the D&C Phase) must be no more than 5mm for structure widenings; and
 - (ii) other:
 - A. the estimated gross settlement including creep (extrapolated on a logarithmic time scale from measured settlements) at any point in earthworks and pavement must not exceed 50mm over the period of 10 years following the Date of West Gate Tunnel Completion; and

- B. within 25 metres of any structure, the maximum grade change must not exceed 0.4%, measured over a distance of 5 metres or less. Estimated gross settlement including creep (extrapolated on a logarithmic time scale from measured settlements) at any point over this length must not exceed 50mm over the period of 10 years following the Date of West Gate Tunnel Completion.
- (b) Without limiting section 10(c), Project Co must measure and monitor settlement and such measured settlements must provide evidence (when extrapolated on a logarithmic time scale) that, at the end of the 24 month period after the Date of West Gate Tunnel Completion a stable settlement/creep regime has been achieved at all points monitored.
 - (c) Where settlement is identified anywhere that:
 - (i) has not reached a stable settlement/creep regime as contemplated under section 10(b) within the 24 month period after the Date of West Gate Tunnel Completion;
 - (ii) exceeds the parameters set out in section 10(a); or
 - (iii) is predicted to exceed the parameters set out in section 10(a),

the settlement must be monitored at a frequency acceptable to the State (acting reasonably) and reported to the State and IREA until such time as a stable settlement regime has been achieved. The settlement monitoring program and reporting must:

 - (iv) clearly indicate the locations of the monitoring points;
 - (v) clearly indicate the type of measuring instruments;
 - (vi) clearly indicate monitoring intervals and length;
 - (vii) be carried out by a suitably qualified and experienced geotechnical engineer;
 - (viii) be presented in a form acceptable to the State; and
 - (ix) be presented in intervals acceptable to the State (acting reasonably) and include in each monitoring report a prediction of settlement for the next 15 years.
 - (d) Where a report provided in accordance with section 10(c) indicates that settlement exceeds the parameters or is predicted to exceed the parameters identified in section 10(a):
 - (i) a rectification plan must be agreed with the State (acting reasonably); and
 - (ii) the agreed rectification works must be undertaken within the time frame identified in the rectification plan.

11. Road signage

- (a) The following signage must be provided:
 - (i) directional signage within the areas identified in section 1 of Part H9;

- (ii) signage in accordance with Part D1 and section 16 of Part C;
 - (iii) operational signage in accordance with VicRoads usual requirements; and
 - (iv) tolling signage in accordance with a tolling signage scheme:
 - A. which is at least consistent with and equivalent to the extent and effectiveness of the tolling signage on CityLink as at Financial Close (to the extent reasonably possible);
 - B. which reasonably accounts for the integrated tolling arrangements between West Gate Tunnel and CityLink;
 - C. which is approved by the State; and
 - D. the installation of which:
 - 1) may include any new tolling signage or the replacement of any tolling signage on CityLink; and
 - 2) effectively secures and masks any signs that would be misleading or unnecessary at the time of erection.
- (b) A directional signage scheme must be prepared which:
- (i) is consistent with and includes all directional signs identified in section 1 of Part H9;
 - (ii) supports the integration of the Freeway with the existing arterial road system and the efficient operation of the road network;
 - (iii) promotes the safe operation of the Freeway and the overall road network;
 - (iv) informs and directs the movement of motorists in the directional signage area identified in section 1 of Part H9;
 - (v) facilitates navigation on the road network, including access to, travel along, and egress from the Freeway;
 - (vi) ensures consistency with the existing directional signage system on Melbourne's arterial roads, freeways and tollways; and
 - (vii) clearly differentiates between tolled and non-tolled routes.
- (c) As part of the design of the directional signage scheme:
- (i) an inventory of the existing directional signage must be conducted within the extent of the directional signage area as shown in Part H9;
 - (ii) the State's approval to the scheme must be obtained; and
 - (iii) a sign face design of the directional signs must be prepared and approved by the State.
- (d) As part of the installation of the directional signage scheme:
- (i) new signs and supports must be supplied and erected within the directional signage area as shown in Part H9;

- (ii) all redundant directional signs and supports must be removed from the directional signage area as shown in Part H9;
- (iii) any signs that would be misleading or unnecessary at the time of erection must be effectively secured and masked; and
- (iv) redundant existing directional signage must be removed.

12. Intersection traffic signals

- (a) Project Co must:
 - (i) provide all temporary traffic signals required by WTMP's and the permanent traffic signals identified in Part H4;
 - (ii) maintain all traffic signals within the Construction Areas;
 - (iii) where required during the carrying out of the Works, program traffic signal controllers using VicRoads or a VicRoads prequalified contractor for signalised intersections at ramp terminal intersections and adjacent to such ramp terminal intersections; and
 - (iv) comply with VicRoads usual requirements with respect to intersection traffic signals.
- (b) Permanent traffic signals must:
 - (i) meet the functional requirements of Part H4;
 - (ii) provide for all pedestrian movements (except those across un-signalised left turn lanes);
 - (iii) provide for all bicycle movements associated with a shared use path, including bicycle aspect signal lanterns and detectors;
 - (iv) provide traffic detectors on all lanes to and from the Freeway; and
 - (v) be connected to the VicRoads signal linking system in accordance with VicRoads usual requirements.
- (c) Temporary traffic signals must meet the requirements of the relevant WTMP.

13. Freeway ramp signals

A freeway ramp signal system must be provided on the ramps identified in Part H7 which:

- (a) has the number of lanes at the stop line and vehicle storage requirements to meet VicRoads usual requirements unless otherwise defined in Part H7;
- (b) includes all associated devices and infrastructure; and
- (c) is connected to the VicRoads Freeway Management System to meet VicRoads usual requirements.

14. Street lighting

Street lighting must comply with the following requirements:

- (a) General
 - (i) All wiring, except that internal to poles, or within concrete barriers must be underground.
 - (ii) New street lighting for Returned Facilities must have a separate power supply for each Facility Owner.
 - (iii) Power supply within the Leased Area must be separate to that of outside the Leased Area.
 - (iv) Where lighting is provided or where provisions are required for future lighting, it must meet VicRoads usual requirements.
- (b) Lighting
 - (i) Continuous lighting must be provided along:
 - A. freeways;
 - B. freeway to freeway ramps;
 - C. entry and exit ramps;
 - D. other Roads, where lighting exists at the date of Financial Close; and
 - E. shared use paths within underpasses.
 - (ii) The Tunnels must be lit in accordance with section 12 of Part C.
 - (iii) The lighting for the Freeway and Roads must satisfy the requirements of Part H21.
- (c) Without otherwise limiting any other provision of the Project Requirements or Project Scope, LED flood lighting is permitted within the Leased Area.

15. Urban Design and Landscaping

- (a) The urban and landscaping design must be developed and implemented to be consistent with the Urban Design Requirements and section 15(b).
- (b) The urban and landscaping design must ensure:
 - (i) elements such as noise barriers, retaining walls and traffic barriers are integrated with one another in respect of urban and landscaping design elements;
 - (ii) all exposed concrete finishes on bridges and other structures achieve the requirements of VicRoads standard specifications for Road and Bridge Works - Section 610 – Structural Concrete;
 - (iii) colour and texture in concrete is achieved through the use of different aggregates, sands, cements and pigments, and through the use of surface textures and patterns. Applied finishes must be avoided, except for anti-graffiti coating;
 - (iv) drainage details and surface finishes minimise surface staining;

- (v) any rock used in creek works or beaching is consistent with the local geology, where feasible;
- (vi) chain mesh fencing is black;
- (vii) pedestrian bridges, underpasses and associated approaches are well lit with non-threatening spaces for pedestrians and good visual linkages to entry and exit points to and from surrounding areas;
- (viii) bridge spans are open with retained abutments outside the clear zone;
- (ix) bridges over creeks maximise penetration of natural light to protect creek habitat;
- (x) colours of transparent noise walls do not:
 - A. detract from road and public transport safety objectives; or
 - B. result in shadow tones cast on private property which are considered unacceptable to abutting property owners;
- (xi) changes in noise wall heights are resolved as a fundamental design consideration;
- (xii) timber noise walls are not used unless specifically approved by the State;
- (xiii) planting densities and the structure and composition of plant communities:
 - A. maximise potential for natural regeneration and habitat value; and
 - B. minimise competition from weeds;
- (xiv) plantings have a functional lifespan of at least 10 years;
- (xv) plantings when matured do not impede design sight distance requirements along roads and paths;
- (xvi) species that are environmental weeds are not used;
- (xvii) existing vegetation and other environmentally sensitive areas are fenced, maintained and protected during construction;
- (xviii) fencing siting, materials and colours are well considered elements consistent with the design concept; and
- (xix) planting achieves full cover within two years of planting.

16. Conduit Systems

Conduit systems must be provided, including:

- (a) those required for the operation of the Freeway;
- (b) those required for the operation of the Tolling System;
- (c) those required for the operation of the Department of Justice and Regulation road safety cameras identified in Part H10; and

- (d) those required in Part H11.

17. Emergency services facilities

Project Co must, without limiting any of its other obligations under this Agreement, comply with the reasonable requirements of Emergency Services in respect of any facilities provided as part of the Project.

18. Noise

18.1 General

Without limiting sections 18.2 or 18.3, the Works must be designed and constructed to meet the noise requirements of the Key Approvals including the requirements of Part H21.

18.2 Construction Noise

- (a) Permanent noise attenuation must, where feasible, be installed in advance of construction of adjacent Works.
- (b) Temporary noise attenuation must be provided at appropriate locations to reduce construction noise impacts to sensitive receptors in accordance with the requirements of the Key Approvals.
- (c) As a minimum, temporary structures must be constructed at the Tunnel portals to attenuate noise impacts in the surrounding areas from D&C Activities and must include discrete enclosures over all major fixed plant items.

18.3 Permanent Traffic Noise Attenuation

- (a) Subject to sections 18.3(e) and 18.3(g), the Relevant Infrastructure must be designed and constructed so that Traffic Noise is no greater than as set out in this section 18.3(a) or as required to meet the Key Approvals, whichever requires the greater attenuation:
 - (i) for Category A Buildings and Category B Buildings facing Traffic Noise, being those adjacent to or with a direct line of sight to the Freeway (Acoustic):
 - A. Category A Buildings: 63 dB(A) L10 (18hr) measured between 6 am and midnight; and
 - B. Category B Buildings: 63 dB(A) L10 (12hr) measured between 6 am and 6 pm; and
 - (ii) for Category A Buildings and Category B Buildings not falling within section 18.3(a)(i) and which are facing Traffic Noise, being those adjacent to the Local Road, the Traffic Noise level must not exceed the Future Base Traffic Noise Level.
- (b) Regardless of the noise attenuation treatment required, if any Category A Buildings or Category B Buildings are protected by existing noise walls, any replacement noise attenuation treatment must include noise walls with a height no less than that of the existing noise walls.
- (c) Noise walls must also be constructed along the Freeway at the following open space areas as follows:

- (i) W L J Crofts Reserve;
- (ii) Mclvor Reserve;
- (iii) Hyde Street Reserve; and
- (iv) Precinct 15,

as set out in the Concept Design, including being comprised of post and panel design as specified in the Concept Design, with the extent of concrete and acrylic material selection to achieve the urban design intent.

- (d) The noise criteria in section 18.3(a) are to apply to the lowest habitable level of the relevant Category A Buildings and Category B Buildings and for modelling purposes, the receptor point is the centre of a window of the most exposed façade of buildings facing the Traffic Noise. Where a receptor point is not available or accessible, Project Co is required to determine a suitable alternative.
- (e) Off road reservation attenuation treatments are not permitted unless otherwise agreed with the State.
- (f) For the purposes of determining whether the requirements of section 18.3(a) have been satisfied, noise measurements must be undertaken in accordance with VicRoads Traffic Noise Measurement Requirements for Acoustic Consultants – September 2011.
- (g) Section 18.3(a) does not apply in respect of Category A Buildings and Category B Buildings which, as at Financial Close, were not:
 - (i) constructed; or
 - (ii) an Approved Development or Proposed Development.
- (h) The parties acknowledge and agree that, except to the extent expressly stated in section 18.4, this section 18.3 only applies during the D&C Phase.

18.4 WGT O&M Noise Map

Project Co must develop a map to be certified by the IREA in accordance with the Design Review Process which must:

- (a) set out the Category A Buildings and Category B Buildings subject to the requirements of section 18.3(a)(i) provided that, for the purposes of this section 18.4(a), any reference to 'Freeway (Acoustic)' within section 18.3(a)(i) will be interpreted as a reference to 'Freeway';
- (b) subject to section 18.4(c), set out the Traffic Noise levels applicable to each of those Category A Buildings and Category B Buildings referred to in section 18.4(a) in accordance with sections 18.3(a)(i)A or 18.3(a)(i)B as applicable; and
- (c) in respect of any Category A Buildings or Category B Buildings referred to in section 18.4(a) which Project Co has provided off road reservation attenuation treatments during the D&C Phase, set out the Traffic Noise level as at the end of year 2045, determined by reference to the receptor point located at the centre of a window of the most exposed façade of that Category A Building or Category B Building within the WGT Noise Models,

for the purposes of sections 18.5 and 18.6 (**WGT O&M Noise Map**).

18.5 Traffic Noise Standards for the O&M Phase

- (a) From the Date of West Gate Tunnel Completion until the requirements in respect of Handover set out in section 18.6 have been satisfied, the Relevant Infrastructure must be maintained so that Traffic Noise (O&M) at the lowest habitable level of the relevant Category A Buildings and Category B Buildings set out in the WGT O&M Noise Map is no greater than the Traffic Noise levels set out in the WGT O&M Noise Map for those buildings.
- (b) The VicRoads Traffic Noise Reduction Policy 2005 (including as amended, supplemented, varied or replaced from time to time) does not apply to the Relevant Infrastructure.
- (c) For the purposes of measurement under section 18.5(d), the receptor point is one metre from the centre of a window of the most exposed façade of buildings facing the Traffic Noise. Where a receptor point is not available or accessible, Project Co is required to determine a suitable alternative.
- (d) In determining whether the requirements of section 18.5(a) have been satisfied for a relevant Category A Building or Category B Building measurements of Traffic Noise must be undertaken in accordance with VicRoads Traffic Noise Measurement Requirements for Acoustic Consultants – September 2011, subject to the following:
 - (i) any reference to the “superintendent” or “Superintendent” in VicRoads Traffic Noise Measurement Requirements for Acoustic Consultants – September 2011 must be read as a reference to “Project Co and the State”;
 - (ii) the measurements must exclude any contributions from noise sources other than Traffic Noise; and
 - (iii) the measured Traffic Noise must be adjusted to exclude contributions from noise sources other than Traffic Noise (O&M).
- (e) If:
 - (i) it has been determined in accordance with section 18.5(d) that the requirements of section 18.5(a) have not been satisfied for a relevant Category A Building or Category B Building; and
 - (ii) the requirements of section 18.5(a) cannot be satisfied for that relevant Category A Building or Category B Building through reasonable and practicable on road reservation attenuation treatments,

Project Co must, after seeking agreement from the State, make an offer for reasonable off road reservation attenuation treatments to the owner of the relevant Category A Building or Category B Building to reduce the Traffic Noise levels in habitable rooms at the lowest habitable level of that Category A Building or Category B Building by the difference between the Traffic Noise (O&M) level as measured in accordance with section 18.5(d) and the Traffic Noise level set out in the WGT O&M Noise Map for that Category A Building or Category B Building, to the extent practicable, including by having regard to:

 - A. the state of pre-existing noise attenuation of that building;
 - B. any heritage listing applicable to that building that could prevent the implementation of such treatments; and

- C. the impacts to the amenity of the owner of that building.
- (f) If Project Co provides off road reservation attenuation treatments under section 18.5(e), the relevant Category A Building or Category B Building will be deemed to be excluded from the WGT O&M Noise Map and the requirements of this section 18.5 will no longer apply to that Category A Building or Category B Building.
- (g) If Project Co makes an offer for reasonable off road reservation attenuation treatments in accordance with section 18.5(e) and the owner of the relevant Category A Building or Category B Building does not accept that offer, then:
 - (i) Project Co will not be in breach of this section 18.5 in respect of that Category A Building or Category B Building; and
 - (ii) a subsequent owner of that Category A Building or Category B Building will be entitled to an offer for reasonable off road reservation attenuation treatments in accordance with section 18.5(e).
- (h) The State and Project Co acknowledge and agree that:
 - (i) Project Co must ensure that any off road reservation treatment provided by Project Co during the O&M Phase in accordance with section 18.5 is Fit For Purpose and must:
 - A. rectify any Defects identified by the relevant building owners within 1 year of installation of such off road reservation treatments provided that Project Co is given such access that is reasonably required to rectify the relevant Defect and except to the extent that the Defect arises as a result of an act or omission of the relevant building owner or other third party; and
 - B. upon expiry of the period contemplated under section 18.5(h)(i)A, use reasonable endeavours to obtain manufacturer's warranties in respect of those off road reservation attenuation treatments provided under this section 18.5 in favour of the relevant building owners; and
 - (ii) Project Co is not otherwise required during the O&M Phase to repair or maintain any off road reservation treatment provided by Project Co.

18.6 Traffic Noise Attenuation Handover Requirements

- (a) The State and Project Co acknowledge and agree that:
 - (i) this section 18.6 sets out the full extent of Project Co's obligations in respect of Handover in relation to the requirements set out in section 18.5; and
 - (ii) the joint inspection of the Relevant Infrastructure to be undertaken under clause 28.1(d) of this Agreement excludes any inspection which relates to the requirements set out in section 18.5.
- (b) Project Co must:
 - (i) no earlier than 1 January 2042; or
 - (ii) where this Agreement is terminated following the Date of West Gate Tunnel Completion and earlier than 1 January 2042, as soon as reasonably practicable following the Expiry Date:

- A. carry out a noise measurement in accordance with section 18.5(d) for all Category A Buildings and Category B Buildings included on the WGT O&M Noise Map in accordance with section 18.4; and
 - B. provide the Handover Reviewer a report with the details of the noise measurements undertaken.
- (c) The Handover Reviewer must, having regard to the report provided by Project Co under sections 18.6(b)(ii) or section 18.6(e)(i)B and within 30 Business Days or receiving such report, provide to the State and Project Co:
 - (i) a report which identifies the Category A Buildings and Category B Buildings included on the WGT O&M Noise Map in accordance with section 18.4 in respect of which the requirements of section 18.5(a) have not been satisfied (if any); or
 - (ii) a notice stating that in its reasonable opinion, Project Co has achieved Handover in relation to the requirements set out in section 18.5 of Part B.
- (d) If either party does not agree with any of the matters determined by the Handover Reviewer in the report provided under section 18.6(c)(i), that party may refer the matter for resolution in accordance with clauses 43 and 44 of this Agreement within 20 Business Days of the report by the Handover Reviewer being received by it.
- (e) If the Handover Reviewer determines in accordance with section 18.6(c) that the requirements of section 18.5(a) have not been satisfied for a relevant Category A Building or Category B Building, Project Co must:
 - (i) satisfy the requirements of section 18.5(a) for that relevant Category A Building or Category B Building through reasonable and practicable on road reservation attenuation treatments and:
 - A. carry out a noise measurement in accordance with section 18.5(d) for that Category A Building or Category B Building; and
 - B. provide the Handover Reviewer a report with the details of the noise measurements undertaken for the Handover Reviewer's determination in accordance with section 18.6(c), or
 - (ii) if the requirements of section 18.5(a) cannot be satisfied for that relevant Category A Building or Category B Building through reasonable and practicable on road reservation attenuation treatments, following agreement with the State, make an offer for reasonable off road reservation attenuation treatments to the owner of the relevant Category A Building or Category B Building in accordance with section 18.5(e).
- (f) If Project Co:
 - (i) provides off road reservation attenuation treatments under section 18.6(e)(ii); or
 - (ii) makes an offer for reasonable off road reservation attenuation treatments in accordance with section 18.6(e)(ii) and the owner of the relevant Category A Building or Category B Building does not accept that offer,

Handover in relation to the requirements set out in section 18.5 in respect of the relevant Category A Building or Category B Building will be deemed to be satisfied.

19. Modifications to VicRoads Publications

19.1 General

- (a) VicRoads Standard Specification for Roadworks and Bridgeworks must be modified according to sections 19.2 to 19.5.
- (b) VicRoads Test Methods must be modified according to section 19.6.

19.2 Section 605 – Driven Piles

- (a) Add the following two paragraphs to clause 605.01 – General.

“The procedure for handling piles, including lifting and pitching, must be shown on the drawings and all cast in fittings and fixtures must be fully detailed.”

“Piles must not be lifted and slung using chains around the pile.”
- (b) Add the following sub-paragraph clause to 605.09.

“(e) the fabrication of each mechanical splice assemblies being subject to the full inspection and test regime specified in Specification Section 630 – Fabrication of Steelwork, with traceability of each splice to a compliance Certificate and Inspection and Test Plan.”
- (c) Replace “AS/NZS 1554.1” in clause 605.09(d)(ii) with “AS/NZS 1554.3”

19.3 Section 606 – Bored Cast-in-place Piles (Without Permanent Casing)

- (a) Add the following to clause 606.06(b).

“The use of concrete pump lines without a tremie is prohibited.”

19.4 Section 611 – Steel Reinforcement

- (a) Insert the following paragraph at the end of clause 611.10.

“The Contractor must provide adequate support and/or bracing of reinforcement cages during construction to ensure stability. Bracing and support requirements for any reinforcement cages higher than 2.5 must be detailed on the certified design drawings.”

19.5 Section 612 – Post-tensioning of Concrete Units

- (a) Insert the following paragraph at the end of clause 612.13.

“All strands of multi strand tendons with reverse curvature must be post-tensioned simultaneously. Stressing with a mono strand jack is not permitted.”

19.6 Test Method RC 316.00 - Density Ratio and Moisture Ratio

- (a) Replace 2.5(a)(ii) with the following;

“Determine the Hilt density ratio and moisture variation in accordance with AS 1289.5.7.1, provided that:

- (i) if the Hilf Test is used for compaction control, Standard Density Tests must also be carried out to determine an Assigned Value for the material in accordance with AS1289.5.4.2; and
- (ii) the results of the Hilf Test must not be used if the variation between the density ratio derived using the Hilf Test and the Assigned Value of density ratio from the Standard Compaction Test exceeds 1%.”

20. V/Line Stabling

(a) Operation of Stabling Area

Project Co must ensure that it does not impede access to the Stabling Area such that the rail stabling lines can remain fully operational until and including 1 October 2019.

(b) Clearance of Stabling Area

Project Co is to remove and dispose of rail infrastructure as set out in this section 20.

(c) Timing of Works

Project Co must not commence any decommissioning or removal activities of the Wagon Storage Yard in accordance with this section 20 before 2 October 2019.

(d) Timing for access

The State will ensure that Project Co is provided access to Parcel AP8 as identified in WDA-WGTP-ALP-006 in Part K23 (**Stabling Area**), for carrying out the obligations in this section 20 from 2 October 2019.

(e) Scope

Project Co must:

(i) decommission, demolish and remove all rail hardware from:

- A. the South Hump Avoiding Track;
- B. the Reversing Loop; and
- C. the Wagon Storage Yard,

(collectively, **V/Line Stabling Removal Works**) as set out in Diagram-1 in Part K23

(ii) remove cross over between engine tracks and turnout to reversing loop, including installation of replacement plain line track on both engine tracks. Refer to Diagram-2 in Part K23;

(iii) decommission and remove signals MYD186 and MYD188 including associated interlocking and data updates. Refer Diagram-3 in Part K23;

(iv) to the extent necessary relocate MYD280 in the westerly direction once reversing loop junction is removed and repurposed to protect the converging move from the broad gauge flyover track as set out in Diagram-3 in Part K23;

- (v) decommission and remove the Wagon Storage Yard including left-hand facing turnout to the Wagon Storage Yard and plain line tracks reinstated. Refer to Diagrams 1 and 2 in Part K23; and
- (vi) decommission and remove the double compound between the South Hump Avoiding Track and Reversing Loop including MYD234 and MYD122 signals and associated interlocking and data updates. The double junction must be replaced with plain line tracks for moves from West/East by-pass tracks to engine tracks retaining the broad gauge junction with access under the flyover (north of the double compound). Refer to Diagram-4 in Part K23;

(f) Exclusions from scope

The scope of works under this section 20 excludes:

- (i) any other changes to the remaining signalling equipment or new signalling equipment required as a result of the V/Line Stabling Removal Works, including associated control and data systems, required for operations after 1 October 2019;
- (ii) excavation and removal of track ballast except as locally required to install sections of replacement rail track where existing switches, turnouts and cross overs are removed;
- (iii) removal of the South Hump Avoiding Track buffer stop;
- (iv) excavation, removal and disposal of contaminated soils related solely to the decommissioning and removal of the V/Line stabling, other than that associated with the removal and disposal of tracks, sleepers and ballast associated with the scope of works detailed in section 20(e)(ii); and
- (v) the removal of the existing reversing loop track at the e-gate service crossing intersection that will be left in-situ as it is bedded in the asphalt roadway.

Part C - Tunnels

1. General

- (a) The Tunnels must provide for:
- (i) the safe and efficient movement of traffic;
 - (ii) the support and preservation of existing infrastructure including roads, railways, Utility Infrastructure, buildings and the provision for future requirements including development above or adjacent to the Tunnels as described in section 3.2(a);
 - (iii) the continuous control of internal air quality to meet the requirements of the Tunnel Reference Documents;
 - (iv) the continuous management of emission air quality to meet the Environmental Requirements;
 - (v) emission air quality to meet the Environmental Requirements;
 - (vi) [Not disclosed];
 - (vii) emergency egress from all areas of the Tunnels;
 - (viii) effective incident management, and
 - (ix) safe emergency intervention and operations for the MFB and other Emergency Services, including consideration of exhaust plumes to ensure agreed incident management plans can be implemented in a safe manner.
- (b) The design and construction of the Tunnels must:
- (i) comply with the cross section and clearance requirements contained in Part H1 and Table B.6 respectively;
 - (ii) ensure tunnel fixtures and cladding are located outside of the vehicle roll allowance as defined in Austroads Guide to Road Design Part 6 – Roadside Design, Safety and Barriers – Section 6.3.16;
 - (iii) include and address detailed risk assessments of all aspects of the proposed Tunnel design, construction, operation, repair and maintenance processes;
 - (iv) comply with the Tunnel Reference Documents except where there is an Australian Standard equivalent to any British Standard specified in ‘Specification for tunnelling, British Tunnelling Society and Institution of Civil Engineers, Third Edition, 2010’, in which case the equivalent Australian Standard will prevail; and
 - (v) ensure that all areas of the Tunnels, including smoke ducts, fan chambers and service tunnels, must be safely accessible to maintenance staff without the need for closure of both Tunnels.

2. Tunnel geometric design

2.1 Horizontal and vertical sight distances

- (a) The carriageways in the Tunnels must be designed to provide sight distances as applicable to the relevant posted speed shown in Part H2 and with the following design parameters:
 - (i) sight distance requirements in accordance with Table B.5; and
 - (ii) friction factors must be based on wet pavements.

3. Tunnel excavation and support

3.1 Surface and underground limits

- (a) The Tunnels must be constructed with no surface disturbance between the northern portal (chainage AA-14140 inbound and chainage BA-54490 outbound) and the West Gate Freeway corridor (chainage AA-11790 inbound and chainage BA-50900 outbound).
- (b) Tunnels and adjoining underground structures must retain a pillar of a minimum 7m width between the side wall of the Tunnel and any existing adjacent building excavation.

3.2 Future development

- (a) Future development of the land above and adjacent to the Tunnels and other underground structures must be allowed for by designing and constructing the Tunnels for loading and unloading in addition to the design loads applicable to the support of the Tunnel excavation. The additional design loading requirements are as follows:
 - (i) all Tunnels and other underground structures must:
 - A. allow for additional loadings from Approved Developments and Proposed Developments; and
 - B. be designed to avoid any impacts on these developments;
 - (ii) Tunnels and adjoining underground structures must allow for the following building vertical loads:
 - A. 50kPa increase in load acting on a plane 1m above the Tunnel crown. This load will be assumed to be applied uniformly or on one side of the Tunnel, whichever gives the most conservative eccentric load/distortion for the lining;
 - B. 20kPa surface surcharge increase; and
 - C. a 50kPa decrease in load due to excavation at ground level, applied on a plane 1m above the Tunnel crown. This load will be assumed to be applied uniformly or on one side of the Tunnel, whichever gives the most conservative eccentric load/distortion for the lining,

and the Works must be designed and constructed for the worst case combination of section 3.2(a)(ii)A, B and C; and

- (iii) cut and cover Tunnels and adjoining underground structures must allow for a surcharge of 25kPa with a load factor of 1.5 from future buildings or other developments. This loading must be applied at the level of the top of the Tunnel roof.

3.3 Permanent support

- (a) All underground structures including Tunnels, cut and cover structures and trough structures must have permanent and durable structural linings.
- (b) Rockbolts must not be used as a permanent support in lieu of a structural lining or as a measure to partially relieve loads on a structural lining.
- (c) Permanent hold-down anchorages of the invert of cut and cover and trough structures, where they are subject to uplift, are acceptable provided that construction methods and quality assurance systems ensure the anchorages meet the project durability and Design Life requirements set out in section 1 of Part B.

4. Groundwater control and seepage requirements

4.1 Groundwater control

- (a) [not used].
- (b) The Project Activities must comply with the Environmental Requirements and all applicable Standards in relation to the management of groundwater, and in any event must minimise (in accordance with Best Industry Practices):
 - (i) groundwater contamination over and above any such contamination that may already be present within or adjacent to the Site;
 - (ii) the migration of groundwater contamination including any potential for drawing contaminated groundwater into existing uncontaminated groundwater within or adjacent to the Works;
 - (iii) hydrocarbon ingress into the Tunnels due to the movement of contaminated groundwater;
 - (iv) adverse impact on available water for groundwater dependent ecosystems and existing groundwater users, including any adverse impact on the surface water flows of any existing watercourses, acid sulphate soils, compressible soils, terrestrial plants in public spaces, man-made structures and deterioration of vegetation within or adjacent to the Site;
- (c) Notwithstanding section 4.1(b)(ii), and without limiting Project Co's other obligations under this Agreement, Project Co must take all reasonable measures to minimise, manage and mitigate any adverse impacts as a result of the migration of groundwater contamination (including any adverse impacts as a result of vapour intrusion), on any:
 - (i) existing beneficial use actually made of any surface water, groundwater or land; or
 - (ii) future beneficial use proposed to be made of any surface water, groundwater or land which is known to the Project Co or which is reasonably capable of being known to the Project Co, including by reviewing draft planning scheme amendments, planning permit applications and development proposals and other publicly available information.

which result in or have the potential to result in an unacceptable risk to the existing beneficial use actually made or future beneficial use proposed to be made.

For the purposes of this clause 4.1(c) and 4.1(d), "beneficial use" has the same meaning as the definition of that term in the Environment Protection Act 1970 (Vic).

- (d) Without limiting sections 4.1(a) and 4.2, the Project Co must develop and implement a comprehensive groundwater management, instrumentation and monitoring plan (**Groundwater Management Plan**) which sets out the manner in which it will achieve the requirements of sections 4.1(a) and 4.1(c), and must as a minimum:
- (i) be based on a hydrogeological conceptual model developed and updated in accordance with Best D&C Practices;
 - (ii) establish a baseline condition, which takes into consideration historical and predicted natural trends, for groundwater and surface water, including existing beneficial uses actually made, future beneficial uses proposed to be made, water quality, level, flow and the health of groundwater dependent ecosystems;
 - (iii) establish a monitoring regime and program throughout the pre-construction, construction and post construction period to calibrate the predictive groundwater model and evaluate performance and demonstrate compliance with sections 4.1(a) and 4.1(c), the Environmental Requirements and other relevant requirements of this Deed;
 - (iv) provide details of the instrumentation and methods to be used in the monitoring regime established in section 4.1(d)(iii);
 - (v) defines the management, mitigation and performance measures for groundwater contamination;
 - (vi) includes a clear set of triggers and timelines for action and reporting;
 - (vii) includes a clear set of pre-defined contingency response measures, including remedial action where required;
 - (viii) provides a clear allocation of responsibility for construction and post-construction groundwater management and rectification of resultant impacts;
 - (ix) includes an agreed plan for disposal of groundwater and where applicable, identifies the relevant Approvals and agreement from relevant Authorities obtained to the plan; and
 - (x) includes a commitment to proactive continuous improvement, including meeting advancements in technology and improving the standards and quality of groundwater management.
- (e) Lowering of groundwater levels using permanent dewatering systems by pumping is not permitted.
- (f) Any groundwater recharge program during the carrying out of the D&C Activities must be designed and implemented to the satisfaction of relevant Authorities and the State. Long-term recharge of the groundwater table using recharge wells is not permitted.

4.2 Groundwater seepage - D&C Phase

The Works must be designed and constructed so that:

- (a) Tunnel linings and retaining structures must not be visibly wet. Visible weep-holes in Tunnel linings and retaining structures are not permitted.
- (b) no groundwater is to be permitted to drip or flow onto or over road pavements, walkways, egress passages and plant and equipment rooms.
- (c) there must be no adverse effects as a result of groundwater chemistry on the overall structural integrity of the Tunnels.
- (d) there must be no material impact of groundwater chemistry on the Tunnel drainage system, including the potential for the precipitation of insoluble salts to materially reduce the effectiveness of the drainage system.
- (e) without limiting the above requirements, groundwater ingress in Undrained Tunnels during the O&M Phase will not exceed the following:
 - (i) 0.1 litres per square metre of Tunnel surface area per day for any 100m length of Tunnel for segmental and in-situ linings;
 - (ii) 0.2 litres per square metre of Tunnel surface area per day for any 10 metre length of Tunnel for segmental and in-situ linings; and
 - (iii) groundwater seepage through the pavement and floors must be nil (zero litres per second).
- (f) the specified limits for groundwater ingress in 4.2(e) must be evidenced as not being exceeded as a condition precedent to West Gate Tunnel Completion and the specified limits must be satisfied by a measurement methodology agreed with the State.
- (g) All Tunnels and associated underground and trough structures must be Undrained.

4.3 [Not disclosed]

5. Drainage system

- (a) The drainage system for the Tunnels must comply with Part H21 and section 6 of Part B.
- (b) As a minimum, the Tunnel drainage system must:
 - (i) accommodate a credible range of stormwater, incident, groundwater, maintenance and other water ingress events;
 - (ii) only contain system elements that are flame proof and explosion resistant for areas classified as hazardous;
 - (iii) continuously monitor, control and record the system's operations as part of an integrated control system within the FCC;
 - (iv) provide appropriate pump system redundancy; and
 - (v) identify, isolate, treat, store and dispose of contaminated water in accordance with the requirements of relevant Authorities.

- (c) Any part of the Tunnel drainage system that discharges by gravity drainage must not connect to an outlet, where the inlet pits or access chambers for that drainage system and the catchment itself is below the combined level of:
 - (i) the PMF level at the outlet; and
 - (ii) an additional level calculated to include the pipe and pit losses of the gravity drainage system in this section 5(c).
- (d) Non-return valves or similar devices must not be used to prevent backflow into the Tunnel on a gravity drainage system.
- (e) Project Co must provide details and calculations as part of the Design Documentation showing how contaminated water from spillages, deluge testing, wash down works and the like is to be collected and disposed.

6. Tunnel finishes

- (a) An architectural cladding, must be provided in the Tunnels, excluding cross passages, which:
 - (i) is continuous above the traffic barrier to a height of 4.0m above the roadway;
 - (ii) is durable, non-combustible non-distorting and vitreous enamel coated; and
 - (iii) provides surface reflectance greater than 60 percent for the required Design Life.

7. Fire and life safety requirements

- (a) The fire and life safety systems and facilities forming part of the Tunnels must include:
 - (i) smoke control in the event of a fire incident;
 - (ii) emergency egress from Tunnel carriageways at intervals to be as determined in the FEB process referred to in sections 7(c) and 7(d);
 - (iii) fire suppression including hydrants, hose reels and a fixed water based-system;
 - (iv) linear thermal detection;
 - (v) an Emergency Services communication system throughout the Tunnels, including cross passages, egress passages and portals;
 - (vi) normal operation lighting and emergency and exit lighting;
 - (vii) emergency exit signage and low level parapet emergency exit lighting within the Tunnel environment including signage indicating direction and distance to safe exits;
 - (viii) an uninterruptible power supply to:

- A. ensure that the parts of the critical safety systems and essential equipment that are necessary to close and evacuate the Tunnel can operate for a minimum of 60 minutes;
 - B. enable the automatic water based suppression system required under section 8.3 to be operational; and
 - C. enable FCC operators to operate the systems and equipment identified in section 7(a)(viii)A and B for a minimum of 60 minutes;
- (ix) a reliable water supply, including a valved ring main;
 - (x) reliable control systems including redundancy provisions;
 - (xi) security systems and alarm switches on doors and service cabinets;
 - (xii) drainage with flame traps and hydrocarbon sensors in the pump wells;
 - (xiii) illuminated and reflective signage and markers;
 - (xiv) all fire protection functions which must be monitored and recorded at the FCC and integrated into the Traffic Management and Control System and Communication System; and
 - (xv) infrastructure for egress of people within the Tunnels and underground structures to a point of safety, and access for Emergency Services.
- (b) As a minimum, the fire and life safety measures employed for the Tunnels must achieve the following outcomes:
- (i) a level of safety for Tunnel occupants and Users that is consistent with Best Industry Practices and as determined in the FEB process;
 - (ii) levels of safety and access for:
 - A. operations and maintenance staff during routine activities in accordance with the Tunnel Reference Documents; and
 - B. Emergency Services personnel during incidents to meet the requirements of the Emergency Services; and
 - (iii) minimise the impact of incidents on the Relevant Infrastructure, the O&M Activities, in-ground services, adjacent infrastructure and buildings and the surrounding road network including public transport operations.
- (c) Fire and life safety systems and facilities must be designed and constructed in accordance with:
- (i) the requirements of the Emergency Services; and
 - (ii) the process outlined in AS4825:2011 "Tunnel Fire Safety".
- (d) The outcomes of the process referred to in section 7(c)(ii) must be documented in a FEB and FER.
- (e) An appropriately qualified Fire Engineer (FE) as described in AS4825:2011 must be appointed for the period to the Date of West Gate Tunnel Completion. The role of the FE must include:

- (i) initiating and managing stakeholder consultation with the relevant Authorities in relation to fire and safety matters;
 - (ii) responsibility for planning, preparing and updating the FEB and FER; and
 - (iii) ensuring that the fire and life safety systems and facilities forming part of the Tunnels comply with and are consistent with the FEB and the FER.
- (f) The Proof Engineer must fulfil the function of a third party reviewer as required by AS4825:2011.
 - (g) The content of the FEB and FER are to be reviewed and agreed by Emergency Services in accordance with the process outlined in AS4825:2011.

8. Fire suppression systems

8.1 Hydrants

- (a) Hydrants must be installed within:
 - (i) Tunnels, excluding cross passages, at a maximum of 60m spacing; and
 - (ii) emergency cabinets,
 in consultation with the relevant Emergency Services.
- (b) A minimum of two hydrant outlets must be provided in each emergency cabinet and in consultation with the relevant Emergency Services.
- (c) The hydrant pressures/flows must comply with the requirements of AS 2419.1.

8.2 Emergency Cabinets

- (a) Hose reels with 36m long hoses must be provided in each emergency cabinet.
- (b) Each emergency cabinet must contain fire suppression equipment appropriate to electrical or chemical fires for use by a single operator to the satisfaction of the relevant Emergency Services.

8.3 Automatic water based suppression

- (a) Subject to section 8.3(h), an automatic water based fire suppression 'deluge' system must be provided in all carriageway sections of the Tunnels.
- (b) The system must be zone-based with each zone covering a minimum length of 20m of roadway in the Tunnels, excluding cross-passages. The arrangement of zones in the merge and diverge areas including the appropriate length must comply with the area limitations in AS2118.3.
- (c) The system must be capable of operating up to four deluge zones and two hydrant lines simultaneously.
- (d) The system must be designed to operate so that fire fighters can safely approach, fight and control/extinguish a fire or fires.
- (e) The system must be designed to control a fire or fires (in accordance with the design fire scenarios as described in the PSR and the approved FEB) and limit it to the vehicle/s of origin.

- (f) The system must be designed for integrated operation with the other fire measures and must be able to be operated in a timely manner by the Tunnel operators.
- (g) The system must have a discharge density of a minimum of 10mm/min/m² of measured road surface.
- (h) If a 'water misting' type system is proposed as an alternative to a 'deluge' system, it must be demonstrated, to the satisfaction of the MFB, that such a system will provide an operational performance equivalent to a 'deluge' type system.
- (i) Site acceptance testing of the automatic water based suppression system must include:
 - (i) operation under design conditions at the two most hydraulically onerous locations within the relevant Tunnel;
 - (ii) operation of the system for a minimum period of three minutes; and
 - (iii) use of suitable collection pans located throughout the operational zones to confirm the density of discharge.

8.4 Fire protection water supply

- (a) Grade 1 water supplies must be provided in accordance with AS2118.1 "Automatic fire sprinkler systems".
- (b) Suction and booster points for boosting the hydrant system must be provided within the vicinity of each portal of the Tunnels at locations agreed with the MFB. Booster points must be fed from independent supplies, separated to avoid cross-contamination of supply.
- (c) The system must be capable of supplying a minimum of four deluge zones and two hydrant lines simultaneously, subject to section 8.3(h).

9. Fire resistance of Tunnel infrastructure

9.1 Fire resistance and fire rating of Tunnel structures

- (a) For the purposes of complying with fire resistance and/or fire rating requirements, references to Tunnel structures include:
 - (i) driven tunnels;
 - (ii) mined tunnels;
 - (iii) cut and cover tunnels;
 - (iv) escape passages, including cross-passages;
 - (v) equipment rooms;
 - (vi) shafts;
 - (vii) bridging slabs between adjacent tunnels;
 - (viii) concrete filler walls;
 - (ix) vertical rock pillars between adjacent tunnels;

- (x) horizontal rock pillars between adjacent tunnels; and
 - (xi) internal tunnel structures, including smoke ducts and structures used to convey air or smoke in the tunnel ventilation system.
- (b) The Tunnel structures must have a minimum fire resistance level as defined by the ITA Guidelines for Structural Fire Resistance of Road Tunnels 2004 based around the standard temperature time curves of AS 1530.4 and the Modified Hydrocarbon curve (as defined in the Tunnel Reference Documents). All Tunnel structure fire resistance levels must be subject to risk assessments incorporated into the FER and must as a minimum, take account of:
- (i) stable or unstable ground conditions;
 - (ii) loadbearing criticality;
 - (iii) progressive collapse;
 - (iv) cost and convenience of repair;
 - (v) road network criticality; and
 - (vi) emergency response and operations.
- (c) As a minimum, a 2-hour Modified Hydrocarbon (as defined in the Tunnel Reference Documents) curve must be used as the governing design criteria in areas where the impact of a fire within the Tunnel or Tunnel approaches may result in operational failure of existing buildings or infrastructure.
- (d) The Tunnel structures must be designed to limit spalling so that the outcomes specified in section 3.3 are met. The issue of spalling must be analysed and addressed in the FER.

9.2 Fire resistance of Tunnel separation

- (a) As a minimum, the Tunnels must be designed to comply with the following:
- (i) Tunnel carriageways must be separated by a minimum of 240/240/240 separation in accordance with AS1530 "Methods for fire tests on building materials, components and structures";
 - (ii) cross passage, longitudinal passage and egress doors including joints, openings, and sealants must have a fire rating of not less than -/120/120 to AS1530. Two doors separated by a passage are considered to provide a -/240/240 rating;
 - (iii) longitudinal passages must have a rating of not less than 120/120/120 to AS1530; and
 - (iv) the smoke duct must have a fire rating of not less than 120/120/120 as determined by the standard fire curve of AS 1530.4.

9.3 Fire rating of equipment

- (a) As a minimum, the Tunnels must be designed to comply with the following:
- (i) equipment, including associated supports, suspended from the roof of the Tunnel, including the ventilation ducts, jet fans and signage, must be

maintained, in position, for a period of not less than two hours when subjected to a temperature of 400°C; and

- (ii) all mechanical ventilation system components including fans and dampers must have a fire rating of not less than two hours at 250°C.

10. Smoke management

10.1 Smoke management system

- (a) A smoke management system must be installed in the Tunnel comprising suitable ductwork and remotely operated dampers.
- (b) For a single incident fire up to and including a [Not disclosed], the smoke management system must be designed to:
 - (c) establish and maintain tenable conditions for evacuation and for intervention by the MFB;
 - (d) prevent back-layering of smoke to enable a tenable environment upstream of a fire;
 - (e) enable the operation of longitudinal ventilation with smoke extraction to enable a tenable environment for contraflow access by Emergency Services personnel; and
 - (f) ensure all cross passages, pedestrian egress tunnels and refuges are pressurised.
- (g) The design of the smoke management system, including the capacity of ductwork and fans, must take into account the effect of:
 - (i) the automatic water based suppression system;
 - (ii) leakage rates for ducts and air or smoke conveyance structures to provide the lowest lifecycle cost of the system;
 - (iii) damper leakage and the potential non-performance of dampers to operate when called for; and
 - (iv) maximum potential differential pressure developed by the fans on structure and other elements of the system.
- (h) For a Double Incident scenario, the smoke management system must be operated as set out in the FEB to provide tenability to the greatest extent possible utilising the system's installed capacity defined by the requirements of section 10.1(b).
- (i) Site acceptance testing of the smoke management system must be undertaken:
 - (i) by a series of commissioning, witnessing and integration testing to be carried out in accordance with section 10 of AS4825:2011; and
 - (ii) subsequently through a series of emergency smoke management tests (hot smoke tests) which must include:
 - A. a minimum of two tests in three different locations within Tunnels (at least six separate tests):
 - 1) one test involving the simultaneous generation of 1.5MW of heat and 5.0MW of smoke; and

- 2) the second test involving the simultaneous generation of 2.5MW of smoke heat and smoke;
- B. testing of the longitudinal smoke management system with counter flow by Emergency Services vehicles in the Tunnels;
- C. testing of longitudinal smoke management in the vicinity of Tunnel portals;
- D. testing of the effect of the automatic water based suppression system and a range of longitudinal air velocities in the Tunnel;
- E. selection of test locations on the basis of simulating the most onerous conditions with at least one point where the downhill gradient is greatest;
- F. digital video recording of smoke tests; and
- G. tests which demonstrate the ability of all fire safety systems to operate in an integrated manner and provide operational preparedness for Emergency Services and OpCo.

11. Tunnel power system

11.1 General

- (a) The Tunnel electrical systems must have a permanent power supply source and equipment and a permanent alternative power supply source and equipment which, except in the event of total electricity supply failure are each capable of ensuring:
 - (i) continued and uninterrupted operations of essential services in the event of equipment or system failure irrespective of the cause; and
 - (ii) continued operations of the remaining (non-essential) Tunnel services at a safe and acceptable functional level with minimum disruptions.

11.2 Supply failure

- (a) Secured no-break backup power supplies must be installed to ensure there is no adverse impact on the safe operation of the Tunnels in the event of a total electricity supply failure.
- (b) Secured no-break backup power supplies must provide:
 - (i) subject to the specific provision for emergency lighting and exit signs in egress routes in section 11.2(b)(v), signs, communications, emergency power outlets, closed circuit television and ancillary areas for a minimum period of one hour;
 - (ii) the Tunnel management control system and plant management control system for a minimum period of four hours;
 - (iii) all variable message signs (**VMS**), and incident detection systems that are required to ensure the ongoing safe operation of the Tunnel for a minimum period of one hour;
 - (iv) vehicle over-height detection devices for a minimum period of one hour; and

- (v) emergency lighting, exit and directional signs in the Tunnel and egress routes must be illuminated for a minimum of 90 minutes.

11.3 Electrical installation

- (a) The following requirements for electrical installation must be met:
 - (i) conduit, cubicles, trunking, cable tray boxes, metal work and cabling must be designed to withstand a tunnel environment, and must be fire resistant, non-flammable, low smoke, halogen free and corrosion resistant. Conduit and other wireway materials within the Tunnel envelope must meet the fire safety requirements for tunnels; and
 - (ii) all electrical equipment and cabling must be installed in accordance with the relevant Standards, and must address safety, segregation, adequate rating for maximum demands, voltage drop limitations, durability and operational safety.

12. Tunnel lighting systems

- (a) Tunnel lighting, including emergency lighting, must be designed, installed and put into continuous service in accordance with the Reference Documents including AS / NZS 1158.5 Lighting for roads and public spaces – tunnels and underpasses and CIE No.88 – Guide for the lighting of road tunnels and underpasses, 2004.
- (b) The lighting design for the Tunnel must be of the symmetrical system type and provide uniform light distribution.
- (c) The Tunnel lighting sub-circuits must be arranged so that half of the Tunnel lighting (each alternate luminaire group (maximum of three fittings) or alternate adjacent rows of luminaires) within any one electrical distribution zone remains unaffected by loss of power supply from any one substation main distribution board.

13. Tunnel ventilation system

13.1 Performance requirements

- (a) The Tunnel ventilation system must:
 - (i) meet all Environmental Requirements relating to air quality including the requirements of:
 - A. EPA Worksafe Exposure Standards; and
 - B. the Tunnel Reference Documents; and
 - (ii) be able to be operated to meet specified in-tunnel and external air quality requirements under all credible atmospheric and traffic flow scenarios (including stationary traffic).
- (b) All necessary investigation, monitoring, modelling, design, works and other activities required to provide a tunnel ventilation system must be carried out in accordance with the Environmental Requirements, including:
 - (i) background air quality monitoring;
 - (ii) design, including emissions modelling, for the Tunnel ventilation system;

- (iii) obtaining any required Approvals;
- (iv) design, construction and installation in accordance with the required Approvals;
- (v) testing, commissioning and hot smoke testing as necessary to meet the requirements of Emergency Services and any other responsible Authority;
- (vi) operating in accordance with any required Approvals; and
- (vii) designing, installing and operating a program of ambient air quality monitoring.

13.2 System design

The ventilation system must be designed in accordance with the recognised method described in the PIARC Technical Committee Report: Road Tunnels, Vehicle emissions and air demand for ventilation 2012R05EN and all other relevant Tunnel Reference Documents.

13.3 Air flow

- (a) The ventilation system must be capable of introducing and removing air from the Tunnels as required to meet the air quality requirements of this PSR.
- (b) All airways must be smooth and free from abrupt cross sectional area changes.
- (c) Longitudinal air velocity in the carriageway sections of the Tunnels must be monitored continuously and automatically controlled to a level not exceeding 10 metres/second.
- (d) The ventilation system must be capable of being automatically controlled to maintain the specified air quality requirements based on real-time data from air quality, visibility and airflow monitoring. Suitable monitoring equipment must be provided and strategically placed to achieve this outcome.
- (e) Null points in the ventilation system must be avoided.

13.4 Management of incidents

- (a) The ventilation system must be capable of continuous operation for at least two hours under Double Incident fire mode condition.
- (b) In the event of an incident, noxious gases and by-products released into the Tunnels must be effectively exhausted from the affected area by appropriate air flow enabling an orderly and safe evacuation of motorists along the emergency egress route.
- (c) The ventilation system must be capable of maintaining a minimum tunnel air velocity at any point along the Tunnels as required, to prevent smoke back layering. The critical velocity must be achieved with the Tunnels full of stationary vehicles.

13.5 System components

Without limiting any other monitoring obligations, air quality sampling ports and associated infrastructure must be provided at each exhaust outlet and at Tunnel portals.

13.6 Acoustic requirements

- (a) With the ventilation system under full load, the octave band spectrum for the ventilation equipment flow must not exceed NR85 as determined in accordance with

ISO 1996. Compliance must be demonstrated at any point measured along the centre line of any lane 1.5 m above road level for a situation with no traffic flow.

- (b) Maximum allowable external noise levels must comply with the Environmental Requirements.

13.7 Modelling of impact of tunnel ventilation emissions

- (a) Appropriate modelling must be undertaken as part of the design of the Tunnels in accordance with EPA requirements and designs refined to meet the Environmental Requirements in order to substantiate the adequacy of air pollution dispersion to the Environment. The modelling must take into account all credible combinations of meteorological conditions and traffic flows (including stationary traffic).
- (b) The modelling must demonstrate that, for the design adopted, air quality achieved at ground level and at receptors at nearby buildings, including Approved Developments and Proposed Developments, complies with the specified air quality criteria. The modelling must also be used to demonstrate that designs minimise re-ingestion of pollutants into fresh air supplies of the Tunnel ventilation system and of the surrounding buildings.
- (c) The impact of vehicular emissions must be assessed for both initial traffic flows, and for future traffic flows, to the satisfaction of the EPA. The scenarios investigated must include the assessment of varying flow conditions consistent with predicted traffic volumes.
- (d) Consultation with relevant Emergency Services during the FEB/FER stages, is necessary to ensure emergency response and operational considerations are satisfied.

13.8 Operating approval

All activities must be undertaken as are necessary to obtain approval for the operation of the Tunnel ventilation system from the EPA.

14. Air quality monitoring

- (a) All air quality monitoring must:
 - (i) be in accordance with the scope, methodology, standard and duration as reasonably determined by Project Co, provided that all EPA requirements are complied with; and
 - (ii) comply with the requirements of the National Environment Protection Measures (**NEPM**) monitoring policy and any requirements of the EPA as expressed in Publication 440.1.
- (b) The air quality monitoring system must enable air quality monitoring as set out in section 14(a) and meet the System and Traffic Incident Response Requirements in Part H19.

15. Emergency response facilities

- (a) Emergency response facilities must be provided in consultation with Emergency Services and in accordance with the operational and quality standards required by Emergency Services and other relevant Authorities including:
 - (i) emergency response coordination at the FCC;

- (ii) emergency services control points to provide immediate and direct access at the entry and exit zones at each end of the Tunnels (either a combined set of emergency control points at each end of the twin Tunnels, or separate emergency services control points at the entry and exit zone of each Tunnel);
- (iii) emergency vehicle access from the surface road network to both carriageways at each Tunnel portal;
- (iv) emergency telephones and communications systems for incident communications and management;
- (v) emergency radio communications; and
- (vi) emergency cabinets within the Tunnels.

16. Operational requirements

16.1 Over-height vehicles

Over-height vehicles must be detected and controlled as identified in section 2.6 of Part D1.

16.2 Dangerous goods

- (a) Vehicles carrying dangerous goods (as defined in the Dangerous Goods Act 1985, the Regulations made under that Act and the Australian Code for Transportation of Dangerous Goods by Road and Rail) must be forbidden from using the Tunnels. All entrances to the Tunnels must be monitored by the Closed Circuit Television System and fixed warning signs must be provided.
- (b) Operators of vehicles carrying dangerous goods must be:
 - (i) warned of the need to divert from using the Tunnels and informed of the alternative route definition by means of advanced fixed warning signs; and
 - (ii) if detected entering the Tunnels, recorded and reported to relevant Authorities.

17. State conduit system

A State communication sub system must be provided:

- (a) in accordance with the requirements of Part H11; and
- (b) for the sole use of the State and its representatives.

Part D - Systems

Part D1 - Operations Management and Control Systems

1. General

1.1 Purpose

- (a) An Operations Management and Control System (**OMCS**) must be implemented to safely and efficiently:
 - (i) operate the Freeway;
 - (ii) monitor and manage traffic and incidents on the Freeway; and
 - (iii) monitor and control plant and equipment.

1.2 Operations Management and Control System

- (a) The OMCS must:
 - (i) provide a high level of automation;
 - (ii) provide timely presentation of relevant information to operators at the Freeway Control Centre;
 - (iii) provide support to the operators via a real-time expert system;
 - (iv) interface with the Asset Management System (**AMS**);
 - (v) include and monitor:
 - A. the Traffic Management and Control System (**TMCS**);
 - B. the Plant Management and Control System (**PMCS**); and
 - C. the Communication System (**CS**);
 - (vi) monitor the periods during which each of the individual devices and systems identified in Part H19 as being monitored by the OMCS, is deemed to be unavailable in accordance with Part H19;
 - (vii) be modular, upgradeable and scalable to:
 - A. minimise impacts during upgrades;
 - B. account for future developments in technology to the extent reasonably possible; and
 - C. allow for expansion to incorporate an additional open road managed motorway consistent in scale and complexity with the West Gate Freeway component of the West Gate Tunnel.
 - (viii) meet the System and Traffic Incident Response Requirements in Part H19; and
 - (ix) be capable of meeting the requirements of the FMS Agreement.

1.3 Operator interface

- (a) The OMCS must:
 - (i) provide a schematic map based graphical user interface;
 - (ii) provide all alarms within two seconds of detection;
 - (iii) display the current status of all devices;
 - (iv) provide automatic operation together with manual over-ride facilities for each system and system element;
 - (v) allow monitoring and control of a single system or multiple systems through operator selection;
 - (vi) provide all alarms and warnings in priority level displayed to ensure visibility to operator and to enforce operator acknowledgement and in a consolidated log (all alarms must be visible and selected alarms audible); and
 - (vii) include response procedures to assist operators with the management of all devices.

1.4 Response procedures

- (a) A comprehensive set of response procedures must be developed for the management of incidents and events and for user training.
- (b) The response procedures must be automatically displayed for the relevant alarm or warning.

1.5 Trainer system

- (a) An OMCS Back Office trainer system must:
 - (i) be provided in the Freeway Control Centre;
 - (ii) subject to section 1.5(a)(vi), provide a user interface substantially identical to that of the OMCS;
 - (iii) provide for training functions;
 - (iv) be capable of simulating all incident and operations managed by the OMCS;
 - (v) provide an environment where modifications to the OMCS can be developed and tested; and
 - (vi) be easily distinguishable from the on-line OMCS.

1.6 Backup system

- (a) An OMCS Back Office backup system must:
 - (i) be provided at a location remote from the Freeway Control Centre;
 - (ii) provide a user interface identical to the primary OMCS;

- (iii) act as a backup OMCS in the event of a failure of the primary OMCS; and
 - (iv) be maintained in an operational state at all times and able to function in OMCS back-up mode within one minute of any failure of the primary OMCS.
- (b) When the OMCS backup system referred to in section 1.6(a) is required to be activated by an unplanned event, the VicRoads Traffic Management Centre must be notified immediately.
 - (c) When planned events require the OMCS backup system to be activated which may impact on the TMCS interface with VicRoads, VicRoads must be notified in advance.

1.7 Report and logging requirements

- (a) The Closed Circuit Television System camera footage must be recorded 24 hours a day, seven days a week and stored at configurable frame rate and resolution. Project Co must store:
 - (i) high quality (at least 25fps) data (whenever an AID Incident is detected or high quality recording is selected by an operator) for 14 days; and
 - (ii) recording quality (at least 3 fps) data for 31 days.
- (b) All detected incidents occurring on the Freeway must be logged in an OMCS event log.
- (c) The event log must:
 - (i) provide a record sufficient for audit purposes and the review of event sequences;
 - (ii) be time stamped; and
 - (iii) ensure that event logs for the previous day are incorporated into an historic log area with access services available for the review of all historic log file data for a minimum preceding period of 13 months and in accordance with VicRoads usual requirements.
- (d) The OMCS must provide comprehensive reporting facilities including full search functionality for the management review of all activity on the OMCS.
- (e) The OMCS must have the capability to generate reports on all stored data for any selectable time interval.
- (f) All TMCS activity must be logged in accordance with VicRoads usual requirements.

1.8 Reliability and Performance Requirements

- (a) The OMCS Back Office must be a High Availability system.
- (b) The failure of any OMCS component of the TMCS, PMCS or CS must not cause the failure of any other OMCS component.
- (c) Subject to section 1.8(b), OMCS components that are not specified to have redundancy are permitted to fail, provided such failure does not prejudice the overall integrity and availability requirement of the OMCS.

- (d) Project Co must demonstrate the availability and system redundancy requirements of this PSR through the conduct of a rigorous failure analysis using an internationally recognised failure analysis methodology.

1.9 Freeway Control Centre

- (a) A Freeway Control Centre must be provided which is suitable for operational and incident management purposes.
- (b) The Freeway Control Centre must:
 - (i) be of a standard not less than that of existing control centres with similar usage in Australia as at the Date of West Gate Tunnel Completion; and
 - (ii) include high standard facilities for at least 20 visitors to observe the operation of the control room from a separate room with full visibility of the control room. The separate room must be capable of acting as a command post in the event of an incident on the Freeway requiring the attendance of Emergency Services.

2. Traffic Management and Control System

2.1 General

- (a) The Traffic Management and Control System (**TMCS**) must:
 - (i) monitor traffic and automatically detect all AID Incidents on the Freeway;
 - (ii) advise, control and manage motorists in the Leased Area in accordance with the FMS Agreement, relevant traffic related plans contemplated under Part F7 and the Business Management Strategy;
 - (iii) interface with the VicRoads Freeway Management System - to ensure coordination of traffic management functions between the Freeway and the road network in accordance with the FMS Agreement;
 - (iv) integrate the subsystems and all associated signs and devices of the subsystems described in sections 2.2 to 2.12; and
 - (v) enable electronic requests to signs and devices, from a range of inputs including from the VicRoads traffic management centre to be prioritised so that multiple requests to the same device can be resolved to the highest priority level in accordance with the FMS Agreement
- (b) The design of the TMCS must have regard to the requirements for traffic diversion and the communication of such traffic diversions to any Users of the Freeway in the event of incidents, scheduled maintenance and the redundancy scenarios set out in Part H8, when locating roadside devices for the subsystems listed in sections 2.3, 2.4, 2.5, 2.7, 2.8, 2.9, 2.10 and 2.11.
- (c) The TMCS must be capable of meeting the requirements of the FMS Agreement.

2.2 Tunnel Information Signing System

- (a) The Tunnel Information Signing System must:
 - (i) display short messages to motorists advising of emergencies, on-road incidents, lane closures and other relevant information;

- (ii) incorporate the ability to automatically default to a set message when a major system failure occurs;
- (iii) consist of signs which:
 - A. are mounted above the carriageway, centrally over each lane, such that the sign is clearly visible from the lane to which the sign applies;
 - B. are positioned at approximately 200 metre intervals along the Tunnel, generally midway between lane use management signs;
 - C. are capable of being individually addressed;
 - D. are capable of displaying operator formed or pre-programmed messages; and
 - E. display the message in white or amber;
- (iv) be capable of meeting the requirements of the FMS Agreement; ; and
- (v) meet the System and Traffic Incident Response Requirements identified in Part H19.

2.3 Lane Use Management System (LUMS)

The Lane Use Management System must:

- (a) consist of combined lane control and variable speed limit signs:
 - (i) mounted above the carriageway, centrally over each lane, such that the sign is clearly visible from the lane to which the sign applies;
 - (ii) mounted on gantries or appropriate support structures which are positioned:
 - A. in accordance with VicRoads usual requirements;
 - B. along the Freeway (including multi-lane ramps only) and ITS Interface Area; and
 - C. along all multi-lane Ramps;
- (b) include LUMS gantries that include cabling for Vehicle to Infrastructure roadside equipment as set out in Part H11;
- (c) include variable speed limit signs along all single lane Ramps ;
- (d) be capable of meeting the requirements of the FMS Agreement;
- (e) meet the System and Traffic Incident Response Requirements identified in Part H19; and
- (f) transmit the operating displays of the lane use management signs in accordance with Part H10 on the gantry preceding each safety camera site to that road safety camera control box at that road safety camera site.

2.4 Variable Message Signing System

- (a) A Variable Message Signing System must be provided which consists of variable message signs.
- (b) Variable message signs must:
 - (i) be appropriately located along the Freeway and ITS Interface Area to notify Users of the Freeway of safety, operational, maintenance and other informational matters;
 - (ii) be capable of meeting the requirements of the FMS Agreement;
 - (iii) meet VicRoads usual requirements;
 - (iv) display VicRoads and Project Co requested traffic information, including VicRoads travel time information in accordance with the FMS Agreement; and
 - (v) meet the System and Traffic Incident Response Requirements identified in Part H19.
- (c) Variable message sign gantries must include cabling for Vehicle to Infrastructure roadside equipment as set out in Part H11.

2.5 Traffic Data System

- (a) A real time Traffic Data System and a daily traffic counting system must be provided.
- (b) The real time Traffic Data System must:
 - (i) have sites located:
 - A. in accordance with VicRoads usual requirements;
 - B. on the Freeway within the Leased Area and ITS Interface Area; and
 - C. on all freeway to freeway ramps, within the Leased Area and ITS Interface Area, at intervals not exceeding 500m;
 - (ii) measure and record in real time at each data station site the:
 - A. average speed of the vehicles in each lane in km/h in each 20 second period;
 - B. total number of vehicles in each lane in each 20 second period; and
 - C. amount of time each lane is occupied at the data collection point during the 20 second period as a percentage of the total time;
 - (iii) transmit the data station site data to the VicRoads FMS Communication Network as and when required by VicRoads, in accordance with section 2.11;
 - (iv) be capable of meeting the requirements of the FMS Agreement;

- (v) meet VicRoads usual requirements; and
- (vi) meet the System and Traffic Incident Response Requirements identified in Part H19.

2.6 Over-height Vehicle System

- (a) An automatic Over-height Vehicle System must be provided.
- (b) The Over-height Vehicle System must:
 - (i) detect over-height vehicles;
 - (ii) classify over-height vehicles into two categories being:
 - A. class 1 over-height, for vehicles from 4.6m to 4.9m in height (inclusive); and
 - B. class 2 over-height, for vehicles greater than 4.9m in height;
 - (iii) warn drivers of over-height vehicles with sufficient time to:
 - A. not exit CityLink via Ramp C2;
 - B. not use Ramp D2, Ramp F2, Ramp P2 or Ramp P4; and
 - C. divert to Ramp W1, Ramp A1 or Ramp H1 if travelling eastbound on the West Gate Freeway;
 - (iv) prevent, where possible, a class 2 over-height vehicle that has been detected on any of the Ramps C2, D2, F2, P2 or P4 from accessing the West Gate Tunnel main carriageway, unless under escort;
 - (v) activate the associated Tunnel portal barriers if class 2 over-height vehicles:
 - A. are not stopped on Ramps C2, D2, F2, P2 or P4; and
 - B. do not divert at Ramp W1, Ramp A1 or Ramp H1 as required;
 - (vi) alert VicRoads TMC if the associated Tunnel portal barriers are activated in accordance with the FMS Agreement;
 - (vii) record and store images of class 2 over-height vehicles:
 - A. approaching the Tunnel (as appropriate); and
 - B. using the Tunnel (as appropriate),

for a reasonable period of time, having regard to any potential enforcement or action against the driver of the vehicle;
 - (viii) record and store the class of the over-height vehicle;
 - (ix) be capable of meeting the requirements of the FMS Agreement; and
 - (x) meet the System and Traffic Incident Response Requirements in Part H19.

- (c) The Works must be designed and constructed to, without limiting section 2.8, at all times allow over-height vehicles to:
 - (i) safely exit the Freeway; and
 - (ii) either:
 - A. exit to an alternative carriageway; or
 - B. have adequate space prior to or after the portal barriers to safely store the vehicle out of traffic lanes or emergency lanes for retrieval at a suitable time.
- (d) Within ten Business Days of any incident where a class 2 over-height vehicle (as described in section 2.6(b)(ii)B) enters the Tunnel, Project Co must:
 - (i) conduct an investigation into the cause of the incident to determine whether it was caused by the failure of the Over-height Vehicle System; and
 - (ii) prepare and submit to the State a report detailing the outcomes of the investigation, and the rectification measures proposed.
- (e) All rectification measures identified in the report described in section 2.6(d) must be:
 - (i) to the reasonable satisfaction of the State; and
 - (ii) undertaken within 30 Business Days of providing the report in section 2.6(d)(ii) to the State, or such longer period agreed to by the State acting reasonably.

2.7 Automatic Incident Detection System

- (a) The Automatic Incident Detection System must:
 - (i) automatically detect AID Incidents within the Leased Area;
 - (ii) alert the CityLink road operations control centre (if separate from the FCC) and VicRoads TMC (separately) to detected AID Incidents within the Leased Area in accordance with the FMS Agreement;
 - (iii) be capable of meeting the requirements of the FMS Agreement; and
 - (iv) meet the System and Traffic Incident Response Requirements identified in Part H19.

2.8 Tunnel Portal Barrier System

- (a) The Tunnel Portal Barrier System must:
 - (i) be able to be controlled from the Freeway Control Centre and also through on-site control panels;
 - (ii) consist of barriers:
 - A. on the approach to each Tunnel portal in order to safely stop vehicles entering the Tunnels in the event of an incident that requires the Tunnel(s) to be closed;

- B. located on the approach side of emergency median crossings near each Tunnel portal so that traffic access to these emergency median crossings is also controlled;
 - C. which are appropriately located to facilitate the requirements of Emergency Services during incidents; and
 - D. allow the passage of emergency and maintenance vehicles;
- (iii) be capable of meeting the requirements of the FMS Agreement; and
 - (iv) meet the System and Traffic Incident Response Requirements identified in Part H19.

2.9 Closed Circuit Television System

- (a) The Closed Circuit Television System must:
 - (i) consist of cameras:
 - A. located to provide continuous overlapping coverage of:
 - 1) traffic lanes, entry, exit and connecting ramps and emergency stopping lanes and bays within the Leased Area and ITS Interface Area;
 - 2) all Tunnel cross passages and pedestrian egress routes;
 - 3) the Veloway (such cameras to be located such that the likelihood of vandalism is minimised as far as reasonably practicable); and
 - 4) the elevated shared use path on Footscray Road between the eastern end of the Veloway and east of Waterfront Way (such cameras to be located such that the likelihood of vandalism is minimised as far as reasonably practicable);
 - B. which provide coverage of the area of the Roads in the immediate vicinity of the approaches to ramp intersections; and
 - C. which comply with VicRoads usual requirements;
 - (ii) not rely on cameras at the ramp metering stop line to provide continuous overlapping coverage;
 - (iii) be capable of meeting the requirements of the FMS Agreement; and
 - (iv) meet the System and Traffic Incident Response Requirements identified in Part H19.

2.10 Operational Redundancy Management System

- (a) The Operational Redundancy Management System must:
 - (i) provide motorists with a comprehensive, integrated and easily understood linemarking and signage arrangement for each of the options identified in Part H8; and

- (ii) be capable of meeting the requirements of the FMS Agreement.

2.11 Integration and Data Transmission

- (a) Project Co is responsible for the connection of the Project Co Communications Network to the VicRoads FMS Communication Network.
- (b) The transmission of TMCS data to VicRoads must be capable of meeting the System and Traffic Incident Response Requirements identified in Part H19 in respect of the transmission of TMCS data.
- (c) TMCS data must include:
 - (i) data collected from the WIMS as set out in section 2.12;
 - (ii) real time simultaneous video from at least 20 Closed Circuit Television System cameras with a transmission quality of at least:
 - A. 704 x 480 pixels;
 - B. 25 frames / sec; and
 - C. Mpeg4 or H264.

2.12 Weigh In Motion System

- (a) A weigh in motion system (WIMs) must be installed on the West Gate Freeway in the vicinity of Cawley Rd.
- (b) The WIMs must provide full coverage of all traffic lanes in both directions of the collector-distributor carriageway and the main carriageway and meet VicRoads usual requirements.
- (c)

2.13 Fibre Connections for Devices

Subject to Part H7, the signs and devices of the subsystems described in sections 2.2 to 2.12 which are:

- (a) located within the Leased Area must be connected to the Project Co Communication Network;
- (b) located within the ITS Interface Area must be connected to the VicRoads FMS Communication Network apart from those expressly identified as Maintained Off-Freeway Facilities in the definition of Maintained Off-Freeway Facilities under this Agreement which must be connected to the Project Co Communication Network; and
- (c) subject to section 2.13(b), located outside the Leased Area must be connected to the VicRoads FMS Communication Network.

3. Plant Management and Control System

3.1 General

The OMCS must include a plant management and control system which must monitor and control mechanical and electrical plant associated with the safe and efficient operation and maintenance of the Tunnel and other relevant components of the Freeway.

3.2 Plant Management and Control System (PMCS)

- (a) The PMCS must:
 - (i) be designed so that no single point of failure causes:
 - A. major performance degradation of one or more elements; or
 - B. total unavailability of operational functions, which would necessitate the closure of a section of the Freeway;
 - (ii) be capable of showing the status, alarms and faults of all plant, equipment and other operating systems;
 - (iii) be supported by secondary or manual systems to allow the Tunnels to be safely operated in a mode involving a higher level of operator control in the event of system failure; and
 - (iv) meet the System and Traffic Incident Response Requirements identified in Part H19.
-

4. Communication System

4.1 General

The OMCS must include a Communication System (**CS**) which must allow VicRoads and Project Co operators to communicate with Users on the Freeway.

4.2 Communication System Sub-systems

- (a) The Communication System must incorporate the following sub-systems:
 - (i) Tunnel radio re-broadcast system;
 - (ii) Tunnel public address system;
 - (iii) Tunnel mobile telephone system;
 - (iv) Emergency Services telephones; and
 - (v) help phone system.

4.3 Tunnel radio re-broadcast system

- (a) The radio re-broadcast system for the Tunnels must:
 - (i) subject to section 4.3(b), re-broadcast in seamless operation and at no cost to the State or users of the Freeway top 20 government and commercial radio stations in Melbourne as identified in the Commercial Radio Australia Ltd Radio Survey results for Melbourne as at 1 January in the current year;
 - (ii) include all Emergency Services radio bands;
 - (iii) provide sufficient signal strength on all stations and Emergency Services radio bands to ensure that all Emergency Services personnel and Users within the Tunnel (including equipment rooms, emergency exit areas and cross passages) are capable of receiving re-broadcasts;

- (iv) enable an operator in the Freeway Control Centre locally or remotely to temporarily interrupt all live radio channels in the Tunnel to transmit live, or pre-recorded messages; and
 - (v) be configured so that each Tunnel can be separately interrupted.
- (b) Project Co must use all reasonable endeavours (not including the payment of licencing fees) to obtain any rights required at law, and any private data key for digital radio transmission (as applicable), necessary to permit Project Co to lawfully re-broadcast any radio station referred to in section 4.3(a)(i). Where despite such endeavours Project Co is unable to secure such rights or private data key for a radio station, the radio re-broadcast system will not be required to re-broadcast that radio station.

4.4 Tunnel Public Address System

- (a) The Tunnel public address system, linked to the Freeway Control Centre, must:
- (i) be audible in all areas throughout the Tunnel environment under all traffic operating conditions;
 - (ii) be able to be operated automatically or manually; and
 - (iii) meet the System and Traffic Incident Response Requirements identified in Part H19.

4.5 Tunnel Mobile Telephone System

- (a) Project Co must at all times:
- (i) provide any telecommunications carriers nominated by the State from time to time (and their agents and contractors) with such access to the Relevant Infrastructure, including the Tunnel, as they reasonably require to Build and Operate any telecommunications cabling or communications equipment (**Telco Infrastructure**) necessary to provide continuity of service within the Tunnel for any mobile telecommunications services (voice and data) provided by the relevant carrier (or any telecommunications service provider utilising the network of the carrier); and
 - (ii) provide each of those telecommunications carriers (and their agents and contractors) with:
 - A. access to and use of equipment rooms or other locations within the Tunnel; and
 - B. electricity at the places referred to in section 4.5(a)(i),

as reasonably required to house the carrier's Telco Infrastructure, and to permit the carrier and its agents and contractors to Build and Operate that Telco Infrastructure for the purposes of ensuring it meets and continues to meet the requirements set out in section 4.5(a)(i), provided that such telecommunication carriers nominated by the State:
 - C. comply with the Site Access and Interface Protocols and any generally applicable safety and security requirements of Project Co;

- D. do not unnecessarily interfere with the carrying out of the Project Activities;
- E. do not damage the Relevant Infrastructure, the Site or property of Project Co or its Associates;
- F. on and from the Date of Tolling Completion, only access the Freeway during a Low Impact Lane Closure, period of planned maintenance or any other planned closure unless otherwise agreed by Project Co acting reasonably; and
- G. where applicable, agree to reimburse Project Co for the costs reasonably required under section 4.5(b).

(b) Project Co may:

- (i) require a carrier to whom it provides access to the Relevant Infrastructure, the Tunnel or any equipment rooms or locations under sections 4.5(a)(i) or 4.5(a)(ii)A to reimburse Project Co for any incremental costs (including any loss of toll revenue) it reasonably incurs as a result of providing such access or making changes to the Relevant Infrastructure or the Tunnel required to provide such access (without the application of any margin, mark up or overhead), but only if, at the time of first providing access to that carrier, Project Co has already provided such access to five or more other carriers; and
- (ii) require any carrier provided with electricity under section 4.5(a)(ii)B (regardless of the number of carriers provided with that service at that time) to reimburse Project Co for that carrier's proportionate share (having regard to the number of carriers having access to that service at the relevant time) of the amount Project Co is charged by a third party utilities provider for the consumption of electricity provided under section 4.5(a)(ii) (without the application of any margin, mark-up or overhead).

(c) In this section 4.5, Build and Operate includes design, install, configure, test, operate, maintain and upgrade.

4.6 Emergency Services telephones

- (a) Emergency telephones and communication systems must:
 - (i) be provided in accordance with the usual requirements of Emergency Services; and
 - (ii) meet the System and Traffic Incident Response Requirements identified in Part H19.

4.7 Help Phone System

- (a) The help phone system must be designed to enable effective communication in the noise levels expected inside the Tunnels and to filter out traffic and other unwanted noise including having an internal adjustment to fine-tune the phones to their surrounding environment;
- (b) Help phones must:
 - (i) be located inside the Tunnels only, at intervals not exceeding 120m; and

- (ii) meet the System and Traffic Incident Response Requirements identified in Part H19.

5. Asset Management System

- (a) The Asset Management System must be operational within 30 days after the West Gate Tunnel Opening Date.
- (b) The Asset Management System must:
 - (i) maintain a record of the current, historical and projected future condition of each Asset within the O&M Site (**Asset Inventory**) including:
 - A. detailed records of the repair or replacement of Assets (including components and sub components) to assist in establishing the Residual Design Life of the Assets (including components and sub components); and
 - B. detailed records of the specific maintenance or protective treatments for any Assets requiring such maintenance or treatments under this Agreement;
 - (ii) maintain a record of the nature, extent, quantity, location, time and type of any maintenance activities performed by, or programmed to be performed by, Project Co under this Agreement;
 - (iii) maintain a record of inspections of the Assets, maintenance responses and the response times and any failure to meet the standards set out in the Code of Maintenance Standards;
 - (iv) include a method of reporting to the State on the performance of any Asset by analysis of the specific condition and Defect information recorded for individual Assets (including components and sub components);
 - (v) incorporate data from the pavement performance models. The pavement performance models must:
 - A. record and monitor key pavement performance parameters during the O&M Phase;
 - B. record and monitor implemented pavement maintenance activities and measured volumes of car traffic and commercial vehicles; and
 - C. enable modelling of future performance and Residual Design Life for alternative maintenance programs and estimates of expected growth in the volume of car traffic and of commercial vehicles;
 - (vi) retain an historical record of all of the data and information. Each data item must be referenced with the date of the record as appropriate to the type of data.
- (c) All data and information within the Asset Management System in respect of Assets within the O&M Site must be made available to the State upon request.
- (d) At Handover, Project Co must provide to the State:

- (i) the Asset Management System; or
- (ii) an operational system which meets the requirements of section 5(b) and has similar functionality to the Asset Management System,

including an operating manual for the Asset Management System or such operational system under section 5(d)(ii) (as applicable) and all data referred to in section 5(b) in an electronic form which is compatible with the system provided under sections 5(a) or 5(b) (as the case may be).

6. Traffic Devices Operating Protocols

- (a) The traffic devices must meet the requirements of the FMS Agreement.

Part D2 – Tolling System

1. General

- (a) The Tolling System must:
 - (i) include a RSS;
 - (ii) include a TBO;
 - (iii) provide for customer interaction channels as defined in section 4 of Part D2; and
 - (iv) provide for external interfaces as defined in section 6 of Part D2.
- (b) Without limiting any provision (including clause 10) of this Agreement, nothing in this Part D2 prevents Project Co from meeting the requirements of sections 1(a)(ii) to 1(a)(iv) through the procurement of the relevant services, systems or functionality from a subcontractor.
- (c) In this Part D2 a reference to the Tolling System having 'the ability' to do any thing includes a reference to that part of the Tolling System having functionality or capability to do that thing, whether or not that function or capability is in fact used by Project Co without the need to acquire additional hardware, software, equipment or material external services.
- (d) The parties acknowledge and agree that, notwithstanding any other provisions of this Part D2, none of:
 - (i) the Performance Metrics set out in section 8; or
 - (ii) the references in this Part D2 to the Tolling System having 'the ability' to do any thing;

requires Project Co to operate the Tolling System in the manner contemplated under section 1(a) or (b) during the O&M Phase.

2. RSS

- (a) The RSS must meet the requirements of Part H12.
- (b) Without limiting anything in Part H12A, the RSS must as a minimum incorporate the following functionality:
 - (i) the ability to detect Vehicles passing through the Detection Zones;
 - (ii) the ability to perform preliminary classification of detected Vehicles into one of the following categories;
 - A. Motor Cycle;
 - B. Car;
 - C. Light Commercial Vehicle;
 - D. Heavy Commercial Vehicle; or
 - E. High Productivity Freight Vehicle;

- (iii) the ability to transact with OBUs passing through Detection Zones;
- (iv) the ability to capture images of the front and rear Licence Plates of Vehicles passing through Detection Zones;
- (v) the ability to integrate all the data relating to each Vehicle detected passing through a Detection Zone;
- (vi) the ability to manage the configuration of all of the sub-components that make up the RSS;
- (vii) the ability to undertake automated monitoring of the operational status of key sub-components that make up the RSS which as at the date of this Agreement, comprise:
 - A. the toll segment controller;
 - B. the toll station management controller;
 - C. the transceivers;
 - D. the vehicle detection and classification sensors and illuminators; and
 - E. the vehicle registration sensors and illuminators,
 - F. with automated raising of alarms and alerts;
- (viii) the ability to exchange data capture with the TBO; and
- (ix) the ability to receive and process Action Lists to identify On Board Units for special handling and communicate appropriately with those On Board Units.

3. Tolling Back Office System (TBO)

3.1 Receive and Process Data from the Roadside System

- (a) The TBO must have the ability to exchange data with the RSS through an interface.
- (b) The interface between the TBO and the RSS must include:
 - (i) the ability to receive from the RSS all records (including image sets) which the RSS has generated in respect of the passage of Vehicles through Detection Zones, in accordance with the applicable Performance Metric;
 - (ii) the ability for the TBO to provide to the RSS all data required by the RSS to complete Tag Transactions as contemplated by section 2.4 of Part H12A (including any status information to be transmitted by the RSS to OBUs, such as black-listed and orange-listed status as advised by Foreign Toll Operators in accordance with the MOU or applicable Australian Standards);
 - (iii) the ability to exchange all other data with the RSS as contemplated by section 2.9 of Part H12A; and
 - (iv) the ability to exchange with the RSS any other information necessary to meet a functional or performance requirement for any other part of the Tolling System defined elsewhere in this Agreement.

- (c) The TBO must have the ability to monitor the integrity and completeness of data received from the RSS, such that any missing or corrupt messages are identified and actioned (including by requesting re-transmittal where possible) by the TBO.
- (d) The TBO must enable all data concerning Trips, which are required to be sent to a Foreign Toll Operator (under the MOU), to be sent to that Foreign Toll Operator in the form, and in accordance with the process and time frames, specified in the MOU.
- (e) The TBO must have the ability to transmit status information to the RSS concerning OBUs in a timely manner and consistently with the requirements of the MOU.
- (f) The TBO must have the ability to, following any period for which it is not functional (an **Outage**), be able to process a backlog of messages and images stored by the RSS at all Toll Points (as contemplated by section 2.10 of Part H12A) in accordance with the applicable Performance Metric.
- (g) The TBO must have the ability to detect and raise an alert for the user where the level of performance in the RSS falls below a pre-determined performance threshold (able to be configured by a user within the TBO) for key tolling related processes which, as at the date of this Agreement, comprise
 - (i) the rate of incomplete OBU transactions;
 - (ii) the rate of non-correlation events;
 - (iii) the OBU to Vehicle event ratio;
 - (iv) the Vehicle to OBU event ratio;
 - (v) the rate of “keep alive” (heart beat) message failure;
 - (vi) the rate of messages received;
 - (vii) the rate of transaction (tolling) messages;
 - (viii) the rate of “no read”, “not valid”, “no process” events from front LPN recognition and optical character recognition process;
 - (ix) the rate of “no read”, “not valid”, “no process” events from rear LPN recognition and optical character recognition process; and
 - (x) the rate of “image not available” events,
 in accordance with the applicable Performance Metric.

3.2 Identify Vehicle

- (a) The TBO must have the ability to identify each Vehicle detected by the RSS as passing through a Detection Zone through the application of a range of identification strategies including:
 - (i) automatic identification of the Vehicle by analysis of images and measured characteristics of the Vehicle, without intervention by a manual operator;
 - (ii) automatic identification of the Vehicle by use of information provided by an OBU being carried by the Vehicle; and

- (iii) permitting the manual identification of the Vehicle by a human operator reviewing the images captured by the RSS for that Vehicle passage.
- (b) For each passage of a Vehicle through a Detection Zone, the TBO must have the ability to:
 - (i) record all Vehicle identification information received from the RSS and determined through processing in the TBO, including the LPN, State of Registration and Vehicle Class and/or issuer of the OBU, class of the OBU and contract serial number of the OBU; and
 - (ii) reliably and accurately apply the Vehicle Identification information determined for the relevant Vehicle in order to send that Vehicle identification information and details of the Trip to the relevant Product Issuer and where relevant in accordance with the relevant Interoperability Process, or to the relevant authority through the Compliance Process.
- (c) The automatic Vehicle identification strategies used by the TBO must be consistent with Best O&M Practices and in any event be suitable for automatically identifying Vehicles passing through a Detection Zone to the extent reasonably practicable (based on the quality of the data and images generated by the RSS in relation to the passage of the relevant Vehicle), and in accordance with the applicable Performance Metric.
- (d) The TBO must have the ability to specify the level of confidence (as a measure of the probability of accuracy) in the identification of each Vehicle identified by an automatic Vehicle identification strategy (**AVI Confidence Level**).
- (e) The TBO must have the ability to prompt a user to manually identify a Vehicle detected in a Detection Zone if the TBO is unable to identify the Vehicle through an automated vehicle identification strategy to an AVI Confidence Level that is able to be configured by a user of the TBO.

3.3 Identify Trip

- (a) The TBO must have the ability to identify and record details of each Trip and in doing so undertake verification checks to confirm that the recorded details of the relevant Trip are logically consistent with:
 - (i) the complete set of tolling transactions received from the RSS for that Vehicle;
 - (ii) the topology of Toll Points on the Freeway; and
 - (iii) the time gaps allowed for a Vehicle to move between the Toll Points
- (b) The TBO must have the ability to have configurable parameters for allowable time gaps for a Vehicle travelling between Toll Points.

3.4 Correctly Tolloed Trip

- (a) The TBO must have the ability to determine the tolls fees and charges which are payable in relation to each Trip.
- (b) The TBO must have the ability to ensure that the amount of tolls, fees and charges determined in respect of each Trip are calculated in accordance with the Toll Calculation Schedule and in accordance with the applicable requirements set out in the Performance Metric.

- (c) In the event that:
 - (i) the Vehicle Class cannot be conclusively determined by the TBO or manual identification for a Trip; or
 - (ii) there is reasonable doubt as to the correct toll or administration charge to be applied for the particular Trip, based on data concerning the Trip collected by the RSS (including tolling events that cannot be incorporated into a Trip),

the TBO must apply for the relevant Trip, the toll and/or administration charges (as applicable) which is the lowest of the options which could apply having regard to the inconclusiveness or reasonable doubt (as applicable).
- (d) Without limiting section 3.4(a) above, the TBO must have the ability to correctly identify Exempt Vehicles and ensure that no tolls or fees are levied in respect of any use of the Freeway by such Exempt Vehicles.
- (e) The TBO must have the ability to implement a change solely to the toll amount attributable to a future Trip by each then-existing category of Vehicle and for each then-existing Tollable Section.

3.5 Send to/manage Retail or Enforcement

- (a) The TBO must have the ability to send sufficient details of each Rated Trip to the entity responsible for payment or procuring payment of the applicable tolls, fees and charges or pursuing enforcement activities in relation to the payment of those tolls, fees and charges (as applicable). Without limiting this requirement:
 - (i) the TBO must have the ability to send sufficient details of all Rated Trips excluding No Arrangement Travel to the relevant Product Issuer in accordance with the applicable timeframes specified in the relevant Performance Metric and in the format required by the MOU; and
 - (ii) the TBO must have the ability to send sufficient details of all Rated Trips relating to No Arrangement Travel to the relevant No Arrangement User in accordance with the applicable law and the timeframe specified in the relevant Performance Metric in relation to No Arrangement Travel ; and
- (b) The TBO must have the ability to retain evidence for each Rated Trip as is reasonably required to substantiate the:
 - (i) identity of the Vehicle undertaking the Trip;
 - (ii) accuracy of the tolls, fees and charges determined in respect of that Trip;
 - (iii) determination of the entity responsible for the payment of the tolls;

and as otherwise required under applicable laws relating to the levying of tolls, fees and changes.
- (c) The TBO must have the ability to maintain the data described in section 3.5(b) for a period of 2 years following the date on which that Trip was completed.

4. Customer Interaction Channels

The TBO must have the ability to interface with multiple readily accessible payment channels in Australia to enable No Arrangement Users to make payments of tolls, fees and charges in relation to No Arrangement Travel.

5. Payments

- (a) The TBO must be compliant with all applicable laws in Australia relating to the making or receipt of payments, including all requirements for the calculation and administration of GST.
- (b) The TBO must have the ability to maintain complete, accurate and auditable records in relation to all financial transactions relating to tolling, including payments of tolls, fees and charges by users of the Freeway and payments made by or to Foreign Toll Operators.

6. External Interfaces

6.1 Foreign Toll Road Operators

The TBO must have the ability to automatically exchange Trip data and other data relating to users or potential users of the Freeway required in relation to the Interoperability Process with Foreign Toll Operators, in accordance with the MOU and the Interoperability Process, and all applicable laws and Roaming Agreements, and otherwise in accordance with the applicable requirements set out in section 9.

6.2 Payment Methods

- (a) The TBO must have the ability to interface with one or more payment processing facilities of a nature generally accepted in businesses providing retail services to enable secure and accurate processing of payments made by No Arrangement Users.
- (b) The TBO must have the ability to store and secure any credit card data of No Arrangement Users in compliance with the standards imposed by the Payment Card Industry Data Security Standard (**PCI DSS Compliance**).

6.3 Mailhouse

The TBO must have the ability to produce and transfer secure data files to an external mailhouse to enable generation of outbound notifications to No Arrangement Users including Compliance Notices.

6.4 Enforcement Agency & Vic Roads

- (a) The TBO must have the ability to provide files in the correct format for the secure exchange of:
 - (i) Vehicle Registered Operator Information with VicRoads; and
 - (ii) information relating to the registered owners of Vehicles registered in Australia but outside of Victoria with the relevant third party service provider.
- (b) The TBO must have the ability to store VicRoads' information and any interstate Vehicle registration authority's information in a manner that meets the privacy and security standards as agreed in writing with VicRoads or the relevant interstate Vehicle registration authority, as the case may be.
- (c) The TBO must have the ability to provide files in the correct format for the secure exchange with an Enforcement Agency of information concerning tolling offences committed under applicable Victorian laws in relation to the Freeway, as reasonably required to support associated infringement.

6.5 Debt Collection Agencies

The TBO must have the ability to provide files in the correct format for the secure exchange with one or more debt collection agencies, which is sufficient to enable transfer (in compliance with applicable privacy legislation and Privacy Codes) of Personal Information concerning users of the Freeway to that debt collection agency, for the purposes of debt recovery actions by that debt collection agency.

7. Requirements for Tolling Completion

The State and Project Co acknowledge and agree that, for the purposes of achieving Tolling Completion in respect of the Tolling Works, Project Co is required to demonstrate that the TBO has the ability to:

- (a) construct Trips such that the relevant Trip is logically consistent with the topology of Toll Points on the Freeway;
- (b) ensure that the amount of tolls, fees and charges in respect of each Trip is calculated in accordance with the Toll Calculation Schedule and allocated in accordance with the Network Tolling Agreement;
- (c) ensure that the amount of tolls, fees and charges for Trips made under a WGT Day Pass or WGT/CML Day Pass are charged in accordance with the Toll Calculation Schedule and allocated in accordance with the Network Tolling Agreement;
- (d) construct Trips which involve travel through at least one Detection Zone on the Freeway such that the relevant Trip is logically consistent with the topology of Toll Points on the Freeway;
- (e) construct Trips which involve travel through at least one Detection Zone on the Freeway and at least one City Link Tollable Section on the Link such that the relevant Trip is logically consistent with the topology of Toll Points on the Freeway and City Link Tollable Sections on the Link and is charged in accordance with the Toll Calculation Schedule and City Link Toll Calculation Schedule;
- (f) ensure that no tolls or fees are levied in respect of any use of the Freeway by Exempt Vehicles (to the extent such Exempt Vehicles are identified to Project Co);
- (g) ensure that placard vehicles travelling on the Bolte Bridge are charged in accordance with the City Link Toll Calculation Schedule and/or a tolling strategy (as contemplated under the City Link Concession Deed) which is the subject of a then current approval of the State.
- (h) No Arrangement Travel is aggregated correctly on the Request for Payment and where required, the Further Request for Payment.

8. Not used

9. Performance Specifications

Table D2.1 –Performance Metrics

| Part D2 Clause Reference | Description of Function | Performance Metric |
|--------------------------|---|--|
| 3.1(b)(i) | Receive all RSS message data and store the data | [Not disclosed]% of valid RSS messages received each month to be stored as a TBO |

| Part D2 Clause Reference | Description of Function | Performance Metric |
|--------------------------|---------------------------------------|--|
| | within the TBO for further processing | database record within 4 hours of RSS detection timestamp |
| 3.1(b)(i) | Availability of the RSS TBO interface | <p>Unscheduled Downtime to be less than or equal to [Not disclosed]% of Available Uptime for each month. Available Uptime is calculated as the number of minutes in the relevant month. Unscheduled Downtime is calculated as the number of minutes during the relevant month for which the TBO is not able to receive or store RSS messages as described in section 3.1(b)(i) (leaving aside the reference to this Performance Metric).</p> |
| 3.1(g) | RSS – TBO Interface Alerts | The TBO must have the ability to raise an alert in respect of the relevant event within 5 minutes of the occurrence of the event. |
| 3.1(f) | Recovery from RSS Backlog | <p>The TBO must have sufficient processing capacity to successfully process any backlog of messages and images stored in respect of Trips occurring during the Outage, within a period following the Outage no longer than twice the period of that Outage, in addition to retaining its ability to process the usual volumes of messages and images. Eg. a 48 hour backlog must be capable of being cleared within 96 hours of the cessation of the Outage, in addition to retaining normal processing throughput. Any Outage of less than 4 hours is considered to be an Outage for a period of 4 hours.</p> |
| 3.2(c) | Automatically Identify Vehicle | From six months after the Date of Tolling Completion, the TBO will automatically identify a Vehicle with the correct Licence Plate Identifier and Licence Plate type at a rate of accuracy greater than [Not disclosed]% per month. |
| 3.4(b) | Calculating Charge Toll Amounts | <p>Trips must be rated in accordance with the Toll Calculation Schedule, so that the correct toll is charged to any relevant user of the Freeway for at least [Not disclosed]% of all Trips undertaken during each month as demonstrated by the performance of the existing tolling system as follows:</p> <p>(a) the number of Trips in a month of which Project Co is aware (whether by customer complaint or otherwise) where tolls have been charged incorrectly; divided by</p> <p>(b) the total number of Trips in that month,</p> |

| Part D2 Clause Reference | Description of Function | Performance Metric |
|--------------------------|---------------------------------------|--|
| 3.5(a) | Trips charged to a responsible entity | <p>multiplied by [Not disclosed]%. For each month, the TBO must be able to perform such that:</p> <p>(a) [Not disclosed]% of Rated Trips for that month (for which all relevant tolling events are Tag Transactions that have been completed successfully, as determined in accordance with section 2.4 of Part H12A, but are not undertaken by No Arrangement Users) are included in an outbound MOU file within 2 Business Days after the date on which the first Tag Transaction involved in that Rated Trip was detected by the RSS;</p> <p>(b) [Not disclosed]% of Rated Trips for that month (for which a Tag Transaction has not been completed successfully, as determined in accordance with section 2.4 of Part H12A, but are not undertaken by No Arrangement Users) must be included in an outbound MOU file within 7 Business Days after the date on which the relevant Vehicle was first detected by the RSS in a Detection Zone as part of that Rated Trip; and</p> <p>(c) [Not disclosed]% of Rated Trips involving No Arrangement Travel must be included on a Compliance Notice which is issued to the No Arrangement User within 2 weeks after the first date of the travel period covered by the Compliance Notice.</p> |
| 6.1 | Processing FTO files | The TBO is required to be able to receive and process all inbound MOU files within 6 hours of receipt. |

Part E - Property and Land

1. Property Access

- (a) Without limiting any other obligation of Project Co under the State Project Documents, Project Co's access to those properties identified in Table H15.1, Table H15.2 and Table H15.3 is subject to and conditional upon compliance with such conditions as are identified in Table H15.1, Table H15.2 and Table H15.3.
- (b) Project Co must do all things necessary to ensure that:
 - (i) subject to sections 1(b)(ii) to 1(b)(v), access, amenity and function is maintained to all properties at all times, including in accordance with any requirements in respect of access, amenity and function identified in Table H15.1, Table H15.2 or Table H15.3;
 - (ii) any reduction to the level of access to and egress from commercial properties during their normal trading hours is avoided where possible;
 - (iii) any reduction in the level of access to egress from or amenity or function of any property is minimised to the duration necessary to carry out the relevant construction related D&C Activities and is subject to a WTMP;
 - (iv) all permanent access to any property affected by the D&C Activities is restored, or relocated as agreed with the relevant property owner, including associated landscaping and restoration works, and temporary access arrangements removed, within seven Business Days of completing the activity requiring the temporary access measures or within such other time as agreed with the relevant property owner. The restored permanent access must be to a condition at least equivalent to that existing prior to the commencement of the relevant D&C Activities; and
 - (v) without limiting Project Co's obligations under this Agreement, the following notice is given to the owner and occupier of a property in respect of which access may be directly affected by construction related D&C Activities:
 - A. at least one month prior to commencement of such activities, an indicative schedule of when access will be restricted and the expected duration; and
 - B. at least ten Business Days prior to the commencement of such activity a notice containing:
 - 1) a full description of the relevant activities;
 - 2) the impact such activities are likely to have on the property including access to the property; and
 - 3) the 24 hour contact phone numbers through which the owner or occupier of the property may obtain further information or register complaints regarding the carrying out of the activities or the effect of the activities on or near the property.

2. Fencing

- (a) Subject to section 2(b):

- (i) the Freeway must be protected by a fence that is designed and constructed to prohibit animals, pedestrians and vehicles from accessing the Freeway at locations other than authorised access points;
 - (ii) boundary fencing consistent with abutting land use must be provided between the Leased Area and abutting land, except where otherwise agreed by the State (acting reasonably); and
 - (iii) subject to section 2(g), a fence must be designed and constructed to meet the requirements of section 2(a)(i) and otherwise in accordance with VicRoads standard Type K between any shared use path and the Freeway traffic lanes or ramps.
- (b) A fence is not required where there is a noise wall which meets the requirements for the fence described in section 2(a), at the relevant location.
- (c) A new boundary fence may be required when:
- (i) there is no existing boundary fence; or
 - (ii) the existing boundary fence does not perform the functions as described in section 2(f).
- (d) Each section of new boundary fencing must:
- (i) be accurately located on the ground by cadastral survey on the Leased Area boundary as defined on the relevant survey plans;
 - (ii) not vary from the Leased Area boundary by more than 50mm, unless otherwise agreed by the State (acting reasonably);
 - (iii) be designed and constructed to reasonably prevent access by vehicles, persons or animals to the Leased Area at locations other than authorised access points;
 - (iv) be in a sound structural condition;
 - (v) be of uniform appearance and be maintained free from graffiti in accordance with the Code of Maintenance Standards, when viewed from:
 - A. the Freeway;
 - B. the shared use path as required by Part H6; or
 - C. areas of easily accessible public land identified in accordance with section 2(e).
 - (vi) provide a reasonable level of privacy to the property where the abutting land use is residential (having regard to the level of privacy enjoyed by the property prior to the commencement of construction of the Works) and be at least equivalent to the fence type specified in Table E.1; and
 - (vii) for private property fencing, be of no lesser standard than any removed fencing or the remainder of the property fencing.
- (e) The areas referred to in section 2(d)(v)C will be determined by a nominated representative of each of the State and Project Co following a joint inspection by both representatives once all fences and noise walls required by this Agreement have been constructed. The areas of easily accessible public land and the relevant fence

and noise walls will be recorded in the O&M Phase Management Plan and maintained in accordance with the Code of Maintenance Standards.

Table E.1 – Boundary Fence Types

| Abutting Land Use | Fence Type |
|-------------------|---|
| Residential | Treated pine paling fence. Minimum height 1.8m. |
| Other | Type K (refer to VicRoads standard drawings). |

- (f) Each section of existing boundary fencing proposed to be used as the permanent boundary fence must:
- (i) be of a condition to reasonably prevent access by vehicles, persons or animals to the Leased Area at locations other than authorised access points;
 - (ii) be in a sound structural condition;
 - (iii) provide a reasonable level of privacy to the property where the abutting land use is residential (having regard to the level of privacy enjoyed by the property prior to the commencement of construction of the Works); and
 - (iv) not vary from the Leased Area boundary by more than 100mm, unless otherwise agreed by the State, acting reasonably.
- (g) Where a concrete safety barrier is required in accordance with this PSR between a shared use path and Freeway traffic lanes, the security fence must be a welded mesh fence erected on top of the concrete safety barrier.
- (h) Project Co must obtain the written consent of each relevant private property owner as to the type and dimensions of the fence to be installed on their property boundary.
- (i) Where Project Co is unable, despite using its best endeavours, to obtain the written consent from any property owner, Project Co must submit a monthly report to the State providing the following information for each such property:
- (i) how Project Co used its best endeavours to obtain the written consent of the property owner;
 - (ii) Project Co's proposed fencing for the property; and
 - (iii) the reasons why written consent has not been obtained.
- (j) Within ten Business Days of receiving the report, the State will in respect of each property included in the report, unless Project Co subsequently receives the written consent of the property owner, either:
- (i) procure the agreement of the property owner to Project Co's proposed fencing; or
 - (ii) direct Project Co to comply with a fencing proposal for the property (which may include such amendments to address issues raised by Project Co or the property owner as the State considers appropriate having regard to the requirements of Table E.1).

3. Demolition and Salvaged Materials

- (a) The following salvaged materials which have been removed from their in-situ state within the Project Area remain the property of the relevant Facility Owner unless otherwise agreed by the Facility Owner:
 - (i) bluestone paving and kerbing;
 - (ii) train rails, sleepers and electrical infrastructure; and
 - (iii) all other salvaged materials, the retention of which constitutes a usual requirement of the Facility Owner.
- (b) Unless otherwise agreed with the Facility Owner, Project Co must, for a minimum period of one month, make the salvaged material available for collection in a manner and location to facilitate easy loading and transport by the Facility Owner.

4. Condition of Land

- (a) Subject to section 4(b), any property affected by the D&C Activities, to the extent that such property does not comprise part of the Freeway or the Returned Works must, following the carrying out and completion of the relevant D&C Activities:
 - (i) be re-instated to at least the standard it was in; and
 - (ii) provide the same functionality that existed,immediately prior to the commencement of the D&C Activities by Project Co on that property, unless otherwise agreed with the relevant property owner.
- (b) Nothing in section 4(a) restricts or affects Project Co's right or obligation to remove infrastructure on, or make improvements to, such land to the extent authorised or required by this Agreement.
- (c) Where Project Co seeks to rely on an agreement with a property owner in accordance with section 4(a), a copy of the agreement with the relevant property owner must be provided to the State and the IREA within 20 Business Days.
- (d) Project Co is to undertake condition surveys of land immediately prior to commencement of any D&C Activities for all areas of land that are included in the Licensed Construction Area but will not be included in the Leased Area. A copy of the surveys are to be provided to the State and any Facility Owner within one month of completion of the survey.

5. Land Availability

5.1 Roads

- (a) Subject to section 5.1(b), before Project Co occupies the West Gate Freeway or any Roads (excluding CityLink) identified in the Land Availability Plans, Project Co must use its best endeavours to agree to a maintenance plan with the Relevant Road Authority for the West Gate Freeway or other relevant area affected by the D&C Activities which identifies:
 - (i) the discrete area in respect of which access is required;
 - (ii) Project Co's maintenance obligations with respect to that discrete area and the assets located on that discrete area;

- (iii) the condition of the assets within and, where appropriate, adjacent to, the discrete area;
 - (iv) the routine inspections to be undertaken to the discrete area;
 - (v) the date from which Project Co will assume maintenance responsibility of the discrete area;
 - (vi) solely in respect of Roads and parts of the West Gate Freeway which are not within the Leased Area, the process by which Project Co will return maintenance responsibilities of the discrete area of the Road or such parts of the West Gate Freeway to the Facility Owner in accordance with this Agreement; and
 - (vii) the names and contact information of a representative from Project Co and the Relevant Road Authority.
- (b) Project Co acknowledges that:
- (i) its occupation in respect of the whole extent of the West Gate Freeway (as defined in Part H22) must commence on; and
 - (ii) Project Co will assume maintenance responsibility of the West Gate Freeway (as defined in Part H22) from,
- the date set out in section 7 of Part H22.
- (c) Where Project Co is unable, despite using its reasonable endeavours, to agree a maintenance plan with the Relevant Road Authority within 20 Business Days of first contacting that Relevant Road Authority, Project Co must submit a report to the State:
- (i) demonstrating how it used its reasonable endeavours to agree a maintenance plan;
 - (ii) detailing Project Co's proposed maintenance plan; and
 - (iii) detailing the reasons known to Project Co why agreement was not able to be reached.
- (d) Within ten Business Days of receiving the report under section 5.1(c) the State must either, unless Project Co and the Relevant Road Authority subsequently agree a maintenance plan:
- (i) procure the agreement of the Relevant Road Authority to Project Co's proposed maintenance plan; or
 - (ii) direct Project Co to comply with a maintenance plan (which may include such amendments to address issues raised by Project Co or the Relevant Road Authority as the State considers appropriate).
- (e) Prior to accessing the West Gate Freeway or relevant discrete area identified under section 5.1(a), a maintenance plan must be in place (either agreed between Project Co and the Relevant Road Authority or as directed by the State) in accordance with section 5.1(d)(ii).
- (f) Project Co must comply with any maintenance plan agreed or directed under this section 5.1.

- (g) Project Co must keep records of all maintenance activities undertaken on the relevant area affected by the D&C Activities and regularly submit them to the Relevant Road Authority and the State, including upon completion of the Works on that area.

5.2 [Not Used]

5.3 [Not Used]

5.4 [Not Used]

5.5 Underground Strata Land

The upper limit of the land identified as "Tunnel Stratum" in the Land Availability Plans related to land above the Tunnels is:

- (a) 15 metres below the natural surface for all privately owned property; and
- (b) 5 metres below the natural surface for all other land as set out in Part H16.

5.6 Temporary Works Areas

No part of the West Gate Tunnel (except works within the stratum Leased Area associated with the Tunnels), the Utility Infrastructure or the Maintained Off-Freeway Facilities may be located on those areas identified as "Temporary Works Areas" on the Land Availability Plans.

6. Survey Plans

Survey plans must be provided by Project Co which must:

- (a) be used by Project Co as the basis for preparation of the Lease Plans, the maintenance plans and road gazettal and authorised access point gazettal plans;
 - (b) be provided to the State for review and approval at least four months prior to the expected Date of West Gate Tunnel Completion, unless otherwise agreed by the State;
 - (c) identify all boundaries (including new boundaries) of different land types;
 - (d) be produced by a licensed surveyor and comply with VicRoads standards;
 - (e) be signed by VicRoads Proper Officer (pursuant to the *Survey Co-ordination Act 1958* (Vic)); and
 - (f) identify any surplus land (e.g. land in the Project Area but not in the Leased Area),
- (Survey Plans).**

7. Leased Area Plans

- (a) Without limiting clause 6 of this Agreement, Project Co must produce a Certified Lease Survey Plan office plan (**OP**) and West Gate Tunnel Lease Plan which must:
 - (i) be provided in Type 2, Type 4 and Type 5 formats as defined in Table E.3; and
 - (ii) be provided in an OP format acceptable to both the State and the Surveyor-General;

- (iii) be produced by a licensed surveyor and provided to the State for review and approval at least two months prior to the expected Date of West Gate Tunnel Completion, unless otherwise agreed by the State; and
- (iv) be provided as a fully dimensioned plan that defines the boundary of the Leased Area in accordance with the guidelines published by the Office of the Surveyor General.

8. Road and Authorised Access Points Gazettal Plans

- (a) Road and authorised access points gazettal plans must be provided to enable:
 - (i) any part of existing Roads that are realigned or relocated outside of the existing road reserve during construction to be declared; and
 - (ii) the Freeway and Roads to be declared.
- (b) The road and authorised access points gazettal plans must:
 - (i) be provided:
 - A. to the State as a condition precedent to West Gate Tunnel Completion, at least two months prior to the expected Date of West Gate Tunnel Completion unless otherwise agreed by the State; and
 - B. in a form agreed by VicRoads;
 - (ii) be produced in consultation with the Relevant Road Authority for each Road and with VicRoads for the Freeway;
 - (iii) be produced in all format types as defined in Table E.3;
 - (iv) be agreed by the State; and
 - (v) identify segments and points for the whole of the boundary of each road declaration which must be either:
 - A. a boundary line within a Survey Plan; or
 - B. a defined point within a Survey Plan.

9. Maintenance Area Plans

- (a) Maintenance Area Plans must be produced to identify the Facility Owner responsible for maintenance in the vicinity of the Maintenance Areas and at Freeway interchanges.
- (b) The Maintenance Area Plans must:
 - (i) be in accordance with clause 6 of this Agreement;
 - (ii) be provided:
 - A. to the State and any relevant Facility Owner (excluding CityLink) as a condition precedent to West Gate Tunnel Completion or Handback of the Returned Facility (as the case may be);

- B. on a photogrammetric base which identifies the completed Works; and
 - C. in Type 2, Type 4 and Type 5 formats as defined in Table E.3;
- (iii) to the extent that the Maintenance Area is a Road, be produced in consultation with the Relevant Road Authority for the relevant Road.

10. Plan Types

Table E.3 – Plan Formats

| Format Type | Definition |
|-------------|---|
| 1 | Electronic .pdf format fully text searchable and selectable |
| 2 | Electronic .pdf format with image selectable |
| 3 | Electronic CAD as described in section 14.2 of Part F6 |
| 4 | Electronic GIS as described in section 14.3 of Part F6 |
| 5 | Printed |

11. Progressive Development

Within 12 months of commencement of the Works, Project Co must produce a schedule showing how the plans identified in sections 6 to 9 will be prepared and progressively developed.

12. GIS Data

- (a) The latest version of the data identified in Table E.4 must be provided to the State at the times identified so as to present an overall consolidated view of the design.
- (b) The GIS data must consist of:
 - (i) a file for each of the elements;
 - (ii) a consolidated merged GIS file (in format of GIS platform) for all elements with attributes that ensure display, colours, symbolisation and printing of elements is consistent with the digital CAD and PDF files provided;
 - (iii) Geographical coordinate set: Geocentric Datum of Australia 1994 (GDA 94);
 - (iv) Map projection: Map Grid of Australia 19914 (MGA 94), Zone 55.

Table E.4 - GIS Data

| Element | When required | Field(s) |
|--------------------|---|------------------|
| Design Data | | |
| Lip of Kerb | Within three months after Financial Close, then every six months up to the Date of West Gate Tunnel | Status of design |
| Lane Lines | | Status of design |

| Element | When required | Field(s) |
|--|--|----------------------|
| Top of batter | Completion and as a condition precedent to Close-Out | Status of design |
| Bottom of batter | | Status of design |
| Edge of shared use paths and footpaths | | Status of design |
| Noise walls, fencing and barriers | | Status of design |
| | | Type ⁽¹⁾ |
| | | Height (m) |
| Retaining walls | | Status of design |
| New buildings | | Status of design |
| All other civil design elements | Status of design | |
| Leased Area | See section 7 | n/a |
| Road and Authorised Access Points Gazettal Plans | See section 8 | n/a |
| Emergency Services Telecommunications Authority (ESTA) Data | | |
| As-Designed Highway Configuration | Six months prior to the expected Date of West Gate Tunnel Completion | To ESTA requirements |
| After Construction Actual Road Geometry | Prior to the expected Date of West Gate Tunnel Completion and when changed thereafter | To ESTA requirements |
| Shared User Pathway(s) | Six months prior to the expected Date of West Gate Tunnel Completion and when changed thereafter | To ESTA requirements |
| ⁽¹⁾ Type must be a number representing a specific form (eg 1=concrete noise wall, 2=chain mesh fence, etc). | | |

- (c) The Design Data in Table E.4 must be delivered to the State on CD or other agreed method.
- (d) The ESTA data in Table E.4 must be:
- (i) delivered to the State and ESTA; and
 - (ii) delivered on CD or other method agreed by ESTA and Project Co.

Part F - Process Requirements

Part F1 - Business Management Strategy, Project Plans and O&M Manuals

1. Introduction

1.1 Business Management Strategy

- (a) The intended purpose of the Business Management Strategy is to describe Project Co's strategies and policies to carry out the Project, including to:
- (i) ensure that the Relevant Infrastructure and the Project Activities comply with the requirements of the State Project Documents; and
 - (ii) demonstrate that Project Co has the understanding, capacity and capability at all times to carry out the Project Activities in accordance with the State Project Documents.
- (b) The Business Management Strategy must not be amended unless:
- (i) it is necessary to do so to comply with the State Project Documents, including as a result of a Modification; or
 - (ii) it is otherwise appropriate to do so,
- and the State agrees to the amendment (such agreement not to be unreasonably withheld).
- (c) The Business Management Strategy must set out the manner in which Project Co will deliver the Project Activities in accordance with this Agreement including in relation to:
- (i) providing a strategic business framework for the control, coordination and integration of all other plans;
 - (ii) Project Co's obligations at Law (including under the Road Management Act);
 - (iii) internal management and operation of Project Co;
 - (iv) an outline of strategic business objectives and key success indicators;
 - (v) how Project Co will commit to a partnership approach with the State;
 - (vi) the approach proposed to ensure that a single point of accountability is maintained throughout the life of the Project between:
 - A. the State; and
 - B. Project Co (on behalf of Project Co and its Subcontractors),including the proposed strategy for managing Subcontractor issues prior to the presentation of those issues to the State;
 - (vii) management of the D&C Subcontractor;
 - (viii) management of OpCo;

- (ix) management of any other Key Subcontractors or Subcontractors;
 - (x) co-ordination of the D&C Subcontractor and OpCo during the D&C Phase, including:
 - A. to ensure that OpCo is involved in relevant design issues affecting whole of life considerations and the ongoing operation and maintenance of the Project; and
 - B. managing the interface between the D&C Subcontractor and OpCo including in relation to West Gate Tunnel Completion;
 - (xi) management of West Gate Tunnel Completion activities generally; and
 - (xii) Project Co's construction performance regime during the D&C Phase.
- (d) The Business Management Strategy must also include the following sections:
- (i) Traffic Management - this section must set out the manner in which Project Co will manage traffic during both the D&C Phase and the O&M Phase in accordance with this Agreement, including in relation to:
 - A. overall lane use strategy;
 - B. management of the interface with Relevant Road Authorities;
 - C. maximising the efficiency of the Freeway and the surrounding road network and:
 - D. maintaining the efficiency of the Freeway and the surrounding road network including:
 - 1) public transport interfaces; and
 - 2) pedestrian and bicycle movements.
 - (ii) Environmental Management – this section must set out the manner in which Project Co will address the Environmental Management Framework, all Environmental Requirements, relevant Approvals, any conditions of those Approvals and the PSR. The Environmental Management section must set out the manner in which Project Co will develop the Environmental Management Strategy to respond to the above requirements and incorporate an Environmental Management System;
 - (iii) Sustainability Management - this section must set out the manner in which Project Co will establish procedures and targets for overall sustainability objectives for the Project;
 - (iv) Quality Management – this section must set out the manner in which Project Co will deliver and operate the Project in accordance with the Standards and this Agreement;
 - (v) Safety Management – this section must set out the manner in which Project Co will safely deliver and operate the Project in accordance with this Agreement;
 - (vi) Communications and Community Engagement – this section must set out the manner in which Project Co will comply with the communications and community engagement requirements of this Agreement, including those

obligations to keep the community informed in relation to the Project and the Project Activities; and

- (vii) Interface Management – this section must set out the manner in which Project Co will manage the interfaces applicable to the delivery of the Project and comply with the interface management requirements of this Agreement, including:
 - A. identification of relevant interfaces and affected stakeholders; and
 - B. the processes by which these interfaces will be managed.

The Business Management Strategy, as at the date of this Agreement, is attached in Part K.

1.2 Project Plans and O&M Manuals

- (a) The intended purposes of the Project Plans and O&M Manuals are to:
 - (i) demonstrate to the State and, where applicable, the IREA how Project Co will meet its obligations under the State Project Documents in relation to the Project Activities;
 - (ii) identify the processes that Project Co will adopt for the management of the D&C Activities and O&M Activities respectively; and
 - (iii) document the management accountabilities for ensuring effective implementation of such processes.
- (b) The parties acknowledge and agree that, except for the Design Management Plan and the Completion and Commissioning Plan, the D&C Phase Project Plans required under this Part F1 of the PSR are not required to address the Tolling Works.
- (c) The preliminary Project Plans are attached in Part K.

1.3 Obligation to prepare, update and submit Project Plans and O&M Manuals

- (a) The Project Plans and O&M Manuals must be:
 - (i) prepared and updated in accordance with this Part F1;
 - (ii) submitted to the State and the IREA for review (except for the Code of Maintenance Standards which must be submitted to the State only for review) in accordance with the Review Procedures;
 - (iii) prepared in accordance with all Environmental Requirements, relevant Approvals and conditions on those Approvals prior to being submitted pursuant to this section 1.3; and
 - (iv) as required by any Approval or Approval condition, submitted to the Victorian Minister for Planning or any other Minister of State in accordance with the Review Procedures.

1.4 Minimum requirements

- (a) The Project Plans and O&M Manuals must, as a minimum:
 - (i) be consistent with the Business Management Strategy; and

- (ii) where there is a relevant preliminary Project Plan, be consistent with, and not limit or reduce the requirements or obligations of Project Co under, the relevant preliminary Project Plan,

except where it is otherwise necessary to comply with the State Project Documents or as otherwise agreed by the State in writing (such agreement not to be unreasonably withheld or delayed);

- (b) Compliance by Project Co with its obligations under this section 1.4 is not evidence of compliance by Project Co with its other obligations under the State Project Documents and does not ensure that Project Co will fulfil all of the requirements of the State Project Documents.

1.5 Periodic updating of Project Plans and O&M Manuals

- (a) Each Project Plan and O&M Manual must be reviewed and, where necessary, updated:
 - (i) throughout the period identified in Column 3 of Table F1.1 and Table F1.2;
 - (ii) subject to sections 1.6 and 1.7, at a frequency no less than the frequency specified for each Project Plan and O&M Manual in Column 4 of Table F1.1 and Table F1.2; and
 - (iii) where otherwise required by this Agreement or where the Project Plans and O&M Manuals do not comply with the State Project Documents.

1.6 Event Updates of Project Plans and O&M Manuals

- (a) Without limiting section 1.5, Project Co must take into account events or circumstances including where:
 - (i) any Modification has been implemented;
 - (ii) a Change in Mandatory Requirements with which Project Co must comply has occurred;
 - (iii) subject to section 2.1(a) of Part A, any relevant change in Best Industry Practice has occurred;
 - (iv) any additional Approvals have been obtained or existing Approvals varied (including to take into account the conditions of any additional Approvals);
 - (v) new phases or stages of design or construction as shown in the D&C Program have commenced;
 - (vi) the current Project Plan or O&M Manual:
 - A. does not adequately address the matters it is intended to address (including on the basis of the results of an audit performed under section 1.9(a)(i)); or
 - B. does not provide for accurate measurement of KPI performance; or
 - (vii) any rectification of a Defect occurs,

and Project Co must review and, where necessary, update the Project Plans and O&M Manuals to the extent that the relevant event or circumstance will materially change the manner in which Project Co carries out the Project Activities.

1.7 Updates of Project Plans and O&M Manuals at the State's Request

- (a) If at any time, Project Co has not updated any Project Plan or O&M Manual in accordance with the requirements of sections 1.5 and 1.6, the State may by notice request that the relevant Project Plan or O&M Manual is amended or updated specifying:
 - (i) the reasons why the Project Plan or O&M Manual is required to be updated; and
 - (ii) the time within which such amendment or updating must occur (which must be reasonable, having regard to the amount of work likely to be required).
- (b) Upon receipt of a notice under section 1.7(a), Project Co must either:
 - (i) provide written advice to the State as to why Project Co considers that the Project Plan or O&M Manual is in accordance with the requirements of this Agreement and does not need updating or amending; or
 - (ii) amend or update the Project Plan or O&M Manual to address the issues identified in the State's notice under section 1.7(a) and:
 - A. submit the amended or updated Project Plan or O&M Manual to the State and the IREA for review (except for the Code of Maintenance Standards which must be submitted to the State only for review) in accordance with the Review Procedures within the time specified in the State's notice under section 1.7(a)(ii); and
 - B. where required by any Approval or Approval condition, submit the amended or updated Project Plan or O&M Manual to the Victorian Minister for Planning or any other Minister of the State, after review by the State and the IREA (where applicable) in accordance with the Review Procedures.

1.8 Notification

Without limiting sections 1.5 and 1.6, Project Co must promptly notify the State and the IREA of any proposed change to a Project Plan or O&M Manual (except for any proposed changes to the Code of Maintenance Standards which must be notified to the State only) and the amended Project Plan or O&M Manual (except for the amended Code of Maintenance Standards which must be submitted to the State only) must be submitted to the State and the IREA within five Business Days of such notice for review in accordance with the Review Procedures.

1.9 Audit and Monitoring

- (a) Project Co must:
 - (i) regularly audit its compliance with each Project Plan and O&M Manual;
 - (ii) invite representatives of the State and the IREA to be present during such audits;

- (iii) assist the IREA to conduct regular (which at a minimum, must be conducted at the frequency as specified in the Environmental Requirements) audits of compliance with the Environmental Management Strategy (during both the D&C Phase and O&M Phase), the CEMP (during the D&C Phase) and the OEMP (during the O&M Phase after the Last DLP);
 - (iv) upon expiration of the term of the IREA, engage a suitably qualified environmental auditor who is independent of Project Co (**Environmental Auditor**) to conduct regular audits of compliance with the OEMP (during the O&M Phase) at least at the frequency as specified in the Environmental Requirements;
 - (v) deliver copies of each audit report prepared in accordance with this section 1.9 to the State and the IREA within ten Business Days of its completion; and
 - (vi) permit the IREA and the State to conduct monitoring and testing of any aspect of the Project Activities to the extent permitted under clause 13.3 of this Agreement.
- (b) Without limiting this section 1.9 or Part F3, Project Co must engage a suitably qualified health and safety auditor who is independent of Project Co and approved by the State (such approval not to be unreasonably withheld) to:
- (i) perform an initial audit of the Health and Safety Management Plan prior to Project Co submitting the Health and Safety Management Plan to the IREA and the State, to ensure that:
 - A. when implemented, the Health and Safety Management Plan will comply with the requirements of the OHS Legislation and this Agreement; and
 - B. relevant control measures are put in place to eliminate and, if this is not reasonably practicable, reduce the health and safety risks associated with the Works and Project Activities, and
 - (ii) perform an audit 3 months after commencement of the Works and further audits at intervals not exceeding 6 months thereafter, to ensure that the Works and Project Activities are being undertaken in compliance with the Health and Safety Management Plan; and
 - (iii) provide a copy of an audit report within 10 Business Days of completion of the audits contemplated in sections 1.9(b)(i) and 1.9(b)(ii) above to Project Co.
- (c) Project Co must, as soon as reasonably practicable:
- (i) develop and provide to the State an action plan to address any non-conformances or opportunities for improvement as identified in the audit reports under section 1.9(b)(iii); and
 - (ii) implement the action plan and provide evidence of closing actions to the satisfaction of the State (acting reasonably).

1.10 Obligation to comply

- (a) The Project Activities must be carried out in accordance with:

- (i) the Business Management Strategy; and
- (ii) the Project Plans and O&M Manuals,

as approved in accordance with this Part F1, unless to do so would result in a breach or non-compliance with a State Project Document, in which case, Project Co:

- (iii) will be entitled to depart from the Business Management Strategy, Project Plans and O&M Manuals (as applicable) to the extent necessary to ensure compliance with the relevant State Project Document; and
 - (iv) must where reasonably practicable to do so, provide prior notification of the departure to the State and where not reasonably practicable to provide prior notification, provide notification of the departure to the State as soon as is reasonably practicable.
- (b) A notification to the State pursuant to section 1.10(a)(iv) must include:
- (i) an explanation as to why the departure was necessary; and
 - (ii) any proposed amendments to the relevant Business Management Strategy, Project Plans and O&M Manuals (as applicable).

2. Project Plans and O&M Manuals

2.1 D&C Phase Project Plans

- (a) The parties acknowledge and agree that the D&C Phase Project Plans only apply during the D&C Phase.
- (b) Project Delivery Management Plan
 - (i) The Project Delivery Management Plan must identify the procedures, processes and management systems that will apply in relation to the D&C Activities. As a minimum, the Project Delivery Management Plan must:
 - A. define an organisational structure for the D&C Subcontractor that identifies the key positions, roles, and the minimum skills and experience required for each position;
 - B. provide a framework for how the Works will be divided and delivered in separate construction zones;
 - C. outline the classification system of Asset types to be used in the Asset Inventory required by section 5(b) of Part D1, and numbering protocol to be used to uniquely identify each Asset;
 - D. describe policies and processes that are proposed to ensure:
 - 1) effective input from OpCo into design and construction so as to optimise implementation of whole of life considerations;
 - 2) effective consultation with Facility Owners to facilitate efficient commencement of construction, progressive completion of Returned Works and Handback of Returned Facilities; and
 - 3) compliance with the requirements of Part F5; and

- E. describe strategies and procedures for:
- 1) managing risk;
 - 2) managing industrial relations;
 - 3) maximising local industry participation;
 - 4) providing a sustained vocational training culture;
 - 5) obtaining all necessary Approvals (other than Key Approvals); and
 - 6) schedule management and cost control.

(c) Design Management Plan

The Design Management Plan must:

- (i) identify how Project Co proposes to ensure that the D&C Subcontractor will comply with the design requirements of this Agreement;
- (ii) provide within the organisational structure of the D&C Subcontractor the key position roles and the minimum skills and experience required for each position in the D&C Subcontractor's design team, including its subcontractors, its design verifiers and the position of Proof Engineer;
- (iii) include a design program to ensure that the Design Documentation is submitted in package sizes and timings that are reasonable and manageable to enable the State, IREA and/or Facility Owner to carry out their obligations and respond within required timeframes in accordance with this Agreement; and
- (iv) include processes and allocation of responsibilities that are proposed to ensure that:
 - A. the Preliminary Design Documentation complies with section 2.2 of Part F5;
 - B. the Certified Design Documentation complies with section 2.4 of Part F5; and
 - C. the documentation, certification and notification of proposed changes to IFC Design Documentation comply with section 2.5 of Part F5.

(d) Construction Management Plans

The Construction Management Plans must:

- (i) provide:
 - A. a framework for delivery of components of the Works within each construction zone including an outline of the Construction Packages required within the zone;
 - B. construction methodologies for each major construction stage and or key activity;

- C. proposed contracting arrangements for key subcontractors and suppliers; and
- D. forecast construction risks and impacts including noise, vibration and other community impacts and proposed mitigation measures;

for each of the construction zones outlined in the Project Delivery Management Plan;

- (ii) include procedures for:
 - A. the monthly updating of the D&C Program and the monthly progress summary required by Part F2; and
 - B. the development and approval of Construction Documentation complying with section 2 of Part F6;
- (iii) include procedures in relation to survey and condition monitoring;
- (iv) include procedures to ensure progressive closure of As-Built Records in accordance with section 11 of Part F6;
- (v) include:
 - A. records management indexing protocols that will enable referencing of all design and construction records back to Construction Packages, and Construction Packages to Asset, work type and location;
 - B. a schedule of Construction Packages which complies with section 1.1 of Part F2; and
 - C. a protocol (which must be agreed with the State) for notification of incidents.

(e) Construction Quality Management Plan

The Construction Quality Management Plan must:

- (i) comply with AS/NZS ISO 9001:2015 Quality Management Systems – Requirements;
- (ii) nominate and define the responsibility and authority of a management representative (**Construction Quality Representative**) who has responsibility for ensuring that the requirements of the Construction Quality Management Plan are implemented and maintained;
- (iii) define the responsibility, authority and reporting function of personnel primarily responsible for quality assurance, including the name, qualification and scope of each Nominated Authority for the release of Hold Points;
- (iv) describe procedures:
 - A. to coordinate and implement quality assurance functions across all Project Plans including:
 - 1) audit and surveillance;

- 2) notification of Hold Points and witness points and release of Hold Points;
 - 3) notification and control of Non-Conformances; and
 - 4) corrective action and process improvement; and
 - B. which define the scope, format and indexing of final As-Built Records and of Design Documentation; and
- (v) in addition to section 2.1(e)(iv), describe procedures that provide:
 - A. the IREA with reasonable notice of:
 - 1) Hold Points prior to their release; and
 - 2) witness points;
 - B. a mechanism for the IREA to nominate additional Hold Points and witness points for inclusion in the ITPs and Construction Procedures at any time during the D&C Activities; and
 - C. access for the IREA to attend the release of any Hold Point or witness point.
- (f) The Nominated Authority must:
 - (i) have knowledge of the Design Documentation relevant to the release of the relevant Hold Point;
 - (ii) not be involved in the day-to-day supervision of the D&C Activities; and
 - (iii) physically inspect the Works and the completed quality assurance documents to verify compliance with the Design Documentation before releasing the Hold Point.
- (g) Workplace Relations Management Plan

The Workplace Relations Management Plan must comply with the Building Code 2013 (Cth) (Building Code).
- (h) Construction Traffic Management Plan

The Construction Traffic Management Plan must:

 - (i) demonstrate how traffic will be managed throughout the D&C Phase to ensure:
 - A. traffic flow is optimised whilst providing a safe environment for all vehicles, cyclists, pedestrians, public transport users and construction personnel, with clear and accurate information for all users; and
 - B. compliance with the Road Management Act, the Worksite Safety Traffic Management Code of Practice under the Road Management Act and this Agreement;

- (ii) include area strategies for proposed traffic management arrangements for each interchange or other location where vehicles, cyclists, pedestrians and public transport may be affected;
- (iii) be supported by traffic data and analysis to demonstrate that traffic impacts will be minimised and showing the proposed staging provisions for:
 - A. temporary traffic and pedestrian routes;
 - B. managing restricted lane widths;
 - C. construction clear zones; and
 - D. property access arrangements;
- (iv) address the Environmental Requirements and the requirements of any relevant Approval;
- (v) include procedures and responsibilities for managing and reporting traffic accidents and incidents;
- (vi) include procedures and responsibilities for:
 - A. preparing, reviewing and updating the WTMPs in accordance with section 7 of Part F6;
 - B. traffic analysis to verify the adequacy of any WTMP;
 - C. meeting all relevant timing and submission requirements for WTMPs;
 - D. development and implementation of communications requirements;
 - E. training and induction to ensure that relevant personnel, including subcontractors, are aware of the requirements of the WTMPs; and
 - F. implementing, auditing and adjusting the WTMPs;
- (vii) show any changes to the proposed arrangements for staging the Works, including Temporary Works, and for managing traffic;
- (viii) provide an overall lane use strategy;
- (ix) detail framework for management of the interface with Relevant Road Authorities;
- (x) maximise the efficiency of the surrounding road network;
- (xi) minimise construction and operations impacts associated with:
 - A. traffic movements in peak periods;
 - B. traffic movements in off-peak periods;
 - C. public transport interfaces;

- D. pedestrian and bicycle movements;
 - E. access to local road network;
 - F. access to properties and facilities;
 - G. access for tenants and users of the Port of Melbourne; and
 - H. parking management for local community and construction workforce.
- (xii) provide a commitment and strategy for maintaining the current capacity (number of lanes during peak periods) during construction on the roads as identified in Part H22.
- (i) Construction Environmental Management Plan
- The CEMP must:
- (i) be consistent with and meet, as a minimum, all the requirements of the Key Approvals, the Environmental Requirements and the State Project Documents;
 - (ii) include procedures and allocation of responsibilities for:
 - A. the preparation and distribution of audit reports prepared in accordance with Part H21 and any other Environmental Requirements, including audit reports assessing compliance with the CEMP;
 - B. the development, implementation, reviewing, updating and monitoring of site or activity specific WEMPs; and
 - C. the management of non-conformances with the CEMP, the Key Approvals or Environmental Requirements, including correction and prevention of such non-conformances;
 - (iii) detail noise and vibration mitigation measurements to be taken during construction;
 - (iv) outline air and water quality measures to be taken during construction;
 - (v) include procedures for managing environmental matters and incidents including:
 - A. notifications to Project Co management, site staff, Subcontractors, EPA, Emergency Services and the State;
 - B. location of on-site information on hazardous materials and dangerous substances; and
 - C. procedures for spill containment;
 - (vi) include the plans required by AQP6, EMP2 (excluding the OEMP) and NVP7 of Part H21;
 - (vii) address the requirements of any relevant Approval;

- (viii) address any specific environment-related conditions of access set out in Part H15;
- (ix) include a site induction and training plan which:
 - A. ensures that all personnel, including subcontractors, are familiar with relevant plans and emergency/incident response procedures; and
 - B. ensures systematic recording of required training and training undertaken;
- (x) be developed and updated to ensure that the role of the Environmental Representative remains the responsibility of Project Co;
- (xi) define the activity to be managed and the potential environmental impacts to be controlled;
- (xii) define responsibilities for developing and implementing the CEMP, verifying compliance with the CEMP before construction commences and monitoring the effectiveness of the CEMP during construction;
- (xiii) incorporate any additional reasonable requirements of any relevant Authorities;
- (xiv) be developed, implemented and maintained in accordance with AS/NZS ISO 14001; and
- (xv) include the Groundwater Management Plan.

(j) Health and Safety Management Plan

The Health and Safety Management Plan must identify how compliance with all legislative and Project specific occupational health and safety requirements will be achieved during the execution of the Project Activities. The Health and Safety Management Plan must comply with the Building Code and must address:

- (i) its approach to protection of people and property;
- (ii) health and safety policy;
- (iii) approach to safety and safety management including hazard identification and risk analysis and assessment;
- (iv) induction of all workers before they commence on Site and task specific induction and tool box processes;
- (v) work processes for safe systems of work;
- (vi) safe work method statements;
- (vii) safety risk management process;
- (viii) health and safety training and competency requirements;
- (ix) safety reporting and statistics;
- (x) accident and incident reporting, management and investigation including corrective actions;

- (xi) a safety monitoring and auditing program;
- (xii) safe management of plant and equipment;
- (xiii) vehicle safety and compliance with the requirements of the *Heavy Vehicle National Law Application Act 2013*;
- (xiv) the resourcing, roles and responsibilities required to implement the Health and Safety Management Plan, including, an OHS manager and an adequate number of health and safety professionals, employed full time, and with appropriate experience and competence; and
- (xv) the requirement for a safety culture program to foster a proactive safety culture including:
 - A. requirements for attendance and participation in safety strategy and culture workshops convened in respect of the Project; and
 - B. identification of how the culture will be developed and maintained, lead indicators, planned strategic activities, role-specific safety accountabilities and deliverables from senior leaders.

(k) Construction Communications and Community Engagement Plan

The Construction Communications and Community Engagement Plan must identify how motorists, local communities and other stakeholders will be kept informed of planned D&C Activities (including road closures and changes in traffic conditions) and of progress of the D&C Activities. The Construction Communications and Community Engagement Plan must also:

- (i) comply with all requirements in Part G and Part H21 (in relation to communications and community engagement during the D&C Phase);
- (ii) provide for the appointment of a communications and community relations representative; and
- (iii) include procedures to:
 - A. record, monitor and report on enquiries concerning D&C Activities;
 - B. build and maintain effective relationships with local communities;
 - C. record, monitor and report on public enquiries;
 - D. respond in a timely and sensitive manner to matters which are of interest or concern to the community including:
 - 1) Project design;
 - 2) significant milestones;
 - 3) changed traffic conditions; and
 - 4) construction activities;

- E. develop protocols for media management and liaise with the State on key milestones and opportunities for Project promotion related to the D&C Activities;
- F. address instances where the D&C Activities result in material impacts on the transport network;
- G. address incidents occurring in the Construction Areas which impact on the transport network operations;
- H. deal with complaint resolution including escalation beyond Project Co;
- I. organise Site visits and opening events; and
- J. promote the Project and its benefits.

(l) Emergency Risk Management Plan

- (i) An Emergency Risk Management Plan must be prepared on the basis that the Freeway (or part thereof) is to be declared as an 'essential service' under the *Emergency Management Act 2013 (Vic)*, as amended from time to time.
- (ii) The Emergency Risk Management Plan must include:
 - A. the overall approach to the response and management of emergency scenarios, incidents and evacuation planning, including the management and coordination of notifiable incidents as defined under the OHS Legislation;
 - B. requirements for participation in an emergency response and incident management workshop with the State; and
 - C. the strategies, processes, procedures and responses to be implemented in accordance with the requirements of and prepared in accordance with the *Emergency Management Act 2013 (Vic)* and the *Emergency Management (Critical Infrastructure Resilience) Regulations 2015 (Vic)*, as amended from time to time.

(m) Completion and Commissioning Plan

The Completion and Commissioning Plan must include:

- (i) planned dates for progressive completion and Handback of Returned Works;
- (ii) processes and systems that will be used to monitor all completion and commissioning activities, including closure of Defects;
- (iii) a detailed scope of completion and commissioning tests which must be carried out prior to the Date of West Gate Tunnel Completion, Tolling Completion and Close-Out respectively and, where applicable, the sequence of such tests;
- (iv) any Approvals or acceptances required from relevant Authorities, including Emergency Services; and

- (v) the requirements for safety audits.
- (n) Interface Management Plan
- (i) identify interfaces and affected stakeholders;
 - (ii) outline how Project Co proposes to:
 - A. engage with affected stakeholders; and
 - B. actively manage these interfaces in partnership with the State;
 - (iii) address, at a minimum, the following interfaces:
 - A. during the D&C Phase:
 - 1) working within an urbanised corridor;
 - 2) West Gate Freeway, CityLink, Port of Melbourne access roads and M80;
 - 3) urban road management and local traffic (VicRoads and council operated roads);
 - 4) rail interface works and other potential impacts on public transport;
 - 5) construction and commissioning of the toll collection system;
 - 6) with OpCo, VicRoads and internal interfaces;
 - 7) with the Port Lessor, Port Lessee and Port Manager, their tenants and users of the Port of Melbourne; and
 - 8) Utility Infrastructure and Utilities.
- (o) Landscape Management Plan
- The Landscape Management Plan must identify how Project Co proposes to:
- (i) develop and submit the Landscaping Plan for review by the State and the IREA, including the timing for submission; and
 - (ii) otherwise comply with the requirements of Part H21 in respect of the Landscaping Plan.

Table F1.1 - Submission and updating requirements for Project Plans and O&M Manuals - D&C Phase

| Name of Project Plan or O&M Manual | Time for initial Submission | Period during which Project Co must provide updates | Update or Revision Interval |
|--|---|---|---|
| D&C PHASE PROJECT PLANS | | | |
| Project Delivery Management Plan | Within 30 Business Days after Financial Close | From time for initial submission until the Last DLP | Six monthly |
| Design Management Plan | Within 30 Business Days after Financial Close | From time for initial submission until the Last DLP | Six monthly |
| Construction Management Plans | Within 30 Business Days after Financial Close | From time for initial submission until the Last DLP | Six monthly |
| Construction Quality Management Plan | Within 30 Business Days after Financial Close | From time for initial submission until the Last DLP | Six monthly |
| Workplace Relations Management Plan | On or before Financial Close | From time for initial submission until the Last DLP | Six monthly |
| Construction Traffic Management Plan | Within 40 Business Days after Financial Close | From time for initial submission until the Last DLP | Six monthly |
| Construction Environmental Management Plan | Within 40 Business Days after Financial Close | From time for initial submission until the Last DLP | Six monthly |
| Health and Safety Management Plan | Within 40 Business Days after Financial Close | From time for initial submission until the Last DLP | Six monthly |
| Emergency Risk Management Plan | Within 40 Business Days after Financial Close | From time for initial submission and thereafter in accordance with the Emergency Management Act | In accordance with the Emergency Management Act |

| Name of Project Plan or O&M Manual | Time for initial Submission | Period during which Project Co must provide updates | Update or Revision Interval |
|---|--|---|-----------------------------|
| Construction Communications and Community Engagement Plan | Prior to commencement of construction | From time for initial submission until the Last DLP | Six monthly |
| Completion and Commissioning Plan | At least 6 months prior to the Date of West Gate Tunnel Completion | From time for initial submission until the Last DLP | Six monthly |
| Interface Management Plan | Within 40 Business Days after Financial Close | From time for initial submission until the Last DLP | Six monthly |
| Landscape Management Plan | Within 80 Business Days after Financial Close | From time for initial submission until the Last DLP | Six monthly |
| Landscaping Plan | As detailed in the Landscape Management Plan | N/A | N/A |

2.2 O&M Phase Project Plans:

(a) O&M Phase Management Plan

The O&M Phase Management Plan must:

- (i) set out the approach that Project Co will apply to deliver the O&M Activities, including:
 - A. a statement of objectives;
 - B. the components of the O&M Activities;
 - C. how the components of the O&M Activities will be delivered, including a summary of OpCo's organisational structure applicable to the O&M Activities;
 - D. the management of interfaces including with OpCo, VicRoads, local councils and Utilities;
 - E. how the quality of O&M Activities will be managed; and
 - F. how the delivery of the O&M Activities will be periodically reviewed.

- G. identifying all Material Subcontracts, as at the date of the relevant plan;
- H. set out the manner by which the Project Plans (described in this section 2.2) and O&M Manuals will be reviewed and updated as contemplated under sections 1.5 to 1.7; and
- I. a protocol agreed with the State for notification of Incidents, Major Incidents, and incidents attended.

(b) Performance Management Plan

The Performance Management Plan must:

- (i) include detailed descriptions of the KPIs and data source for each KPI, and responsibilities for ensuring the accuracy and currency of such data;
- (ii) set out the KPI measurement and reporting procedures including the methodology and frequency of measurement, and the detail to be included in KPI reports; and
- (iii) set out the KPI auditing requirements.

(c) Operations Workplace Relations Management Plan

The Operations Workplace Relations Management Plan must be consistent with the proposed workplace relations agreements to be entered into by Project Co in relation to the O&M Activities.

(d) Road Management Plan

The Road Management Plan must:

- (i) subject to section 2.2(d)(iv), identify the Standards and procedures to be applied in relation to the maintenance of the Freeway, Roads (to the extent relevant), roadside furniture, existing and new vegetation and other landscape features;
- (ii) identify intervention levels for repair and maintenance activities;
- (iii) be developed in accordance with the *Road Management Act 2004* and the Code of Practice for Road Management Plans; and
- (iv) be based on standards at least equivalent to the standards for freeways at road maintenance category 1 in VicRoads Road Management Plan.

(e) Operations Traffic Management Plan

The Operations Traffic Management Plan must, in respect of the O&M Phase:

- (i) identify the minimum operational system availability requirement of the OMCS systems before the Tunnels would be required to be closed for safety reasons if appropriate mitigation measures cannot be implemented;
- (ii) identify how traffic will be managed with the object of optimising traffic flow whilst providing a safe environment for all vehicles, cyclists, pedestrians and public transport users, with clear and accurate information for all users;

- (iii) be compliant with the *Road Management Act* and the Regulations made under that Act, the Worksite Safety Traffic Management Code of Practice and this Agreement;
- (iv) identify the manner in which Project Co will facilitate effective operational interfaces with VicRoads and other Relevant Road Authorities;
- (v) include principles to ensure appropriate training and induction of relevant personnel, including Subcontractors; and
- (vi) identify how standing DTMPs, MTMPs and ITMPs will be developed, including in respect of such plans:
 - A. procedures for review, update and approval;
 - B. how traffic analysis is to be undertaken to verify adequacy;
 - C. how appropriate communications procedures will be included; and
 - D. procedures for audit and adjustment;
 and how separate plans will be developed to accommodate specific events or scenarios;
- (vii) identify the manner in which Project Co will comply with the Emergency Management Act (Vic) 2013; and
- (viii) identify the manner in which Project Co will allow over-height vehicles to:
 - A. safely exit the Freeway; and
 - B. either:
 - 1) exit to an alternative carriageway; or
 - 2) be safely stored out of traffic lanes or emergency lanes for retrieval at a suitable time.

(f) Operations Environmental Management Plan

The OEMP must address the Leased Area and Maintained Off-Freeway Facilities and must:

- (i) be consistent with and set out the manner in which Project Co will meet all Environmental Requirements, relevant Approvals and conditions on those Approvals;
- (ii) outline the regulatory framework under which the O&M Activities will be undertaken, including a list of any required Approvals;
- (iii) identify the process for undertaking and documenting risk assessments relating to sensitive areas described in the Environmental Requirements and any relevant Approval;
- (iv) identify processes (consistent with all Environmental Requirements) for the development, implementation and monitoring of site or activity specific environment management plans, including:

- A. managing environmental incidents;
 - B. monitoring and managing air quality;
 - C. spill containment;
 - D. the preparation and distribution of audit reports including audit reports assessing compliance with the OEMP;
 - E. notifications to Project Co management, site staff, Subcontractors, the EPA, Emergency Services and the State (as applicable); and
 - F. site induction and training to ensure that all personnel, including Subcontractors, are familiar with relevant plans and emergency/incident response procedures; and
- (v) be developed, implemented and maintained in accordance with AS/NZS ISO 14001.

(g) Operations Health and Safety Management Plan

The Operations Health and Safety Management Plan must set out Project Co's approach to managing legislative and project specific OH&S requirements during the O&M Phase and must:

- (i) address hazard identification and risk analysis;
- (ii) address processes for safe systems of work;
- (iii) address accident and incident reporting including corrective actions; and
- (iv) address site induction and training, including:
 - A. familiarising all personnel, including Subcontractors, with relevant plans and emergency/incident response procedures; and
 - B. systematic recording of required training and training undertaken.

(h) Operations Communications and Community Engagement Plan

The Operations Communications and Community Engagement Plan must identify how consultation with local communities and other stakeholders in relation to the O&M Activities will be undertaken and must:

- (i) comply with the requirements of Part G;
- (ii) address the manner in which User calls are to be responded to; and
- (iii) identify processes to:
 - A. record, monitor and report on public enquiries;
 - B. build and maintain effective relationships with local communities;
 - C. manage media communications including liaison with the State;

- D. respond to community issues in a timely and sensitive manner;
and
- E. resolve complaints including escalation procedures.

(i) Operations Quality Management Plan

The Operations Quality Management Plan must:

- (i) comply with AS/NZS ISO 9001:2015 Quality Management Systems – Requirements;
- (ii) nominate and define the responsibility and authority of a management representative who has responsibility for ensuring that the requirements of the Operations Quality Management Plan are implemented and maintained; and
- (iii) provide for implementation and coordination of quality assurance functions across all Project Plans including, in respect of:
 - A. audit and surveillance; and
 - B. corrective action and process improvement.

(j) Emergency Risk Management Plan

The Emergency Risk Management Plan (as required by section 2.1(l)) must be updated if any part of the Freeway is declared as an 'essential service' under the *Emergency Management Act 2013 (Vic)* and must otherwise be amended accordance with the *Emergency Management Act 2013 (Vic)* and the *Emergency Management (Critical Infrastructure Resilience) Regulations 2015 (Vic)*, as amended from time to time.

(k) Handover Plan

The Handover Plan must provide the overall strategy for Handover of the Relevant Infrastructure on the Expiry Date in accordance with this Agreement and must include details of how the following issues are to be dealt with:

- (i) operator training;
- (ii) demonstration and documentation of the Residual Design Life of the Assets;
- (iii) the transfer of all required intellectual property, records and documentation in accordance with this Agreement; and
- (iv) the disclosure of any liabilities or any reasonably foreseeable potential liabilities remaining at Handover.

2.3 O&M Manuals

The O&M Manuals must include:

- (a) an Asset management manual including:
 - (i) principles for condition monitoring of Assets;
 - (ii) an index of As-Built Records; and

- (iii) principles for accessing and updating As-Built Records.
- (b) a Maintenance Manual which meets the System and Traffic Incident Response Requirements in Part H19 and includes:
 - (i) maintenance procedures, including maintenance recording procedures and safe operating procedures for plant and equipment; and
 - (ii) a schedule of plant and equipment;
- (c) a Freeway Operations Manual, including:
 - (i) the process for setting, reviewing and updating standard operating procedures and protocols for the operation of the Freeway and the Maintained Off-Freeway Facilities in accordance with this Agreement including:
 - A. identification of agreed communication protocols with VicRoads, the State and relevant Emergency Services setting out the location of contact details and arrangements for the response to any request for assistance from VicRoads or Emergency Services, including under the provisions of the Emergency Management Act 2013 (Vic) and the State Emergency Response Plan (as defined in that Act); and
 - B. the location of manuals for the key operating systems and equipment; and
 - (ii) processes for setting, reviewing and updating incident management procedures for all types of incidents including vehicle breakdowns, plant failures, electrical supply failures, traffic accidents, fires, spillages, vehicles out of fuel, damage to the Freeway or any part of the Maintained Off-Freeway Facilities, injury to persons and other reports received; and
- (d) the Code of Maintenance Standards.

Table F1.2 - Submission and updating requirements for Project Plans and O&M Manuals - O&M Phase

| Name of Project Plan or O&M Manual | Time for initial Submission | Period during which Project Co must provide updates | Update or Revision Interval |
|------------------------------------|---|--|-----------------------------|
| O&M PHASE PROJECT PLANS | | | |
| O&M Phase Management Plan | At least 120 Business Days prior to, and as a condition precedent to, West Gate Tunnel Completion | From time for initial submission until completion of the O&M Phase | Annually |
| Performance Management Plan | At least 120 Business Days prior to, and as a condition precedent to, | From time for initial submission until completion of the O&M Phase | Annually |

| Name of Project Plan or O&M Manual | Time for initial Submission | Period during which Project Co must provide updates | Update or Revision Interval |
|---|---|--|-----------------------------|
| | West Gate Tunnel Completion | | |
| Operations Workplace Relations Management Plan | At least 120 Business Days prior to, and as a condition precedent to, West Gate Tunnel Completion | From time for initial submission until completion of the O&M Phase | Annually |
| Road Management Plan | At least 120 Business Days prior to, and as a precondition to, West Gate Tunnel Completion | From time for initial submission until completion of the O&M Phase | Annually |
| Operations Traffic Management Plan | At least 120 Business Days prior to, and as a precondition to, West Gate Tunnel Completion | From time for initial submission until completion of the O&M Phase | Annually |
| Operations Environmental Management Plan | At least 120 Business Days prior to, and as a precondition to, West Gate Tunnel Completion | From time for initial submission until completion of the O&M Phase | Annually |
| Operations Health and Safety Management Plan | At least 120 Business Days prior to, and as a precondition to, West Gate Tunnel Completion | From time for initial submission until completion of the O&M Phase | Annually |
| Operations Communications and Community Engagement Plan | At least 120 Business Days prior to, and as a precondition to, West Gate Tunnel Completion | From time for initial submission until completion of the O&M Phase | Annually |

| Name of Project Plan or O&M Manual | Time for initial Submission | Period during which Project Co must provide updates | Update or Revision Interval |
|------------------------------------|--|--|-----------------------------|
| Operations Quality Management Plan | At least 120 Business Days prior to, and as a precondition to, West Gate Tunnel Completion | From time for initial submission until completion of the O&M Phase | Annually |
| Handover Plan | At least 3 years prior to Handover | Until completion of the O&M Phase | Annually |
| O&M MANUALS | | | |
| O&M Manuals | At least 120 Business Days prior to, and as a precondition to, West Gate Tunnel Completion | From time for initial submission until completion of the O&M Phase | Annually |

Part F2 - D&C Program

1. D&C Program

1.1 Construction Packages

- (a) The Works must be subdivided into construction zones and Construction Packages that will be used as a basis for:
 - (i) the D&C Program;
 - (ii) packaging of Construction Documentation and construction records; and
 - (iii) progressive closure of As-Built Records.
- (b) The Project Delivery Management Plan must define a standard set of work types and a consistent method for describing location that will be used to identify each Construction Package.
- (c) There must be separate Construction Packages for each construction zone for the following:
 - (i) Preparatory Works;
 - (ii) Returned Works;
 - (iii) manufactured precast components or fabricated components;
 - (iv) Temporary Works;
 - (v) significant items of plant or equipment;
 - (vi) tolling civil works or components thereof;
 - (vii) ITS devices and cabling; and
 - (viii) Pre-Agreed Modifications or components thereof (if applicable).

1.2 D&C Program Requirements

- (a) The D&C Program must:
 - (i) be in the form of a critical path network set out to a time scale of calendar weeks and showing key dates, float, logic links and constraints;
 - (ii) contain in the order of 2,000 to 3,000 activities unless otherwise agreed by the IREA;
 - (iii) be underpinned by a suite of sub-programs (as sections of the main program) including a sub-program for West Gate Freeway and City Interchange and Rail Interface Works, which provide a greater level of detail of the D&C Activities than the main program;
 - (iv) not include activities, constraints or programming methodologies which have the effect of constraining the program from reacting dynamically to change;
 - (v) identify the date of commencement of construction of the Works;

- (vi) be in the form of, and consistent with, the Bid D&C Program;
- (vii) identify all Key Approvals and other Approvals that are on each critical path and the dates by which such approvals are required, and make due allowance for the State or any other Authority responsible for providing the approvals to review Project Co's application and conduct any review or process necessary to determine the application in accordance with the State's rights under this Agreement in respect of the relevant Approval (including any amendment and resubmission of the application which may be undertaken or requested by Project Co);
- (viii) identify each Construction Package and, for each major activity required to complete each Construction Package, show:
 - A. activity dependencies;
 - B. the activity duration;
 - C. the earliest start and finish dates; and
 - D. the latest start and finish dates required to avoid a delay to the Date of West Gate Tunnel Completion;
- (ix) identify significant items of plant and equipment and the labour resources required for each activity and any constraints imposed on the scheduling of activities by the availability of such resources;
- (x) set out the sequence in which, and the times by which, the Preliminary Design Documentation and Certified Design Documentation for each Construction Package is to be submitted to the State and the IREA;
- (xi) make due allowance for any proposed Certified Design Documentation relating to Design Documentation prepared prior to Financial Close to be submitted to the reviewing parties in an orderly manner post-Financial Close;
- (xii) make due allowance for the Design Documentation to be given to the IREA within the time:
 - A. which will enable the IREA to conduct a general overview and reasonable checking of the Design Documentation; and
 - B. required by this Agreement, and for any amendment and resubmission of the Design Documentation and any other activities or matters which are required to be accommodated by this Agreement;
- (xiii) identify the dates or periods for the review or comment on the Design Documentation by the State, the Facility Owners and the IREA in accordance with this Agreement;
- (xiv) clearly demonstrate the actual and then current critical path to achieve each of West Gate Tunnel Completion and Tolling Completion;
- (xv) allow adequate time for the preparation, and review in accordance with the Review Procedures, of all Project Plans and O&M Manuals;
- (xvi) accommodate the impact of the proposed construction on the surrounding environment and community including local traffic implications and an

outline of the proposals to deal with those implications, including compliance with the Construction Traffic Management Plan and the Construction Environmental Management Plan;

- (xvii) identify the proposed commissioning tests for the Works and a program for the timing of those commissioning tests;
- (xviii) identify the anticipated Date of Handback of Returned Works to the relevant Facility Owners;
- (xix) identify any other matters which may have a bearing on the time required to complete the D&C Activities in accordance with this Agreement;
- (xx) identify the award of any Material Subcontract or other agreement which is significant to the performance of the D&C Activities;
- (xxi) include such other information as the State and the IREA may reasonably require; and
- (xxii) be provided in Microsoft Project format or other format agreed by the State and the IREA.

Part F3 - Road Safety Audits

1. Road Safety Audits

Road safety audits must be conducted in accordance with the AUSTRROADS Guide to Road Safety by a suitably qualified road safety auditor who is independent of Project Co, the D&C Subcontractor and OpCo:

- (a) during the design of the Works, including as a minimum, at the following stages as set out in Part 6 of the AUSTRROADS Guide to Road Safety:
 - (i) feasibility stage;
 - (ii) once the preliminary design stage has been developed;
 - (iii) once the detailed design stage is complete; and
 - (iv) at the pre-opening stage;
- (b) as required for traffic management activities;
- (c) prior to opening any part of the Relevant Infrastructure to traffic; and
- (d) immediately following the opening of any parts of the Relevant Infrastructure to traffic.

2. Road Safety Audit Reports

- (a) All corrective actions identified in a road safety audit report must be promptly addressed.
- (b) The Traffic Representative appointed in accordance with section 7.1 of Part F6 must be responsible for addressing the recommendations of road safety audits.
- (c) All corrective actions which are contrary to any road safety auditor's recommendations must be approved by the Traffic Representative.
- (d) Copies of records of all corrective actions implemented, and identifying the Traffic Representative who approved the corrective action, must be promptly provided to the State and the IREA after each road safety audit.

Part F4 - Site and Survey

1. Investigation, Condition Survey and Monitoring

All site investigations, and all property, land, ground and infrastructure condition surveys must be undertaken as required for the performance of the D&C Activities in accordance with this Agreement.

2. Condition surveys

- (a) Condition surveys must be:
 - (i) subject to section 2(b), undertaken to accurately record the condition of existing ground and infrastructure prior to the commencement of the D&C Activities on the relevant ground and infrastructure;
 - (ii) undertaken with the prior approval of the relevant property owner and/or occupier, for all property, land, ground and infrastructure that are reasonably accessible and within 50m of the Project Activities, or other property, land, ground and infrastructure that may be affected by the Project Activities unless otherwise agreed by the State; and
 - (iii) forwarded to the owner and occupier of the property, land, ground and infrastructure, the State and the IREA within four weeks of the condition survey being undertaken; and
 - (iv) carried out by independent qualified assessors.
 - (b) Where Project Co is unable, despite using its best endeavours, to obtain the approval of the relevant property owner and/or occupier in order to undertake a condition survey required under section 2(a)(ii), Project Co:
 - (i) must submit a report to the State and the IREA providing the following information for each property, land ground or infrastructure for which the approval of the property owner and/or occupier has not been obtained:
 - A. how Project Co used its best endeavours to obtain the approval of the property owner and/or occupier; and
 - B. the reasons why approval has not been able to be obtained; and
 - (ii) may commence the D&C Activities not less than ten Business Days after the submission of a report in accordance with section 2(b)(i).
 - (c) Where Project Co has commenced D&C Activities in accordance with section 2(b)(ii), Project Co must continue to use its best endeavours to obtain the approval of the relevant property owner and/or occupier and undertake the condition survey required under section 2(a)(ii).
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3. Monitoring

- (a) Prior to commencing any part of the Project Activities, a monitoring strategy must be developed and implemented.
- (b) The monitoring strategy under section 3(a) must include:

- (i) any monitoring requirements identified in the Environmental Requirements and the CEMP;
- (ii) any usual requirements of relevant Authorities and Facility Owners;
- (iii) all necessary monitoring devices to monitor the actual effects of performance of the Project Activities where the ground conditions or infrastructure are expected to be affected by the performance of the Project Activities; and
- (iv) the establishment of the baseline conditions.

4. Site Reinstatement

- (a) Construction Areas, and any other land accessed for the purposes of carrying out any part of the Works, must be progressively reinstated (subject to the carrying out of the Works) as each part of the Works is completed, as a condition precedent to Handback or West Gate Tunnel Completion (as applicable).
- (b) Subject to section 4(a) of Part E all temporary areas and other land accessed or used temporarily for the purpose of the D&C Activities, including storage and site facilities, must be reinstated to a condition at least equivalent to that existing prior to their occupation or use after Project Co has departed the land.

Part F5 - Design Review Process

1. General

1.1 Preparation and submission of Design Documentation

- (a) The design of the Works must be:
 - (i) consistent with the Concept Design;
 - (ii) developed and completed in accordance with this Part F5 and the State Project Documents; and
 - (iii) compliant with clause 17.1 of this Agreement.

1.2 Changes to the Concept Design

- (a) The process of developing the design from the Concept Design to the IFC Design Documentation may result in changes to the Concept Design.
- (b) Subject to section 1.2(c) and section 1(e) of Part K1, changes to the Concept Design must not be made unless:
 - (i) the change:
 - A. is notified to the IREA; and
 - B. is necessary to comply with the State Project Documents; and
 - (ii) it is demonstrated to the satisfaction of the IREA that the change:
 - A. is minor; and
 - B. is consistent with the design intent in the Concept Design, otherwise complies with the State Project Documents and does not result in a reduction of any Relevant D&C Requirement of any part of the Works.
- (c) Any change to the Concept Design which is not a change of the kind described in section 1.2(b) may only be made if the change is agreed by the State.

2. General Requirements for Design Documentation

2.1 Submission of Design Documentation

- (a) Subject to section 2.1(b):
 - (i) Preliminary Design Documentation must be submitted to the State and the IREA in accordance with section 2.2;
 - (ii) Draft Certified Design Documentation may be submitted to the State and the IREA in accordance with section 2.3; and
 - (iii) Certified Design Documentation must be submitted to the State and the IREA in accordance with section 2.4.
- (b) The following provisions apply to Design Documentation for Temporary Works:

- (i) Preliminary Design Documentation does not need to be submitted in accordance with section 2.1(a)(i) for Category 1 Temporary Works, provided that Project Co provides the State with regular updates on the development of the relevant Design Documentation; and
- (ii) Preliminary Design Documentation does not need to be submitted in accordance with section 2.1(a)(i) for Category 2 Temporary Works but, where Preliminary Design Documentation is not submitted for any Category 2 Temporary Works, Draft Certified Design Documentation must be submitted for such Category 2 Temporary Works.

2.2 Preliminary Design

- (a) Preliminary Design Documentation must include:
 - (i) a preliminary design report which:
 - A. identifies the Construction Package(s) to which the Preliminary Design Documentation relates;
 - B. identifies the aspects of the Design Management Plan to which the Preliminary Design Documentation relates;
 - C. identifies all Reference Documents used in the preparation of the Preliminary Design Documentation;
 - D. demonstrates that all relevant requirements of this Agreement including constructability, maintenance and operations requirements including the Environmental Requirements have been met and integrated into the Preliminary Design Documentation;
 - E. where relevant, includes a report from the D&C Subcontractor's specialist urban and landscape designers which demonstrates that the Preliminary Design Documentation is consistent with the urban and landscape design elements of the Concept Design and the requirements of Part H20A and Part H20B;
 - F. demonstrates that:
 - 1) where appropriate, advice has been sought from suitably qualified marine biologists/aquatic specialists, ecologists and flora and fauna or other environmental experts to ensure that potential environmental issues have been addressed; and
 - 2) the Future Infrastructure has been considered and any future modifications required to construct the Future Infrastructure have been minimised to the fullest extent practicable;
 - G. documents the outcomes of a formal safety-in-design assessment including, where applicable, the performance level for safety barriers and the personal security of users of pathways;
 - H. includes a flood impact assessment for any Construction Package involving major drainage structures, waterway

crossings, or changes to road geometry that could affect patterns of stormwater drainage or flood plains;

- I. demonstrates that:
 - 1) all Condition State 3 and 4 Items identified in the Inspection Reports in accordance with section 3.1 of Part B; and
 - 2) for WGF Existing Bridges and Other Existing Bridges, all defects identified as requiring rectification in order to meet the criteria in the relevant durability and fatigue assessments undertaken in accordance with section 3.1 of Part B,

will be addressed;

- J. includes all relevant geotechnical information and the results of any geotechnical analysis required for the design, including:

- 1) any durability assessment required by section 2.1 of Part B;
- 2) any assessment of tunnel, embankment or excavation stability;
- 3) likely ground movement and any treatments required to achieve the requirements of section 10 of Part B;
- 4) any assessment of the capacity of recommended foundations for structures, retention systems, ground replacement or ground improvement; and
- 5) any assessment of ground water impact;

- K. identifies any changes to the Concept Design and the justification for such changes in accordance with section 1.2 of Part F5;

- L. contains any other information required by the State Project Documents; and

- M. contains a list of all Approvals required to be obtained;

- (ii) all design drawings necessary to adequately define the preliminary design and demonstrate that the relevant elements of the West Gate Tunnel are wholly contained within the Leased Area;
- (iii) a schedule of the Assets to which the report and layout drawings show the location of each Asset; and
- (iv) the WGT Noise Models and WGT O&M Noise Map.

- (b) The Preliminary Design Documentation must be submitted to the IREA, the State and any relevant Facility Owner and those parties must be allowed ten Business Days (or such longer period as contemplated by a Direct Interface Agreement, Rail Projects Agreement Interstate Infrastructure Lease or the WGT Rail Licence) to provide comments.

- (c) The Preliminary Design Documentation relevant to the urban design and landscaping must be submitted to the Urban Design Review Panel for their review and comment.
- (d) Any comments received from the IREA, the State, the Urban Design Review Panel and any relevant Facility Owner must be considered by Project Co when developing the relevant Certified Design Documentation.

2.3 Draft Certified Design

- (a) Subject to section 2.3(b) a draft version of the Certified Design Documentation may be submitted prior to submission of the Certified Design Documentation.
- (b) Draft Certified Design Documentation submitted in accordance with section 2.3(a) must comply with the requirements of section 2.4 except for:
 - (i) evidence of any required Approvals that have not been obtained to the date of submission of the draft Certified Design Documentation as per section 2.4(a)(i)G;
 - (ii) all necessary drawings, reports and specification required by 2.4(a)(iii) are not required to be separately bound;
 - (iii) a complete schedule of assets required under section 2.4(a)(iv)B;
 - (iv) certificates required under section 2.4(c); and
 - (v) compliance with 2.4(a)(i)O.
- (c) Any draft Certified Design Documentation must be submitted to the IREA, the State and any relevant Facility Owner and those parties must be allowed ten Business Days (or such longer period as contemplated by a Direct Interface Agreement, Rail Projects Agreement Interstate Infrastructure Lease or the WGT Rail Licence) to provide comments.
- (d) Any comments received from the IREA, the State and any relevant Facility Owner must be considered by Project Co when developing the relevant Certified Design Documentation.

2.4 Certified Design

- (a) Certified Design Documentation must include:
 - (i) a design report which:
 - A. identifies the Construction Packages to which the Certified Design Documentation relates, including any Construction Packages that have been issued for Preparatory Works;
 - B. identifies the aspects of the Design Management Plan to which the Certified Design Documentation relates;
 - C. identifies all Reference Documents used in the preparation of the Certified Design Documentation and specifies the material properties or mix designs for materials;
 - D. documents any changes to the design since the relevant preliminary design report was issued;

- E. confirms that any changes to the Concept Design have been dealt with in accordance with section 1.2;
 - F. provides results of any additional modelling, investigations or testing;
 - G. provides evidence of all required Approvals;
 - H. provides evidence of compliance with the requirements of clause 10.12 of this Agreement in relation to the Rail Interface Works;
 - I. provides evidence that comments on the relevant Preliminary Design Documentation were sought from the relevant Facility Owners and OpCo;
 - J. where relevant, provides written confirmation from the D&C Subcontractor's specialist urban and landscape designers that the Certified Design Documentation meets the intent of the urban and landscape design;
 - K. demonstrates how comments provided on the relevant Preliminary Design Documentation have been addressed including all comments provided under section 2.2(b) and 2.2(c);
 - L. identifies any relevant Certified Design Documentation for Preparatory Works;
 - M. contains any other information required by the State Project Documents;
 - N. provides details of any instrumentation and monitoring requirements; and
 - O. demonstrates how comments provided on any relevant draft Certified Design Documentation, if submitted under section 2.3(a), have been addressed including all comments provided under section 2.3(c).
- (ii) if relevant, a road safety audit report and an O&M Safety Audit Report including all dispositions to the audit recommendations and, if relevant, an explanation as to the manner in which those dispositions have been addressed;
 - (iii) all necessary drawings, reports and specifications bound separately for each Construction Package covered by the Certified Design Documentation;
 - (iv) all necessary drawings, reports and specifications for each Construction Package to which the Certified Design Documentation relates, including:
 - A. defining the land boundaries of each Returned Facility to which the Certified Design Documentation relates;
 - B. a schedule of Assets to which the report and layout drawings showing the location of each Asset; and

- C. a list of the applicable Reference Documents and any Agreed Exceptions or additions to the requirements in the Reference Documents, and
 - (v) the WGT Noise Models and WGT O&M Noise Map.
- (b) The Certified Design Documentation must be submitted to the State and the IREA.
- (c) The following documents must be submitted to the State and the IREA with the Certified Design Documentation for each Construction Package:
 - (i) a certificate from Project Co confirming that the Certified Design Documentation complies with the requirements of the State Project Documents (in the form set out in the Schedule of Certificates and Notices);
 - (ii) a certificate from the D&C Subcontractor confirming that the Certified Design Documentation complies with the requirements of the State Project Documents (in the form set out in the Schedule of Certificates and Notices);
 - (iii) a relevant certificate from the Proof Engineer where required by section 2.7; and
 - (iv) any other relevant certificates or reports required under the State Project Documents (including the Schedule of Certificates and Notices).
- (d) If required by the State or the IREA, the appropriate design personnel (including the Proof Engineer), must be made available to:
 - (i) explain any Certified Design Documentation; and
 - (ii) provide such information regarding any Certified Design Documentation as the IREA or the State reasonably requests.
- (e) The IREA will:
 - (i) review the proposed Certified Design Documentation submitted or resubmitted by Project Co (by general overview and reasonable checking) to form an opinion as to whether or not it complies with the State Project Documents; and
 - (ii) give notice to the State and Project Co within seven Business Days of the later of:
 - A. receipt of the proposed Certified Design Documentation; and
 - B. compliance by Project Co with any requirement of the IREA under section 2.4(d),

as to whether or not, in the IREA's opinion, the proposed Certified Design Documentation complies with the State Project Documents and the IREA's reasons for the opinion.
- (f) If the IREA notifies Project Co that it considers the Certified Design Documentation does not comply with the State Project Documents, Project Co, must within five Business Days of such notification:

- (i) proceed to amend the Certified Design Documentation to address the matters raised by the IREA and resubmit the Certified Design Documentation in accordance with section 2.4(b) and sections 2.4(c) to 2.4(e) will reapply to such resubmitted Certified Design Documentation;
 - (ii) seek the State's agreement to a proposed amendment to the Concept Design as contemplated by section 1.2 to enable the Certified Design Documentation to comply with the State Project Documents; or
 - (iii) notify the State and the IREA of any matters in connection with which it disagrees with the IREA's opinion together with its reasons for doing so (**Design Explanation**);
- (g) If Project Co provides a Design Explanation in accordance with section 2.4(f)(iii), the IREA will give notice to the State and Project Co, within seven Business Days of receipt of any Design Explanation, of its opinion as to whether or not the Design Explanation satisfactorily addresses the IREA's concerns together with its reasons for forming that opinion.
- (h) Despite any opinion of the IREA that:
- (i) the proposed Certified Design Documentation does not comply with the State Project Documents; or
 - (ii) the Design Explanation does not satisfactorily address the IREA's concerns,

where the Certified Design Documentation complies with the State Project Documents, and subject to the State's right of suspension under clause 13.7 of this Agreement, construction of the relevant Construction Package may commence on the basis of the submitted Certified Design Documentation, subject to the State and the IREA being given two Business Days' notice of Project Co's intention to proceed with construction of the relevant Construction Package at its own cost and risk, including the risk that a Certificate of West Gate Tunnel Completion may not be issued (**Notice of Intention to Proceed**).

- (i) A Notice of Intention to Proceed must include details of the reasons why Project Co intends to proceed with construction of the relevant Construction Package despite the opinion of the IREA.
- (j) Within five Business Days of the receipt of the Notice of Intention to Proceed, the State may refer the matter to dispute resolution in accordance with clauses 43 and 44 of this Agreement.
- (k) To the extent that the dispute is resolved in favour of:
 - (i) the State, Project Co must amend the Certified Design Documentation expeditiously and diligently to address the matters raised by the IREA, resubmit the Certified Design Documentation in accordance with section 2.4(c), and carry out the Works in accordance with this Agreement, including correcting any Defect in the Works as a result of the failure of the Certified Design Documentation to comply with the State Project Documents; and
 - (ii) Project Co, where the State has exercised its rights of suspension in accordance with clause 13.7(a) of this Agreement, the suspension will be deemed to be a Compensable Extension Event.

- (l) The provision by Project Co or receipt by the State of the Notice of Intention to Proceed or the referral by the State to dispute resolution under section 2.4(j) does not in any way limit or otherwise affect:
 - (i) the obligations of Project Co under this Agreement; or
 - (ii) the State's rights under this Agreement, including clauses 37, 41 and 42 of this Agreement.

2.5 IFC Design Documentation

- (a) IFC Design Documentation for any Construction Package must not be issued, and construction of any Construction Package must not commence, unless:
 - (i) the Certified Design Documentation relating to that Construction Package and all required certifications have been provided to the State and the IREA;
 - (ii) the IREA has been given the required number of days to review and comment on the Certified Design Documentation; and
 - (iii) either:
 - A. the IREA has issued a notice under section 2.4(e) stating that, in the IREA's opinion, the Certified Design Documentation complies with the State Project Documents; or
 - B. the IREA has issued a notice under section 2.4(e) stating that, in the IREA's opinion, the Certified Design Documentation does not comply with the State Project Documents, and Project Co has issued a Notice of Intention to Proceed in accordance with section 2.4(h).
- (b) The IFC Design Documentation for each Construction Package must be prepared and submitted to the State and the IREA together with all necessary drawings, reports and specifications for that Construction Package and each drawing issued as part of IFC Design Documentation must be clearly marked as "Issued for Construction".
- (c) If any changes to the IFC Design Documentation are proposed then, unless in the opinion of the IREA the changes are minor or have no adverse effect on any Relevant D&C Requirement or the ability of Project Co to perform the Project Activities in accordance with the State Project Documents:
 - (i) the following must be submitted to the State and the IREA:
 - A. a design change notice (DCN) which clearly describes the design change and the reasons for the design change;
 - B. information which:
 - 1) identifies the Construction Package, and the drawings within the IFC Design Documentation, to which the design change applies; and
 - 2) confirms that the design change complies with all the requirements of the State Project Documents; and

- C. copies of all drawings affected by the design change with the design change marked up to scale and annotated to specify any requirements relating to the design change; and
- (ii) the requirements of section 2.4(a) to 2.4(f) will apply again.

2.6 Design Verification

- (a) Design Documentation for each Construction Package must be subject to a process of design verification that covers all aspects of the design before submission of Certified Design Documentation and must be carried out by the Lead Verifier.
- (b) The Lead Verifier must verify that the Design Documentation complies with all requirements of the State Project Documents and that the detail in drawings, reports and specifications accurately and adequately conveys the design.
- (c) Complete records of the scope and outcomes of design verification must be retained and signed by the designated Lead Verifier and provided to the State.

2.7 Proof Engineering

Project Co must ensure that, in the performance of the D&C Activities, the Proof Engineer:

- (a) undertakes an independent detailed check and certifies (in the form set out in the Schedule of Certificates and Notices) the adequacy of the Design Documentation for all:
 - (i) tunnel structures including all tunnel support and primary and secondary linings and all relevant fire and life safety considerations;
 - (ii) bridges and underpasses;
 - (iii) earth retaining structures greater than or equal to one metre;
 - (iv) sign gantries and attachments and other load bearing structures, including all foundations;
 - (v) load bearing falsework; and
 - (vi) formwork required for concrete pours higher than two metres,and any similar items listed in sections 2.7(a)(i) to 2.7(a)(vi) that form part of the Temporary Works; and
- (b) prior to any load being applied to load bearing falsework:
 - (i) inspects all such load bearing falsework and formwork required for concrete pours higher than two metres prior to the application of loading; and
 - (ii) certifies (in the form set out in the Schedule of Certificates and Notices) that the falsework or formwork (as applicable) has been erected in accordance with the IFC Design Documentation.

2.8 Preparatory Works

- (a) Certified Design Documentation for Preparatory Works must include:
 - (i) a Preparatory Works design report which:

- A. clearly defines the scope of the proposed Preparatory Works;
 - B. subject to section 2.8(b), confirms that Preliminary Design Documentation has been submitted for any Works to which the Preparatory Works relate; and
 - C. provides evidence that any required Approvals have been obtained;
- (ii) marked up preliminary design drawings clearly defining the scope of the Preparatory Works;
 - (iii) relevant reports and specifications for the Preparatory Works; and
 - (iv) any certificates required by the Schedule of Certificates and Notices.
- (b) Section 2.8(a)(i)B. does not apply to Certified Design Documentation for Preparatory Works relating to survey and site investigations as agreed with the State; and
 - (c) Unless otherwise approved in writing by the State, Preparatory Works must be limited to:
 - (i) survey and site investigations;
 - (ii) site clearing and grubbing;
 - (iii) site establishment;
 - (iv) fencing; and
 - (v) preliminary earthworks and drainage.

2.9 Design Review Meetings

- (a) Design review meetings must be held at least fortnightly, or as otherwise agreed by the State, throughout the D&C Phase to review:
 - (i) progress in submitting Design Documentation against the D&C Program;
 - (ii) an updated four week forecast and an updated three month forecast for Design Documentation submission to assist in scheduling design reviews;
 - (iii) a register of issues affecting design progress and actions to resolve such issues; and
 - (iv) any other issues arising out of the design of the Works.
- (b) Design review meetings must involve representatives from the State, Project Co, the IREA, the D&C Subcontractor and its designers, and where relevant, the Urban Design Review Panel, OpCo and/or the Proof Engineer.

Part F6 - Construction

1. Working hours

The construction of the Works must be carried out to minimise impact on the local community and in accordance with the Environmental Requirements.

2. Construction Documentation

- (a) Construction Documentation for each Construction Package must include:
 - (i) site management and supervisory responsibilities;
 - (ii) the planned sequence of work, for the Construction Package;
 - (iii) the relevant IFC Design Documentation;
 - (iv) Inspection and Test Plans (ITPs) and Construction Procedures;
 - (v) relevant WTMPs;
 - (vi) the Worksite Environmental Management Plan, including a specific risk assessment for the Construction Package;
 - (vii) a schedule of Assets contained within that package;
 - (viii) safety plans, including safety procedures required for any construction operations such as lifting or trenching; and
 - (ix) forecast construction impacts including noise, vibration and other community impacts and proposed mitigation measures.
- (b) A standard set of the ITPs and Construction Procedures required by the Reference Documents must be established and used for relevant construction activities.
- (c) The ITPs and Construction Procedures must include all Hold Points required by the relevant Reference Document.
- (d) The ITPs must describe the process pursuant to which the Nominated Authority releases each Hold Point;
- (e) Each Construction Procedure must describe:
 - (i) the scope of activities covered;
 - (ii) the materials, plant and equipment to be used;
 - (iii) the personnel required and their roles, responsibilities and required competencies;
 - (iv) all induction requirements;
 - (v) the ITPs to be used and quality assurance documentation to be completed; and
 - (vi) the detailed construction procedures to be followed.

- (f) Project Co must submit to the State and the IREA, for each Construction Package, Construction Documentation which complies with sections 2(a) to (e).
- (g) If required by the IREA within five Business Days of the issue of the relevant Construction Documentation, Project Co must make available appropriate personnel to:
 - (i) explain the Construction Documentation; and
 - (ii) provide such information regarding the Construction Documentation as the IREA reasonably requests.
- (h) Project Co must ensure that construction of any Construction Package does not commence until at least five Business Days after:
 - (i) the Construction Documentation has been submitted to the IREA in accordance with section 2(f); and
 - (ii) Project Co has complied with any requirements of the IREA under section 2(g).

3. Construction sequencing requirements

Any existing pedestrian bridges over the West Gate Freeway impacted by the relevant D&C Activities must not be decommissioned until the applicable new or temporary pedestrian bridge has been commissioned.

4. Construction Review Meetings

- (a) Construction review meetings must be held at least monthly, or as otherwise agreed by the State, throughout the D&C Phase to review:
 - (i) progress in submitting ITPs and Construction Procedures;
 - (ii) progress in submitting Construction Documentation for each Construction Package;
 - (iii) progress in closure of As-Built Records;
 - (iv) progress in dealing with Non-Conformances and in rectification of Defects;
 - (v) progress in completion and Handback of Returned Works; and
 - (vi) a register of issues affecting construction progress and actions to resolve such issues.
- (b) Construction review meetings must involve representatives from the State, Project Co, the D&C Subcontractor and the IREA.

5. Notification of Incidents

5.1 Immediate Notification

- (a) The State must be notified as soon as practicable of any incidents associated with or affecting the D&C Activities including:
 - (i) any fatality or lost-time injury to construction personnel;

- (ii) any fatality or injury to a member of the public that could be attributed to the D&C Activities;
- (iii) any traffic accident on roads affected by and in the vicinity of the D&C Activities;
- (iv) any incident requiring an unplanned closure of a road;
- (v) any material property damage (other than as necessary for the Works);
- (vi) any environmental incident involving the issue of a Clean-Up Notice, Infringement Notice or other notice under the Environment Protection Act 1970 (Vic); and
- (vii) any notice issued by WorkSafe.

5.2 Incident Details

All relevant details of any detected incident must be recorded (supported, where possible, by photographs of the incident site including the location of all safety devices) as soon as possible after the incident. A report with this information must be forwarded to the State and the IREA:

- (a) within two Business Days of
 - (i) any fatality;
 - (ii) any injury to a member of the public; and
- (b) within five Business Days for any other incident.

6. Maintenance during Construction

6.1 Construction Area

The Construction Areas must be kept in a safe and tidy condition.

6.2 Roads

Without limiting section 6.3 and subject to any maintenance plan agreed or directed under section 5.1 of Part E, all Roads within the Construction Areas must be:

- (a) maintained and repaired until Handback to the relevant Facility Owner in accordance with the applicable maintenance plan;
- (b) maintained in accordance with the relevant Facility Owner's road management plans (if any) and usual requirements; and
- (c) maintained in accordance with the requirements of Part H22.

6.3 West Gate Freeway

The parties acknowledge and agree that, subject to any maintenance plan agreed or directed under section 5.1 of Part E:

- (a) the parts of the West Gate Freeway which are not within the Leased Area must be maintained and repaired until Handback to the relevant Facility Owner in accordance with the applicable maintenance plan;

- (b) the West Gate Freeway must be maintained in accordance with the Relevant Road Authority's road management plans (if any) and usual requirements; and
- (c) the West Gate Freeway must be maintained in accordance with the requirements of Part H22.

6.4 Other Areas

All areas, other than Roads and the West Gate Freeway, within the Construction Areas must be:

- (a) maintained and repaired until Handback to the relevant Facility Owner in accordance with the applicable maintenance plan; and
- (b) maintained in accordance with the relevant Facility Owner's usual requirements.

6.5 Maintenance Records

- (a) Maintenance records in respect of maintenance activities undertaken during the D&C Phase must be maintained on site and must be available for review by the IREA, any relevant Facility Owner (if applicable) and the State.
- (b) Other than in respect of the parts of the West Gate Freeway which are within the Leased Area, all maintenance and inspection records for the inspection and maintenance activities undertaken during the D&C Phase must be provided to the relevant Facility Owner upon Handback of the Returned Works.
- (c) In respect of the parts of the West Gate Freeway which are within the Leased Area, all maintenance and inspection records for the inspection and maintenance activities undertaken during the D&C Phase must be provided to the Relevant Road Authority upon West Gate Tunnel Completion.

7. Traffic Management during Construction

7.1 General

- (a) The parties acknowledge and agree that this section 7 only applies during the D&C Phase.
- (b) WTMPs must be prepared for the management of the performance of discrete stages or components of the Works and Temporary Works that have an impact on (or on users of) Roads, shared use paths, footpaths and public transport infrastructure.
- (c) A management representative (**Traffic Representative**) must be appointed and have authority and responsibility for issues relating to traffic management throughout the performance of the D&C Activities, and this role must not be delegated to a third party without the State's prior written consent.

7.2 WTMPs

- (a) Each WTMP must address:
 - (i) vehicle, bicycle and pedestrian movements;
 - (ii) public transport movements;
 - (iii) lane, road and public transport route closures;
 - (iv) major traffic control devices;

- (v) traffic signal operation;
 - (vi) vertical and horizontal alignment;
 - (vii) drainage;
 - (viii) barrier placement;
 - (ix) operating conditions including speed limits;
 - (x) safety of the public and workers;
 - (xi) peak flows and road traffic capacity, including catering for special events;
 - (xii) signing and linemarking;
 - (xiii) lighting;
 - (xiv) property access;
 - (xv) stakeholder communication and media advertising;
 - (xvi) timing;
 - (xvii) replacement public transport services;
 - (xviii) Utility Infrastructure access;
 - (xix) any interface between the responsibilities and requirements of Project Co, its Subcontractors and any other Authority;
 - (xx) incident management;
 - (xxi) where applicable, the freeway operational requirements for CityLink and VicRoads for the West Gate Freeway; and
 - (xxii) compliance with the requirements of Part H21 (to the extent applicable) and Part H22.
- (b) WTMPs must include detailed drawings identifying the nature and location of all temporary measures contemplated including linemarking, traffic barriers and signs.
- (c) Each WTMP must be distributed, agreed and approved in accordance with the following process:
- (i) a draft WTMP must be distributed to the State, VicRoads, the road safety auditor, any other Relevant Road Authority for any affected Roads and, where the Works affect public transport infrastructure, Public Transport Interface Parties;
 - (ii) recipients of the draft WTMP must be allowed ten Business Days to provide comments; and
 - (iii) a final WTMP, including:
 - A. any adjustments required to meet the requirements of the State, the Port Manager, the road safety auditor, VicRoads and relevant public transport operators and any other Relevant

Road Authority and where the Works affect public transport infrastructure, any relevant Public Transport Interface Parties;

- B. the written agreement of the Traffic Representative to the measures proposed; and
- C. the written agreement of the Relevant Road Authority and, where applicable, relevant Public Transport Interface Parties,

must be submitted to the State for approval and be provided to the IREA for information purposes.

- (d) Within ten Business Days of receipt of a final WTMP which satisfies sections 7.2(a) to (c) the State must either:
 - (i) approve the WTMP; or
 - (ii) acting reasonably, provide reasons why the State has not approved the WTMP, in which case a final WTMP must be updated and resubmitted in a manner which satisfies the matters raised by the State, in which case this section 7.2(d) will re-apply to such resubmitted WTMP.
- (e) Advertising of the proposed Works included in a WTMP must not occur until the WTMP has been approved by the State.
- (f) The Works included in a WTMP must not be undertaken until the WTMP has been approved by the State and all advertising requirements required by the WTMP and this Agreement have been met.

7.3 Implementation of WTMPs

Unless otherwise agreed by the State:

- (a) a road safety audit of that part of the Works covered by a WTMP must be undertaken during the first day and night after the initial implementation of the WTMP;
- (b) within 48 hours of the initial implementation of the WTMP, a written report must be submitted to the State and the IREA (and, where applicable, any Relevant Road Authority) which includes the results of the road safety audit and describes the actions that have been taken in response to all issues identified during the road safety audit;
- (c) the requirements of the "Road Management Act Worksite Safety Traffic Management Code of Practice" must be complied with, including the audit and surveillance obligations;
- (d) all deficiencies affecting the safety of the public or workers identified in a road safety audit must be rectified immediately; and
- (e) all other deficiencies identified in a road safety audit must be rectified within 48 hours of the road safety audit being undertaken.

7.4 Traffic Management Liaison Group

- (a) A Traffic Management Liaison Group (**TMLG**) must be formed prior to the implementation of any part of the Works that may impact upon (or upon the users of) roads, footpaths, shared use paths or public transport infrastructure.

- (b) The TMLG must comprise representatives from the State, VicRoads, Project Co including the Traffic Representative, the D&C Subcontractor, and other groups nominated by the State.
- (c) The TMLG is to be a forum for the exchange of information and the discussion of issues associated with WTMPs.
- (d) The TMLG will have no legal responsibilities and will not have any power to require any of the parties or their Associates to act or refrain from acting in any way, and Project Co's responsibility for traffic management will not be limited or affected by the existence of, or determinations or decision of, the TMLG.
- (e) The TMLG must meet fortnightly from its inception until the Date of West Gate Tunnel Completion, unless otherwise agreed by the State.
- (f) The TMLG must be provided with:
 - (i) the traffic management elements of the Business Management Strategy, the Construction Traffic Management Plan and all WTMPs;
 - (ii) details as to timing of implementation of WTMPs;
 - (iii) a schedule of WTMPs submitted and those proposed to be submitted within the next two months; and
 - (iv) all relevant reports as required by the TMLG.
- (g) The TMLG must review the results of the traffic monitoring undertaken by Project Co and any relevant Responsible Road Authorities for effectiveness of traffic management during construction.

7.5 Traffic controllers

All persons required to perform the duties of a traffic controller must undertake the relevant training and must be examined and certified as competent to perform their respective traffic controller duties.

7.6 Access for Works

- (a) Entry and exit to and from the Construction Areas will be via roads operated by VicRoads, CityLink, the Port Manager or other parts of the road network, subject to obtaining any necessary prior approval of the Relevant Road Authority.
- (b) Haulage of bulk material to and from the Construction Areas to within a two km range of the Project Area must be via roads operated by VicRoads, CityLink or the Port Manager or, subject to obtaining prior agreement by the Relevant Road Authority, other parts of the road network.

7.7 VicRoads Traffic Bulletin

A weekly report must be provided to VicRoads detailing to the extent required by VicRoads:

- (a) all current Works affecting traffic; and
- (b) all Works proposed to be carried out within the next three weeks,

and may be published on the VicRoads web site.

7.8 Incidents and Accidents

- (a) Subject to section 7.8(b), Project Co must manage all incidents and accidents within the parcels of land comprising the Construction Areas as they are made available progressively to Project Co under this Agreement and the Construction Licence.
- (b) Project Co's obligation to manage incidents and accidents under section 7.8(a):
 - (i) will be reduced to the extent that the relevant incidents and/or accidents are managed or controlled by the Emergency Services; and
 - (ii) in respect of the Service Area is set out in section 8 of Part H22.

7.9 Temporary Lighting

Not less than existing lighting levels are to be maintained during construction until permanent street lighting is installed and operational. Any changes to existing lighting levels must be approved by the State.

8. Environmental Management during construction

8.1 General

- (a) The parties acknowledge and agree that this section 8 only applies during the D&C Phase.
- (b) The D&C Activities must be carried out in accordance with:
 - (i) the Business Management Strategy;
 - (ii) the Construction Environmental Management Plan; and
 - (iii) the Environmental Requirements.
- (c) Separate Worksite Environmental Management Plans (**WEMPs**) must be prepared for the management of discrete stages or components of the Works that may have an adverse impact on the Environment.
- (d) WEMP's must:
 - (i) identify specific measures included in the relevant Construction Procedure to prevent adverse environmental impacts; and
 - (ii) include relevant drawings showing:
 - A. location and scope of works to be managed;
 - B. location and nature of physical controls required by the plan;
 - C. nature and frequency of monitoring to be undertaken for each of the identified potential adverse impacts; and
 - D. procedures for notification of any incident or potential hazard.
- (e) A suitably qualified management representative (**Environmental Representative**) must be appointed by Project Co. The Environmental Representative will have authority and responsibility for issues relating to environmental management throughout the performance of the D&C Activities and must review the outcomes of

all environmental audits and ensure that the issues identified in the environmental audits are addressed.

- (f) The IREA will:
 - (i) review and approve the proposed CEMP and OEMP for compliance with the Environmental Management Strategy and Environmental Requirements in accordance with EMP3 of Part H21 and the State Project Documents;
 - (ii) review and approve amendments to the CEMP and OEMP;
 - (iii) review and comment on each proposed WEMP under section 8.2;
 - (iv) carry out the following audits:
 - A. six monthly audits of compliance with the Environmental Management Strategy;
 - B. quarterly audits of compliance with the CEMP; and
 - C. monthly environmental audits of implemented WEMPs including auditing the effectiveness of WEMPs.
- (g) Results of all environmental audits must be provided to the State within five Business Days.
- (h) In addition to section 8.1(g), the IREA must produce 6 monthly audit reports and sub-reports to the State for provision to the Minister for Planning and other approval authorities as appropriate.
- (i) Project Co must co-operate with, and do all things reasonably necessary to assist, the IREA in performing its functions referred to in section 8.1(f) to (h) including the timely provision of information and responding to any request for further information.
- (j) The CEMP and OEMP as approved by the IREA and all approved amendments to the CEMP and OEMP must be provided to the State for review and approval in accordance with the Review Procedures.

8.2 Worksite Environmental Management Plans (WEMPs)

- (a) Each WEMP must be distributed, agreed and approved in accordance with the following process:
 - (i) a draft WEMP must be distributed to the State and the IREA;
 - (ii) recipients of the WEMP must be allowed five Business Days to provide comments; and
 - (iii) the final WEMP must:
 - A. respond to any items raised by the State and the IREA;
 - B. be approved by the Environmental Representative; and
 - C. be submitted to the State and the IREA for information purposes prior to the Works covered by the WEMP commencing.

9. Testing and Commissioning

9.1 General requirement

- (a) Testing and commissioning must be carried out and comply, as a minimum, with the requirements of this section 9 and the Construction Management Plan.
- (b) All testing and commissioning must be documented with the performance results clearly recorded against the design requirements.

9.2 Progressive testing

- (a) Subject to section 9.2(b), the testing and commissioning must be undertaken progressively and must be completed before the Date of West Gate Tunnel Completion except for any commissioning tests which must be undertaken under traffic and which must be completed before Close-Out.
- (b) Where new FMS is required to be operational on the West Gate Freeway during the carrying out of the Works, including in accordance with Part H22, the FMS must undergo the appropriate testing and commissioning in accordance with:
 - (i) in the event VicRoads operates the FMS at the time of the relevant commissioning, VicRoads usual requirements; or
 - (ii) in the event Project Co operates the FMS at the time of the relevant commissioning, Project Co's usual requirements,before being utilised for this purpose.

9.3 Testing and commissioning records

- (a) Testing and commissioning records must be made available to the State and the IREA in accordance with section 14 and must include:
 - (i) Work Lot registers which must:
 - A. provide access to all checklists, test reports, test certificates, as-built survey certificates or other quality assurance documentation required by the Construction Quality Management Plan and Inspection and Test Plans; and
 - B. identify for each Work Lot:
 - 1) location and Asset;
 - 2) quantities and sources of materials;
 - 3) details to enable tracing of test samples; and
 - 4) sampling frequency compared to specified testing frequency;
 - (ii) registers of sampling and testing which enable identification of all test requisitions for each Work Lot and the date and reference number of corresponding test reports;
 - (iii) road safety audit reports;

- (iv) commissioning reports verifying compliance with:
 - A. pavement performance parameters;
 - B. ride quality;
 - C. traffic noise amelioration;
 - D. traffic management systems;
 - E. FMS requirements;
 - F. tolling systems; and
 - G. any mechanical and electrical systems; and
- (v) as-built survey certificates, which must be certified by a qualified surveyor and which must compare the as-built survey with the design geometry and identify any non-conformances.

9.4 Measurement of noise

- (a) As a condition precedent to Close-Out Project Co must ensure:
 - (i) as a minimum, at least 3 months after Tolling Completion, tests are undertaken to measure traffic noise are carried out in accordance with section 18.3(f) of Part B;
 - (ii) the results of these tests are used to validate the models used for traffic noise predictions and verify compliance with section 18.3 of Part B; and
 - (iii) a report verifying compliance with section 18.3 of Part B, in respect of the above requirements, is provided to the State and the IREA.
- (b) The proposed model validation process referred to in section 9.4(a) must:
 - (i) include measurement locations and selection criteria; and
 - (ii) be fully specified in the relevant Preliminary Design Documentation.
- (c) During the D&C Phase construction noise at sensitive receptors must be regularly measured to verify compliance with this Agreement.
- (d) Project Co must monitor Traffic Noise levels during the O&M Phase to ensure compliance with section 18.5 of Part B.

9.5 Testing of off-site equipment

Off-site manufactured equipment must be tested at the point of manufacture prior to delivery (wherever this is practical) and further on site tests carried out during commissioning.

9.6 Non-conformance and Defects

The State and the IREA must be promptly notified of any Non-Conformance or Defect identified by testing and commissioning.

10. Construction records

10.1 General

Accurate and complete construction records must be maintained at all times during the D&C Phase for every Asset identified in the Asset Inventory in a form that is readily accessible to the State and the IREA.

10.2 Construction records system

- (a) The system used to maintain construction records must:
 - (i) ensure that all construction records are compiled in Work Lots and that each Work Lot is clearly referenced to the relevant Asset; and
 - (ii) ensure that each certificate issued by the Construction Quality Representative clearly identifies the relevant Asset, to which it relates and their constituent Work Lots.

10.3 Contents of construction records

- (a) Construction records for each Construction Package must include:
 - (i) all quality assurance records required by the ITPs;
 - (ii) site instructions and any DCNs;
 - (iii) non-conformance reports; and
 - (iv) current versions of the IFC Design Documentation with as-built changes (including repaired Defects) marked up to scale and referenced to the applicable DCN.
- (b) If a drawing is amended and issued as a new revision before completion of the Construction Package, any changes recorded as mark-ups prior to that amendment must be incorporated in the new revision and the traceability to the relevant DCN must be preserved.

10.4 Control of Non-Conformance

- (a) The obligations in this section 10.4 are without limitation to any obligations in relation to quality assurance under this Agreement.
- (b) Project Co must notify the State and the IREA of any Non-Conformance with respect to the Works within one Business Day of the Non-Conformance being identified.
- (c) Project Co must record all Non-Conformances and the status of all Non-Conformances in a register.
- (d) A Work Lot Non-Conformance must be treated as a Hold Point which must not be released until a disposition acceptable to the State, acting reasonably, is submitted to the State and the IREA.
- (e) Project Co must review and analyse the cause of all Non-Conformances and develop a plan of corrective action to minimise the likelihood of recurrence.
- (f) If the IREA notifies Project Co of a Non-Conformance, Project Co must deal with the non-conformance in accordance with this section 10.4.

11. As-Built Records

11.1 General

As-Built Records must include the final versions of the construction records.

11.2 Closure of As-Built Records

- (a) Procedures must be in place for expeditious closure of As-Built Records.
- (b) The As-Built Records for a Construction Package or part of a Construction Package must be completed and closed as soon as practicable, in accordance with the Construction Quality Management Plan, so as to ensure that after the Date of West Gate Tunnel Completion, the As-Built Records represent the Works as completed.
- (c) Closure of As-Built Records cannot occur until:
 - (i) all inspections and tests required for the Work Lots represented by As-Built Records have been completed and the results recorded;
 - (ii) any Non-Conformances and Defects that cannot be corrected promptly have been notified and recorded on the Defects list in accordance with section 13, and the Non-Conformance report marked accordingly;
 - (iii) the final marked-up copy of every drawing relevant to the Construction Package or the part of the Construction Package, including drawings without change, have been checked for completeness and signed by a person with responsibility for supervision of the work;
 - (iv) the complete set of As-Built Records for the Construction Package or the part of the Construction Package has been made available to the State and the IREA; and
 - (v) the Construction Quality Representative has certified (in the form required by the Schedule of Certificates and Notices) compliance with the requirements of this section 11.2.
- (d) As-Built Records must be closed before:
 - (i) the Works represented by the As-Built Records are covered up or subsequent Works are undertaken which would, in the opinion of the IREA, prevent inspection or repairs;
 - (ii) manufactured components, including precast and fabricated components, are erected or incorporated into the Works; and
 - (iii) in the case of Returned Works, the notice required by clause 20.3(c)(ii) of this Agreement has been issued for the Returned Works represented by the As-Built Records.
- (e) The requirements in section 11.2(d) will not apply where it is either not practicable to undertake testing required for closure of As-Built Records before Works are covered up (e.g. flushing of subsoil drains) or in particular situations where test results are unavailable. Where these circumstances apply, any additional inspection or testing arrangements required by the IREA must be included in the applicable Inspection and Test Plan, and the As-Built Records must be closed as soon as practicable after the test results are available.

11.3 Revisions of As-Built Records

The electronic CAD files for the As-Built Records must be revised after the relevant Work Lots have been closed to incorporate all changes to enable production of the final electronic CAD files for the As-Built Records.

12. Asset Inventory

- (a) The Asset Inventory compiled in accordance with this section must be used as the basis for the Asset Management System during the O&M Phase and must be able to be correlated with the Work Breakdown Structure throughout the D&C Phase.
- (b) The Asset Inventory must be structured in layers comprising Assets, classified by type where:
 - (i) components are the constituent parts of an Asset which need to be separately identified in the design; and
 - (ii) component types are identifiable elements of an Asset type which have differing characteristics and inventory data requirements.
- (c) Linear Assets including road carriageways, roadsides and paths must be included in the Asset Inventory as discrete sections between readily identified points such as intersections, interchanges, cross roads or creek crossings.

13. Defects List

- (a) A system for monitoring the rectification of any Defects, including the maintenance of a Defects list, must be established.
- (b) Where Defects are notified by the State or the IREA, in accordance with this Agreement, the Defects list must record the party that notified the Defect and a reference to the notification.
- (c) The Defects list must identify any Defects proposed to be accepted by the State in accordance with clause 22.3 of this Agreement and must include references to any correspondence between the State and Project Co in respect of such Defects.
- (d) Records of Defects must not be deleted from the Defects list.
- (e) The Defects list must be maintained during the Term.
- (f) Every Defect must be identified against the relevant Asset and the location and nature of each Defect must be described in sufficient detail to enable subsequent inspection, repair and monitoring.

14. Records and Reporting

14.1 Format of manuals, plans, drawings and reports

Any manuals, plans, drawings, programs, reports or associated information, or any updates or revisions of such manuals, plans, drawings, programs, reports or information required to be submitted must be submitted as a hard copy and as an electronic copy in the form agreed between Project Co and the State (or failing such agreement, in such form as the State or the IREA, as the case may be, requires).

14.2 Format of CAD drawings

- (a) CAD drawings must:
 - (i) have a layer naming convention and all associated attributes in accordance with VicRoads Final Drawing Presentation Guidelines;
 - (ii) use the real world reference defined in the User Coordinate System (UCS) as follows:
 - A. UCS: World;
 - B. Units: metres;
 - C. insertion base point: 0,0,0; and
 - D. be accompanied by relevant Metadata,and must be submitted to the State in Microstation V8i (or later).
- (b) The following design information must be provided in Digital CAD format:
 - (i) reference models or Xrefs for each individual discipline including separate 2D concept and 3D design models as per Section 2 of VicRoads Final Drawing Presentation Guidelines;
 - (ii) all aspects of civil or structural works;
 - (iii) all aspects of drainage works and drainage modelling works;
 - (iv) all sight lines, vehicle turning movements and clearance envelopes as separate reference or Xref files; and
 - (v) all design contour files at appropriate contour intervals for each work stage.
- (c) Digital CAD reference or Xref files must be saved in correct global orientation and in correlation with controlled survey.
- (d) Digital CAD reference or Xref files units to be in metres.
- (e) Final drawing productions must be presented in accordance with VicRoads Final Drawing Presentation Guidelines.

14.3 Format of GIS Data

- (a) GIS Data must be supplied:
 - (i) in a standard GIS (.tab, .mid, .shp); and
 - (ii) as Horizontal Datum: GDA 94
 - A. Projection: UTM
 - B. Grid: MGA
 - C. Vertical datum: AHD

- (b) Layers are to be separated into feature classes in a structure that is clearly documented and supplied with the data.

14.4 Drawings

All drawings must be provided in PDF format.

14.5 Survey information

The format of all survey information must be in accordance with VicRoads Standards.

14.6 Electronic access to design and construction records

- (a) During the D&C Phase, the State and the IREA must be provided with electronic access to the following design and construction records indexed by Construction Package:
 - (i) Preliminary Design Documentation and Certified Design Documentation;
 - (ii) Construction Documentation;
 - (iii) site instructions and DCNs;
 - (iv) sampling and testing registers required by section 9.3(a)(ii);
 - (v) monthly progress report required by section 14.7(a);
 - (vi) non-conformance reports;
 - (vii) the Defects list;
 - (viii) Work Lot registers and records; and
 - (ix) closed As-Built Records.
- (b) Electronic access to design and construction records must:
 - (i) be available at all times during the Term;
 - (ii) be accessible by web browser;
 - (iii) present records in a format acceptable to the State and the IREA;
 - (iv) have a response time less than 30 seconds;
 - (v) enable convenient searching and selection of records; and
 - (vi) allow reports to be generated by the State and the IREA on an as needs basis.

14.7 D&C Phase Progress Reports

- (a) During the D&C Phase, the State and the IREA must be provided with monthly reports on the progress of the D&C Activities.
- (b) The monthly progress report must include (to the extent applicable) the following:
 - (i) a management overview which addresses overall progress and key D&C Phase issues;

- (ii) photographs and video records of the progress of the D&C Activities;
- (iii) a report on the D&C Activities which addresses:
 - A. for each Construction Package, progress towards:
 - 1) completion of Preliminary Design Documentation;
 - 2) completion of Certified Design Documentation;
 - 3) West Gate Tunnel Completion; and
 - 4) closure of As-Built Records;
 - B. the D&C Program and progress relative to the D&C Program and the original Project milestones;
 - C. key issues and actions arising from the D&C Activities including contractual and financial issues (including any Claims lodged under clause 60.3 of this Agreement), delays to progress, significant safety, environmental or quality issues, and Project Co's response to these issues including:
 - 1) progress claims paid under the D&C Subcontract;
 - 2) commissioning and completion progress of the Works including procurement and performance;
 - 3) stakeholder issues covering property and authorities/utilities; and
 - 4) traffic management issues;
 - D. any issues associated with maintenance of Roads during construction, including public or Facility Owner complaints and safety issues;
 - E. occupational health and safety, environment, quality, project organisation structure and staffing, industrial relations, contractor and subcontractor issues;
 - F. incidents notified to the State or the IREA and outcomes of investigations or responsive actions; and
 - G. identification and progress on rectification work and implemented Pre-Agreed Modifications;
- (iv) planning and implementation of O&M Activities prior to the Date of West Gate Tunnel Completion;
- (v) a corporate relations report (including government, media and community relations) which includes Project Co's actions to address identified issues;
- (vi) reporting on compliance with the LIDP, Workforce Development Plan including the Skills Guarantee Compliance Plan and Social Procurement Strategy; and
- (vii) other reasonable requirements of the State or the IREA.

14.8 Submission of Records

- (a) Design and construction records required by this Part F must be provided to the State as a complete electronic record as a condition precedent to each of West Gate Tunnel Completion, Tolling Completion and Close-Out.
- (b) A complete electronic copy of the As-Built Records for each Construction Package (including the final revised electronic versions of IFC Design Documentation) must be supplied to the State and IREA prior, and as a condition precedent, to Close-Out.
- (c) For the purposes of section 14.8(b), a complete electronic copy of the As-Built Records for each Returned Works Construction Package (including the final revised electronic versions of the IFC Design Documentation) must be supplied to the State, the IREA and the relevant Facility Owner no later than 60 days after the date of completion of the Returned Works and as a condition precedent to Handback of Returned Works. As-Built Records for Returned Works must also include the relevant inspection and maintenance records for the Returned Works during construction.
- (d) Complete electronic copy includes all the final CAD drawings for the Works in the format identified in section 14.2 and the final GIS data in the format identified in section 14.3.

Part F7 - Operation and Maintenance

1. General

- (a) Project Co must:
 - (i) maintain and operate the West Gate Tunnel, including the Freeway;
 - (ii) maintain and operate the Freeway Control Centre; and
 - (iii) maintain (and where appropriate, operate) the Maintained Off-Freeway Facilities,in accordance with this Part F7, the O&M Phase Management Plan and the O&M Manuals.
 - (b) The O&M Phase Management Plan and the O&M Manuals must comply with the requirements in Part F1.
-

2. Operation

In carrying out its obligations under section 1(a), Project Co must:

- (a) develop, maintain and comply with agreed operating protocols with VicRoads to ensure effective management and operation of the road network, including at Freeway interfaces (and otherwise use best endeavours to communicate, cooperate and coordinate with VicRoads and its personnel in pursuit of those objectives);
- (b) communicate, co-ordinate and co-operate with VicRoads;
- (c) communicate, co-ordinate and co-operate with other Relevant Road Authorities;
- (d) manage the Freeway with the objective of ensuring that the Freeway is safe for all Users under all conditions, including traffic congestion and during the management of any incident;
- (e) continually monitor, investigate and report on safety and traffic hazards on the Freeway and undertake any required corrective actions;
- (f) liaise with relevant Authorities, including Emergency Services, on issues affecting the Freeway;
- (g) provide security measures with the objective of preventing unlawful or unauthorised access to any part of the Relevant Infrastructure to which access is prohibited or is unsafe;
- (h) subject to Project Co not being prevented from doing so at Law, remove abandoned vehicles from the Freeway;
- (i) establish and maintain a system for receiving and addressing complaints and enquiries; and
- (j) maintain appropriate records of operations.

3. Incident management

During the O&M Phase, for the Leased Area, Project Co must provide an incident response capability at all times, so as to:

- (a) subject to Project Co not being prevented from doing so at Law, ensure:
 - (i) disabled vehicles which are obstructing traffic or creating a road safety hazard are removed; and
 - (ii) disabled vehicles which are located on any shoulders used as emergency stopping lanes are removed within a reasonable time, in accordance with Best O&M Practices;
- (b) ensure the restoration of damage to the Relevant Infrastructure arising from any incident in accordance with the Code of Maintenance Standards;
- (c) assist Emergency Services personnel in the management of any incident;
- (d) establish and maintain a system to monitor and report response times and rectification times for all Traffic Incidents; and
- (e) meet the System and Traffic Incident Response Requirements identified in Part H19 in respect of Traffic Incident response.

4. Environmental Management during the O&M Phase

4.1 General Requirements

- (a) The O&M Activities must be carried out in accordance with:
 - (i) the Operations Environmental Management Plan; and
 - (ii) the Environmental Requirements.
- (b) The Environmental Representative will have authority and responsibility for issues relating to environmental management throughout the performance of the O&M Activities and must review the outcomes of all environmental audits and ensure that the issues identified in the environmental audits are addressed.
- (c) The IREA must, from West Gate Tunnel Completion until the expiry of its term, conduct regular audits of compliance with the OEMP (during the O&M Phase) at least at the frequency as specified in the Environmental Requirements;
- (d) Upon expiration of the term of the IREA, an Environmental Auditor independent of Project Co is to be engaged by Project Co to conduct regular audits of compliance with the OEMP (during the O&M Phase) at least at the frequency as specified in the Environmental Requirements.
- (e) Results of all environmental audits must be provided to the State within five Business Days.
- (f) In addition to section 4.1(e), the IREA during its term and thereafter the Environmental Auditor, must produce 6 monthly audit reports and sub-reports to the State for provision to the Minister for Planning and other approval authorities as appropriate.

- (g) Project Co must co-operate with, and do all things reasonably necessary to assist, the IREA in performing its functions referred to in section 4.1(c) and the Environmental Auditor in performing its functions under section 4.1(d) including the timely provision of information and responding to any request for further information.

5. Notification to the State

- (a) The State must be notified in accordance with the protocol agreed with the State and included in the O&M Phase Management Plan of either of the following associated with or affecting the O&M Activities:
 - (i) any Incidents;
 - (ii) any Major Incidents or incidents attended; and
 - (iii) any notice issued by WorkSafe of which Project Co becomes aware.
- (b) All relevant details of any Incident or Major Incident required to be reported to the State in accordance with the protocol agreed under section 2.2(a)(i) of Part F1, must be recorded (supported, where appropriate, by photographs of the site including the location of all safety devices) as soon as possible after the Incident or Major Incident.

6. Not used

7. Traffic management

7.1 Traffic Plans

- (a) The following traffic plans must be developed, regularly updated and complied with by Project Co:
 - (i) Diversion Traffic Management Plans;
 - (ii) Incident Traffic Management Plans; and
 - (iii) Maintenance Traffic Management Plans.
- (b) Each of the traffic plans must meet the requirements of the State Project Documents and be consistent with the FMS Agreement (to the extent applicable).

7.2 Content of traffic plans

Each traffic plan referred to in section 7.1 must address, as a minimum (where applicable):

- (a) traffic signal operations;
- (b) on site location of traffic control devices;
- (c) on site location of Victoria Police and incident management personnel;
- (d) on site location and content of DISPLAN boxes;
- (e) the content of TMCS signs and displays;
- (f) the content of signs and displays along the Freeway and CityLink; and
- (g) notification requirements before the traffic plan is implemented.

7.3 Submission of Traffic Plans

Notwithstanding section 7.1(a) the traffic plans referred to in section 7.1 must be submitted to the State and the IREA in accordance with the Review Procedures at least 120 Business Days prior to the Date of West Gate Tunnel Completion.

7.4 Diversion Traffic Management Plans (DTMP)

- (a) DTMPs must be prepared for use in the management of traffic in the event of an incident on the Freeway, or in other circumstances where a traffic diversion is or will be required.
- (b) Potential diversions requiring DTMPs, and the details within each DTMP, must be developed in consultation with, and using best endeavours to agree with Emergency Services, VicRoads, Relevant Road Authorities and local councils (as applicable).

7.5 Incident Traffic Management Plans (ITMP)

- (a) ITMPs must be prepared for the management of traffic around Incidents and Major Incidents occurring within the Leased Area.
- (b) Each ITMP must include a series of standard drawings identifying the location of traffic devices.
- (c) Incident management personnel must be appropriately qualified and incident management vehicles must be appropriately equipped for each type of incident.

7.6 Maintenance Traffic Management Plans (MTMP)

Any O&M Activities that may involve working in close proximity to traffic must be undertaken in accordance with a MTMP.

7.7 Traffic controllers

All persons who are required to perform the duties of an on-road traffic controller for undertaking traffic management pursuant to a DTMP, ITMP or MTMP must undertake the relevant training and be examined and certified as competent to perform their respective traffic controller duties.

7.8 Operations Traffic Management Liaison Group

- (a) An Operations Traffic Management Liaison Group (OTMLG) will be established at least two months prior to the anticipated Date of West Gate Tunnel Completion.
- (b) The OTMLG will comprise representatives from the State, VicRoads, the CityLink Parties, Project Co, OpCo and other groups nominated by the State as required.
- (c) The OTMLG will be a forum for the exchange of information and the discussion of issues associated with operational traffic management, including liaison with VicRoads, data sharing, operational interfaces, coordination of systems between the State's road network, the CityLink network and the Freeway, new traffic management developments and other issues.
- (d) The OTMLG will have no legal responsibilities and will not have any power to require any of the parties or their Associates to act or refrain from acting in any way, and Project Co's responsibility for traffic management will not be limited or affected by the existence of, or determinations or decision of, the OTMLG.
- (e) The OTMLG will meet at least once every six months or at such other frequency as agreed by the State and Project Co.

7.9 VicRoads Traffic Bulletin

A weekly report, for inclusion on the VicRoads website, must be provided to VicRoads detailing, to the extent reasonably required by VicRoads:

- (a) all current O&M Activities; and
- (b) all planned O&M Activities proposed within the following three weeks,

that will involve the closure of any traffic lanes, within the Leased Area and any affected Roads.

7.10 Traffic information

- (a) The State and VicRoads must be provided with quarterly summaries of traffic data in a form reasonably acceptable to the State, provided that the State procures that VicRoads will maintain and treat such information as Confidential Information in accordance with clause 53 of this Agreement.

8. Maintenance

8.1 General

- (a) Project Co must:
 - (i) ensure that only appropriately trained and qualified personnel are engaged in respect of the maintenance activities;
 - (ii) plan and implement maintenance activities in accordance with the O&M Manual;
 - (iii) where maintenance activities may have:
 - A. a material operational impact on traffic outside the Leased Area; or
 - B. an operational impact on traffic outside the Leased Area which requires traffic management on roads outside the Leased Area, having regard to the nature of the maintenance activity including whether it is planned or unplanned and the urgency of the circumstances:
 - C. use reasonable endeavours to coordinate the relevant maintenance activities with each applicable Relevant Road Authority;
 - D. obtain the agreement of each applicable Relevant Road Authority prior to the relevant maintenance activities commencing; and
 - E. where the agreement of the Relevant Road Authority is not able to be obtained prior to the relevant maintenance activities commencing due to unplanned nature of the maintenance activities or the urgency of the circumstances, notify the Relevant Road Authority of the relevant maintenance activities and take into account to the extent reasonably practicable any feedback provided.

- (iv) in accordance with the Code of Maintenance Standards, keep the Relevant Infrastructure in a clean and tidy condition and remove graffiti, litter and debris, including incident debris;
- (v) undertake regular inspections of the Assets of the Relevant Infrastructure in accordance with the O&M Manuals;
- (vi) maintain details of manufacturers' requirements and technical specifications and use them as considerations in performing maintenance in accordance with the Code of Maintenance Standards; and
- (vii) maintain records of all maintenance carried out in accordance with this section 8 and section 5 of Part D1.

8.2 General replacement and refurbishment

The replacement and refurbishment of Assets must be undertaken at such times as required to ensure that the Relevant Infrastructure at all times meets the requirements of this Agreement.

9. Not used

10. Not used

11. Code of Maintenance Standards

11.1 Maintenance Standards

- (a) A Code of Maintenance Standards must be developed which:
 - (i) is consistent with the preliminary Code of Maintenance Standards;
 - (ii) includes maintenance standards which will enable Project Co to comply with the requirements of this Agreement in respect of the O&M Activities for the duration of the O&M Phase;
 - (iii) clearly defines inspection principles, the frequency of inspections, intervention levels, and maximum acceptable maintenance response times; and
 - (iv) clearly defines the system of Asset condition rating to meet the requirements of section 12.2.
- (b) Maintenance standards must be defined in the Code of Maintenance Standards for appropriate Asset categories, including roadside Assets, and must include:
 - (i) the specific performance standards that must be maintained;
 - (ii) potential defects or hazards which could affect each performance standard;
 - (iii) clearly defined intervention levels for each potential defect or hazard;

- (iv) the intervention level at which the defect must be rectified or the hazard removed;
- (v) the period within which the defect must be rectified or hazard removed once the relevant intervention level has been reached;
- (vi) condition indicators and condition ratings for the relevant performance standard;
- (vii) the minimum frequency for:
 - A. daytime and, as required, night time inspections including for defects and condition rating inspections;
 - B. the maintenance activities. As a minimum, these activities include:
 - 1) lighting;
 - 2) Tunnel ventilation;
 - 3) Tunnel safety systems;
 - 4) pavement maintenance;
 - 5) safety barrier realignment, repair or replacement;
 - 6) hazard rectification;
 - 7) cleanliness of tunnel linings;
 - 8) litter control; and
 - 9) grass and weed control.
- (c) The maintenance standards must be at least equivalent to VicRoads maintenance standards for comparable facilities, as at the date of this Agreement without limiting and subject to Project Co's obligation to carry out the O&M Activities in accordance with Best O&M Practices.
- (d) Project Co must not depart from or amend a scheduled activity, intervention, process or standard set out in the Code of Maintenance Standards (including in the preliminary Code of Maintenance Standards set out in Part K), unless otherwise agreed by the State, in respect of the following sections:
 - (i) 4.2.8 Civil Architectural Features;
 - (ii) 4.3.1 Roadside Litter and Debris Removal;
 - (iii) 4.3.2 Graffiti and Unauthorised signs/posters;
 - (iv) 4.3.3 Landscaping; and
 - (v) 4.3.4 Architecture & Urban Design.

12. Condition monitoring of Assets

12.1 Asset Condition

The Asset condition indicators, ratings and inspection frequencies in the Code of Maintenance Standards must be:

- (a) sufficient to allow the determination (and, where reasonably possible, the objective determination) of the condition and be used as an input to the likely Residual Design Life of each Asset; and
- (b) used as an input to inform the time at which refurbishment or replacement of the Asset should be undertaken.

12.2 Required Standards

The condition rating of Assets may be used as an input to determine the extent to which the Relevant Infrastructure meets the Standards required by this Agreement at the Expiry Date.

13. O&M Phase Reports

13.1 Monthly reports

- (a) During the O&M Phase, Project Co must provide the State with monthly reports of the O&M Activities within 15 Business Days of the end of each calendar month.
- (b) The monthly reports required under section 13.1(a) must include (to the extent applicable):
 - (i) a management overview which addresses key issues relating to the O&M Activities;
 - (ii) a summary of the O&M Activities which addresses or includes:
 - A. performance relative to the System and Traffic Incident Response Requirements identified in Part H19;
 - B. roadway operations, including traffic management and road safety;
 - C. environmental performance, including results of analysis of breaches of Environmental Requirements;
 - D. maintenance performance including landscaping works, routine repairs and replacement activities for all Relevant Infrastructure;
 - E. a summary of all incidents attended;
 - F. measurement and performance against KPIs;
 - G. other reasonable requirements of the State; and
 - H. a summary of material matters in relation to government, media and community relations including Project Co's actions taken to address identified matters; and

- (iii) a report on the balance of the Works, including any Defects, required to be completed for the purpose of achieving Close-Out.

13.2 Incident Reports

- (a) Project Co must, after provision of a notice and report under section 5(a) and 5(b) respectively, promptly provide the State with a detailed report of:
 - (i) the details of the relevant Incidents and Major Incidents recorded under section 5(b); and
 - (ii) the action which was taken.
- (b) If a report is provided or required to be provided to the State under section 13.2(a), Project Co must thereafter provide to the State any additional information reasonably requested by the State in connection with the subject matter of such report.

13.3 Material Defects Reports

- (a) Project Co must promptly provide the State with a detailed report of:
 - (i) any material Defect in the Relevant Infrastructure of which it becomes aware;
 - (ii) the action which is proposed to be taken to rectify the material Defect and the estimated time that this will require.
- (b) If a report is provided or required to be provided to the State under section 13.3(a), Project Co must thereafter provide to the State any additional information reasonably requested by the State in connection with the subject matter of such report.

13.4 Annual Budget

During the O&M Phase, Project Co must provide the State with an annual budget by no later than the end of each Financial Year which set outs an overview of the planned expenditure on periodic capital works, asset refurbishment and asset replacement for the Freeway and the Maintained Off-Freeway Facilities for the upcoming Financial Year.

Part G – Communications and Community Engagement

1. Community Information

The parties acknowledge and agree that:

- (a) sections 2 to 9 of this Part G will only apply during the D&C Phase; and
- (b) section 10 of this Part G will only apply during the O&M Phase.

2. General requirements

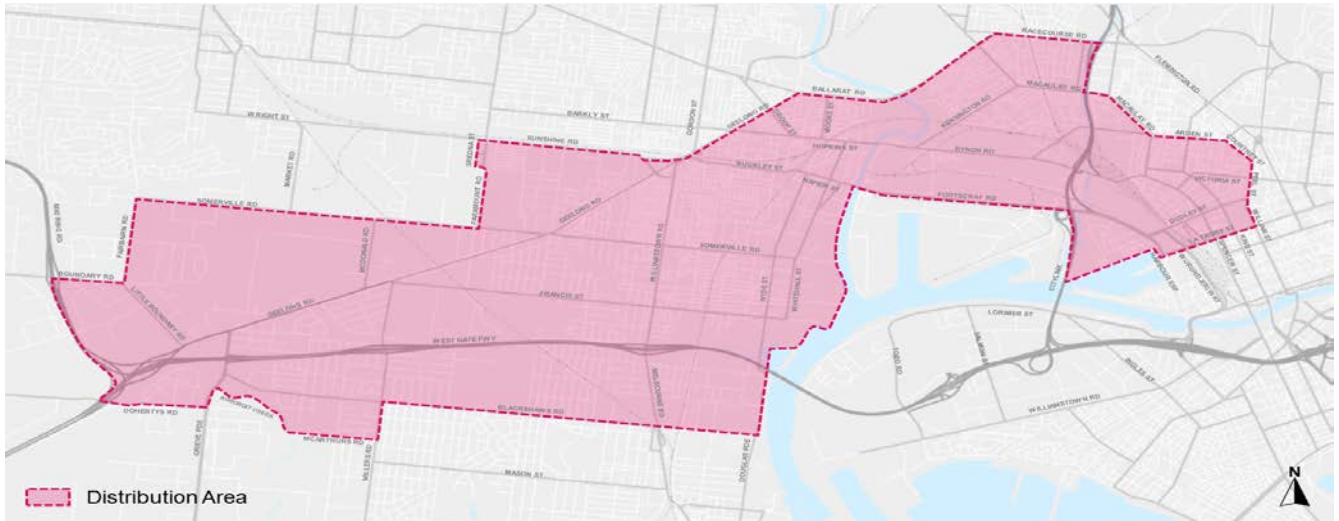
As part of the Construction Communications and Community Engagement Plan, the following activities and issues must be addressed:

- (a) Project Co must:
 - (i) provide:
 - A. resources to respond to all enquiries passed on to Project Co; and
 - B. construction and project related information as required by the State for distribution to the community in response to relevant enquiries,

received via a 24-hour response phone number, operated by the State, targeted to the local community to address specific aspects of project construction information or otherwise received directly by the State or Project Co. This arrangement should be available at all times during the performance of the D&C Activities;
 - (ii) update the register or database established by the State in accordance with Part H21, with records of all enquiries and complaints from the public regarding the Project during the D&C Phase which are made directly to Project Co or passed on to Project Co by the State, including names, nature of the inquiry, response provided and date of response;
 - (iii) acknowledge all enquiries promptly and answer or advise of further action within five Business Days, including where possible, a likely timeframe for resolution. Fortnightly reports must be provided to the State outlining details of public enquiries received and the response provided;
 - (iv) provide regular content to the State for the State to post on its Project website and social media platforms (including Youtube, Twitter, LinkedIn and Facebook), including comprehensive and up-to-date construction information and details of community and traffic disruption;
 - (v) provide video footage, aerial photography and time lapse footage to promote the progress of the D&C Activities. The video production firm and photographer must be approved by the State;
 - (vi) develop accurate 3D animation of the project design and an interactive map from the 3D model, maintained and updated to include major design changes, to be used for community information and engagement purposes throughout the D&C Phase;

- (vii) prepare and distribute a community update newsletter (**Community Update**) at regular intervals (not less than four per year) and in a format and style agreed with the State, to be distributed by direct mail to households and businesses in the distribution area shown in Figure 1.1;
 - (viii) ensure the Community Update provides information on construction progress, planned activities and impacts, as well as promotes opportunities for community involvement. The Community Update must be accessible on the internet including in a Word accessible format and available as a separate document capable of download. The distribution area for the Community Update and any other direct mail to the local community is shown in Figure 1.1;
 - (ix) plan and manage community pop-ups and displays in respect of the Works as agreed with the State. Project Co must develop an annual schedule for attendance at all community events held across the Project corridor for agreement with the State. These will generally be major annual community events managed by each local municipality along the Project corridor such as the Yarraville Festival. The event activities, management, dates and location must be agreed by Project Co and the State and must cater for public attendance numbers equivalent to similar previous events; and
 - (x) notify households and businesses or other impacted stakeholders likely to be affected by the D&C Activities, including by noise, dust and changed conditions, before those D&C Activities occur (**Notification of Works**). Maximum possible notification must be given, including an explanation of the Works, timing and possible impact. Contact details must be provided to facilitate community questions and responses. Notification should occur no later than ten Business Days prior to commencement of the relevant D&C Activities in any local area affected. Copies of any letters should be provided to the State for information at least two Business Days prior to the intended date of delivery. A notification relating to those Works must also be published on the Project website;
- (b) Branding guidelines as agreed between the State and Project Co, for written and digital publications, including appropriate use of logos and branding, must be adhered to.
 - (c) Except for Notification of Works in accordance with section 2(a)(x), all community information and media materials must be approved by the State as soon as reasonably practicable and within five Business Days to the extent possible using its reasonable endeavours.
 - (d) Project Co must immediately inform and provide details to the State of any enquiries from Members of Parliament or councillors and must refer any enquiries from Members of Parliament to the State.
 - (e) Project Co must inform the State of engagement with council officers on a weekly basis. In the event that a significant issue is raised by a council officer, Project Co must notify the State as soon as reasonably practicable.
 - (f) An appropriate languages other than English (**LOTE**) strategy must be prepared by Project Co and approved by the State and used to communicate with culturally and linguistically diverse (**CALD**) communities. The LOTE strategy must include the publication of key project information in other languages in hard copy and online form and the availability of interpreting services.
 - (g) Project Co must organise and manage site visits for media and stakeholders as reasonably requested by the State.

- (h) Project Co is required to implement a regular and rigorous evaluation of the effectiveness of its communication and community engagement program to the satisfaction the State.
- (i) Figure 1.1 Community Information Bulletin Distribution Area



3. Visitor Information Centre

- (a) A visitor information centre must be established that will:
 - (i) enable stakeholders to raise concerns or provide feedback in relation to the Project;
 - (ii) be easily accessible to the public via all modes of transport;
 - (iii) be located within 500m of the Project Area;
 - (iv) be able to accommodate parking for 5 visitors' cars and one bus;
 - (v) have a dedicated room for presentations which:
 - A. accommodates up to 50 people; and
 - B. contains PC and audio visual equipment to enable presentations to be displayed using USBs and DVDs;
 - (vi) operate from five months after Financial Close until one month after opening of the Tunnel to traffic or an earlier date as determined by the State;
 - (vii) be staffed from 10.00am – 5.00pm Monday to Friday, and 10.00am – 4.00pm on Saturdays (excluding public holidays); and
 - (viii) include:
 - A. up-to-date information on the Project using photographs and videos updated quarterly;
 - B. high quality Project information and visual displays which detail matters of interest including:

- 1) Project benefits;
 - 2) Tunnel ventilation systems;
 - 3) Tunnel fire and life safety systems;
 - 4) traffic management strategies;
 - 5) landscape outcomes including urban design features;
 - 6) noise attenuation;
 - 7) environmental and cultural heritage;
 - 8) Tunnel and bridge construction;
 - 9) progress of the Works; and
 - 10) geotechnical information;
- C. samples of finishes and urban design materials;
- D. a 3D interactive model(s) of the Project including:
- 1) Tunnel portals;
 - 2) ventilation outlets; and
 - 3) other relevant Project features;
- E. model of the tunnelling system(s) used;
- F. drive-through presentations; and
- G. other display material provided by the State.

4. Community Liaison Group

- (a) The State proposes to establish a community liaison group (**CLG**) for the D&C Phase to facilitate community and stakeholder involvement in the development of the Project in an advisory capacity and to create opportunities to address community concerns in relation to the Project.
- (b) The State will:
 - (i) appoint an independent chairperson to the CLG; and
 - (ii) provide administrative and support services required to hold meetings and facilitate the operation of the CLG.
- (c) Senior representatives of Project Co and the D&C Subcontractor will be required to participate in the CLG by:
 - (i) attending all meetings as convened by the chair;
 - (ii) providing the CLG with a regular report of the D&C Activities; and

- (iii) participating in other CLG stakeholder groups as required by the State from time to time.
- (d) The CLG will operate until a time determined by the State.

5. Community Engagement

- (a) In regard to general engagement with the local community, Project Co must:
 - (i) adopt a consultative approach with the local community and actively foster positive relationships along the Project construction corridor; and
 - (ii) provide opportunities for community and stakeholder involvement and input into the Project.
- (b) Project Co must do all things reasonably necessary and in good faith to enable Community Issues to be resolved including:
 - (i) meeting with affected householders and/or businesses;
 - (ii) exchanging information;
 - (iii) considering all reasonably available alternatives; and
 - (iv) if necessary, without limiting any other obligations of this Agreement, making changes to the design or construction methodology in consultation with the State.
- (c) A 'Community Issue' is an issue in relation to the Works:
 - (i) which can be resolved through minor amendments to the Design Documentation or otherwise through the way in which the D&C Activities are performed; and
 - (ii) the effect of resolution of which:
 - A. will be within the general scope of the PSR; and
 - B. will not adversely affect the FFP Warranty.
- (d) Protocols in relation to how community impacts associated with construction will be managed must be developed in consultation with the State and published, and made freely available to the public. Project Co must implement the protocols. The protocols must include:
 - (i) a suite of standard measures to mitigate issues including noise and vibration on surrounding communities and consistent triggers for when such mitigation measures will be applied including mitigation measures such as alternative accommodation; and
 - (ii) measures to evaluate the effectiveness of the noise and vibration mitigation, including field monitoring and regular market research conducted with surrounding communities.

6. Communications and Community Engagement Representative

Project Co must appoint a full time communications and community relations representative who:

- (a) has relevant tertiary qualifications and at least five years' experience in communications or a related field;
- (b) must liaise regularly with the State regarding community information, joint communications, open days, media enquiries and public announcements;
- (c) is readily available, contactable at all times during the Works and able to respond appropriately to urgent enquiries or requests;
- (d) is authorised by Project Co to provide official comment to media in accordance with this Agreement;
- (e) is fully briefed on all relevant aspects of the Works;
- (f) has access to additional, appropriately qualified resources to assist during busy periods;
- (g) can organise and manage site visits for stakeholders as requested by the State; and
- (h) can manage and coordinate the official opening of the West Gate Tunnel in consultation with the State; and
- (i) must attend fortnightly meetings with the State and where requested by the State the D&C Subcontractor to review communication and engagement activities.

7. Media

- (a) Project Co must develop and implement protocols for media management, recognising that the State's approval must be obtained prior to the release of media materials in relation to West Gate Tunnel.
- (b) Project Co must provide a report to the State each month detailing key milestones for publicity opportunities over the following six months (as a minimum). Project Co must work in conjunction with the State to organise events to celebrate appropriate key milestones and promote the Project.
- (c) Without limiting section 7(b) Project Co must work with the State to arrange and facilitate an official opening event to commemorate the Date of West Gate Tunnel Completion.

8. Signage

- (a) Project Co is required to produce and install:
 - (i) standard project signage as required by the State;
 - (ii) prominent signage/project branding on gawk screens along the entire length of the works zone and not less than every 50 metres; and
 - (iii) prominent signage/project branding for all site offices and works depots that are visible to communities and abutting road users.
- (b) Project Co must not install or allow a third party to install any advertising signs on the Site without the consent of the State.

9. Accommodation for major community events

Project Co must plan and implement appropriate traffic and transport management measures for any major community events that occur during the Term in accordance with the relevant CTMPs and WTMPs as set out in Part F1 and Part F6.

10. Communications during the O&M Phase

Communications and community engagement during the O&M Phase must be undertaken as set out in the Operations and Community Engagement Plan prepared in accordance with section 2.2(h) of Part F1.

Part H - Specific Appendices

Part H1 - Lane Requirements

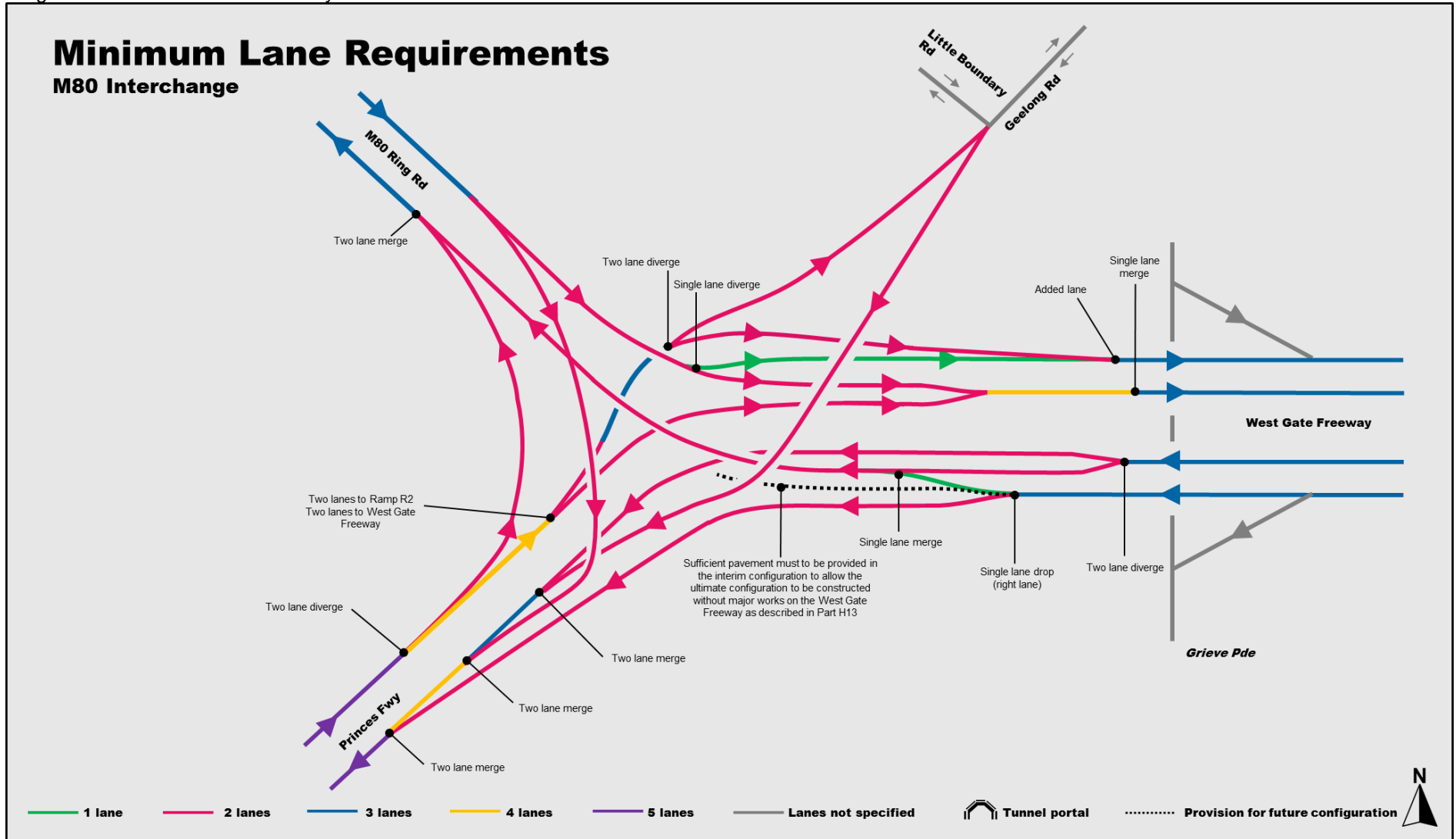
1. General

1.1 General

- (a) As a minimum, the lane configuration must be in accordance with sections 1.2 and 1.3.
- (b) Number of traffic lanes:
 - (i) Freeways - The number of traffic lanes must be as shown in Table H1.1 and Diagram H1.1 unless otherwise necessary to meet the requirements of Part H5 and Part H7.
 - (ii) Other Roads - The number of traffic lanes must be no less than;
 - A. **(as shown in Table H1.1):** as shown in Table H1.1 and Diagram H1.1 unless otherwise necessary to meet the requirements of Part H5 and Part H7;
 - B. **(not shown in Table H1.1):** if not defined in Table H1.1 and Diagram H1.1, the requirements of Part H5 and Part H7; and
 - C. those existing prior to Financial Close unless otherwise agreed to by the State in writing.

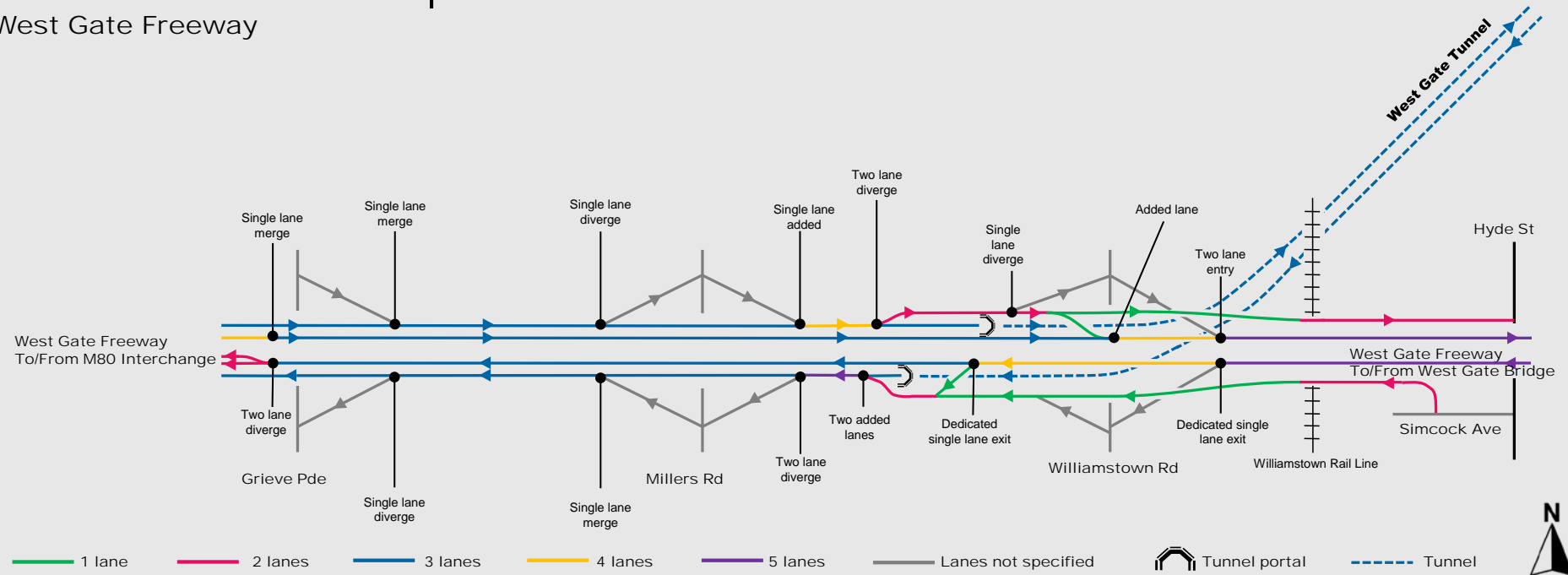
1.2 Freeway lanes

Diagram H1.1 – Number of Freeway Lanes



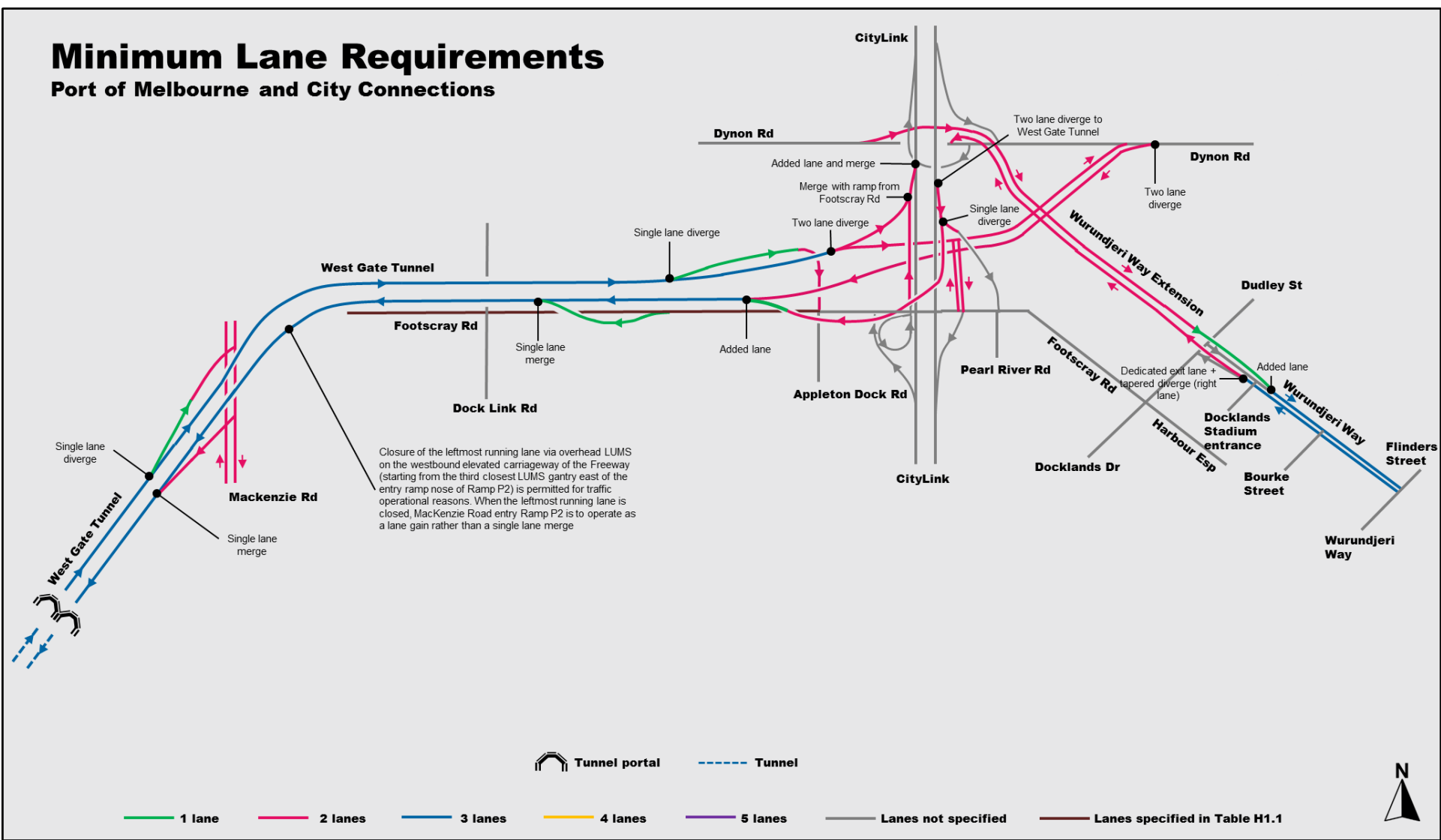
Minimum Lane Requirements

West Gate Freeway



Minimum Lane Requirements

Port of Melbourne and City Connections



1.3 Lane cross sectional dimensions

Table H1.1 – Lane cross sectional dimensions

| Location | ⁽²⁾ Left emergency stopping lane / shoulder minimum width (metres) | Number / width of traffic lanes (metres) | ⁽²⁾ Right emergency stopping lane / shoulder minimum width (metres) |
|---|---|---|--|
| Princes Freeway – Westbound | | | |
| Main Carriageway | 3.0 | 5 @ 3.5 (13) | 1.0 |
| West Gate Freeway - Westbound | | | |
| Collector-Distributor | 3.0 ⁽¹⁾ | 3 @ 3.5 (12) | 1.0 |
| Main Carriageway | 3.0 ⁽⁶⁾ | 3 @ 3.5 | 1.0 |
| West Gate Freeway - Eastbound | | | |
| Collector-Distributor | 3.0 ⁽¹⁾ | 3 @ 3.5 (11) | 1.0 |
| Main Carriageway | 3.0 ⁽⁶⁾ | 3 @ 3.5 | 1.0 |
| West Gate Freeway | | | |
| Braided Ramps (Ramp A1, Ramp A2) | 4.0 | 1 @ 3.5 ⁽⁴⁾ | 1.0 |
| Hyde Street Ramps | | | |
| Exit (Ramp H1) ⁽⁵⁾ | 1.0 | 2 @ 3.5 | 1.0 |
| Entry (Ramp H2) ⁽⁵⁾ | 1.0 | 2 @ 3.5 | 1.0 |
| West Gate Tunnel | | | |
| West Gate Freeway to Tunnel – Eastbound | 1.0 | 3 @ 3.5 | 0.5 |
| Tunnel to West Gate Freeway – Westbound | 1.0 | 3 @ 3.5 | 0.5 |
| Eastbound Tunnel | 1.0 | 3 @ 3.5 | 0.5 |

| Location | ⁽²⁾ Left emergency stopping lane / shoulder minimum width (metres) | Number / width of traffic lanes (metres) | ⁽²⁾ Right emergency stopping lane / shoulder minimum width (metres) |
|-------------------------------------|---|---|--|
| Westbound Tunnel | 1.0 | 3 @ 3.5 | 0.5 |
| Tunnel portal to Ramp C1 | 1.0 | 3 @ 3.5 | 1.0 |
| Ramp C2 to Tunnel portal | 1.0 | 3 @ 3.5 (16) | 1.0 |
| MacKenzie Road Ramps | | | |
| Exit (Ramp P1) | 1.0 | 2 @ 3.5 | 1.0 |
| Entry (Ramp P2) | 1.0 | 2 @ 3.5 | 1.0 |
| MacKenzie Road | | | |
| Northbound | 1.0 | 2 @ 3.5 | 1.0 |
| Southbound | 1.0 | 2 @ 3.5 | 1.0 |
| West Gate Tunnel to CityLink | | | |
| Northbound (Ramp C1) | 1.0 | 2 @ 3.5 | 1.0 |
| Southbound (Ramp C2) | 1.0 | 2 @ 3.5 ⁽⁴⁾ | 1.0 |
| Appleton Dock Ramps | | | |
| Exit (Ramp P3) | 1.0 | 2 @ 3.5 | 1.0 |
| Entry (Ramp P4) | 3.0 | 1 @ 3.5 ⁽⁴⁾ | 1.0 |
| Footscray Road Ramps | | | |
| Exit (Ramp F1) | 1.0 | 2 @ 3.5 | 1.0 |
| Entry (Ramp F2) | 1.0 | 2 @ 3.5 | 1.0 |
| Dynon Road Ramps | | | |
| Eastbound (Ramp D1) | 1.0 | 2 @ 3.5 | 1.0 |

| Location | ⁽²⁾ Left emergency stopping lane / shoulder minimum width (metres) | Number / width of traffic lanes (metres) | ⁽²⁾ Right emergency stopping lane / shoulder minimum width (metres) |
|--|---|---|--|
| Westbound (Ramp D2) | 1.0 | 2 @ 3.5 | 1.0 |
| Wurundjeri Way Extension | | | |
| Northbound | 1.0 | 2 @ 3.5 | 1.0 |
| Southbound | 1.0 | 2 @ 3.5 | 1.0 |
| Wurundjeri Way | | | |
| Dudley Street to Flinders Street - Northbound | 1.0 ⁽⁷⁾ | 3 @ 3.5 | 1.0 ⁽⁷⁾ |
| Dudley Street to Flinders Street - Southbound | 1.0 ⁽⁷⁾ | 3 @ 3.5 | 1.0 ⁽⁷⁾ |
| Footscray Road | | | |
| Between MacKenzie Road and Appleton Dock Road – Eastbound | - | As existing @ 3.5 | - |
| Between MacKenzie Road and Appleton Dock Road – Westbound Main Carriageway | - | 3 @ 3.5 ⁽¹⁴⁾ | - |
| Between MacKenzie Road and Appleton Dock Road – Westbound service road | - | 2 @ 3.5 ⁽¹⁵⁾ | - |

Table Notes:

⁽¹⁾ May be reduced to 1.0 metre provided that emergency stopping bays are provided where safe and practical and at a maximum spacing of 500 metres. The emergency stopping bays must be a minimum of four metres wide for a minimum length of 40 metres plus appropriate tapers for deceleration and acceleration on the approaches and departures. The location of emergency stopping bays must be coordinated with the locations of LUMS gantries.

⁽²⁾ May need to be widened to provide adequate sight distance.

⁽³⁾ Not used.

⁽⁴⁾ Single lane sections must be able to accommodate two lanes of traffic in a redundancy scenario as detailed in Part H8.

⁽⁵⁾ Ramps H1 and H2 lane cross sections may be reduced to a minimum width of 3m left emergency stopping lane / shoulder, 3.5m traffic lane and 1m right shoulder to the extent

| Location | (2) Left emergency stopping lane / shoulder minimum width (metres) | Number / width of traffic lanes (metres) | (2) Right emergency stopping lane / shoulder minimum width (metres) |
|--|---|--|--|
| <p>necessary to minimise impact on Donald McLean Reserve and the Westgate Golf Club (west of the Williamstown railway line, including any transition in lane configuration).</p> | | | |
| <p>⁽⁶⁾ May be reduced to 1.0 metre only in circumstances where it is not possible to accommodate a larger lane width within the Land Availability Plans.</p> | | | |
| <p>⁽⁷⁾ Only required on structure.</p> | | | |
| <p>⁽⁸⁾ Not used.</p> | | | |
| <p>⁽⁹⁾ Not used.</p> | | | |
| <p>⁽¹⁰⁾ Not used.</p> | | | |
| <p>⁽¹¹⁾ Between Ramp M2 and Ramp W1, 4 lanes @ 3.5 metres.</p> | | | |
| <p>⁽¹²⁾ Between Ramp W4 and Ramp M3, 5 lanes @ 3.5 metres.</p> | | | |
| <p>⁽¹³⁾ Between Ramp R10 and nose of Kororoit Creek Road exit ramp.</p> | | | |
| <p>⁽¹⁴⁾ Retain existing turn lane (additional to through lanes) at Linfox access.</p> | | | |
| <p>⁽¹⁵⁾ Additional turn lane provided at each intersection.</p> | | | |
| <p>⁽¹⁶⁾ Closure of the leftmost running lane via overhead LUMS on the westbound elevated carriageway of the Freeway (starting from the third closest LUMS gantry east of the entry ramp nose of Ramp P2) is permitted for traffic operational reasons. When the leftmost running lane is closed, MacKenzie Road entry Ramp P2 is to operate as a lane gain rather than a single lane merge.</p> | | | |
| <p>General</p> | | | |
| <p>(i) parking to be reinstated as per existing</p> | | | |
| <p>(ii) all dimensions are in metres</p> | | | |
| <p>(iii) Shoulder widths of 0.6 metres can be provided adjacent to high containment barriers on the side of the pavement. Allowance must be made for vehicle sway envelopes on the side of the pavement</p> | | | |

Part H2 - Posted Speeds and Design Speeds

1. Posted speeds and design speeds

- (a) The posted speeds must be in accordance with Table H2.1.
- (b) The design speeds used for road design must be calculated in accordance with the VicRoads Supplement to AUSTRROADS Road Design - Part 3 and must not be less than the minimum design speeds shown in Table H2.1.
- (c) Curves must be signed with an advisory speed when the design speed is less than the posted speed.

Table H2.1 – Posted, design and advisory speeds

| Location | Standard Posted Speed Limit ⁽¹⁾ km/h | Minimum Design Speed km/h | Curve Advisory Speed km/h |
|---|--|--|------------------------------|
| Freeway Carriageways | | | |
| West Gate Freeway - main carriageway | 100 | 110 | n/a |
| West Gate Freeway to Princes Freeway main carriageway | 100 | 110 | n/a |
| West Gate Freeway - Collector-Distributor | 100 ⁽³⁾ | 110 ⁽³⁾ | n/a |
| Braided Ramps | 80 | 80 | n/a |
| West Gate Tunnel - Tunnel section | 80 | 80 | n/a |
| West Gate Tunnel - Tunnel approach and departures | 80 | 80 | |
| West Gate Tunnel - all other sections | 80 | 80 | n/a |
| CityLink | 80 | 80 | n/a |
| Freeway to Freeway Ramps | | | |
| M80 interchange | - | 80 | 80 |
| West Gate Freeway to West Gate Tunnel | 80 | 80 | n/a |
| West Gate Tunnel to CityLink | 80 | 80 | n/a |
| Freeway Exit Ramps | | | |
| All except freeway to freeway ramps | The road being approached | 80 at nose, reducing to suit conditions at | n/a |

| Location | Standard Posted Speed Limit ⁽¹⁾ km/h | Minimum Design Speed km/h | Curve Advisory Speed km/h |
|---|--|---|------------------------------|
| | posted speed | ramp terminal intersection | |
| Freeway Entry Ramps | | | |
| All except freeway to freeway ramps | The freeway being entered posted speed. | To suit conditions at ramp terminal intersection, increasing to 80 at nose. | n/a |
| Other Roads (2) | | | |
| Grieve Parade | Existing | Existing | n/a |
| Millers Road | Existing | Existing | n/a |
| Williamstown Road | Existing | Existing | n/a |
| Hyde Street | Existing | 60 | n/a |
| MacKenzie Road | Existing | 60 | n/a |
| Appleton Dock Road | Existing | 60 | n/a |
| Footscray Road | Existing | Existing | n/a |
| Wurundjeri Way Extension | 70 | 70 | n/a |
| Wurundjeri Way | Existing | Existing | n/a |
| Dynon Road | Existing | Existing | n/a |
| Table Notes | | | |
| <p>¹ LUMS may operate some roads at a lower speed limit in certain circumstances.</p> <p>² Where achievement of Minimum Design Speed is not practicable due to effects on adjacent land or adverse environmental effects, the higher of:</p> <ul style="list-style-type: none"> the design speed calculated in accordance with VicRoads Supplement to AUSTRROADS Road Design – Part 3; and the design speed agreed in writing by the relevant Facility Owner, <p>may be used.</p> <p>A reference to Existing means existing as at Financial Close.</p> <p>³ Standard Posted Speed Limit and Minimum Design Speed are 80km/h on the westbound</p> | | | |

| Location | Standard Posted Speed Limit ⁽¹⁾ km/h | Minimum Design Speed km/h | Curve Advisory Speed km/h |
|--|--|-------------------------------------|--|
| section between chainages BB-49060 and BB-50430. | | | |

Part H3 - Design Traffic Volumes and Loadings

1. Design Traffic Volumes

The tables in section 2 of Part H3 identify the design traffic volumes and vehicle mixes for design year 2031.

2. Design Hour Traffic Volumes

Figure H3.1 – Location Plan

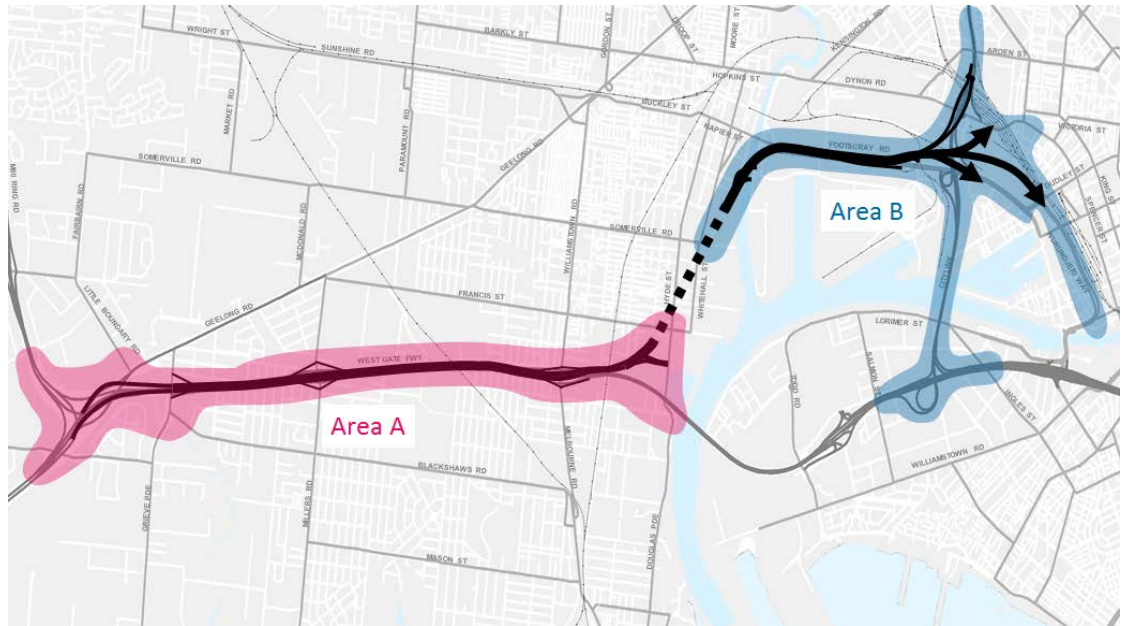


Table H3.2 - Area A - 1 hour volumes

Figure H3.2 – Area A Zone Map

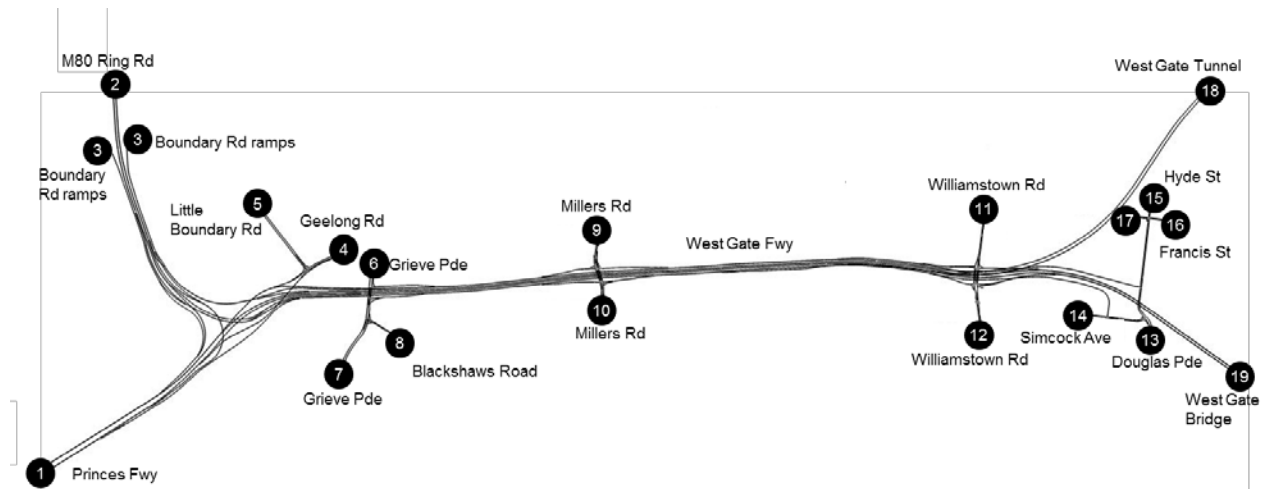


Figure H3.3 - Area B Zone Map

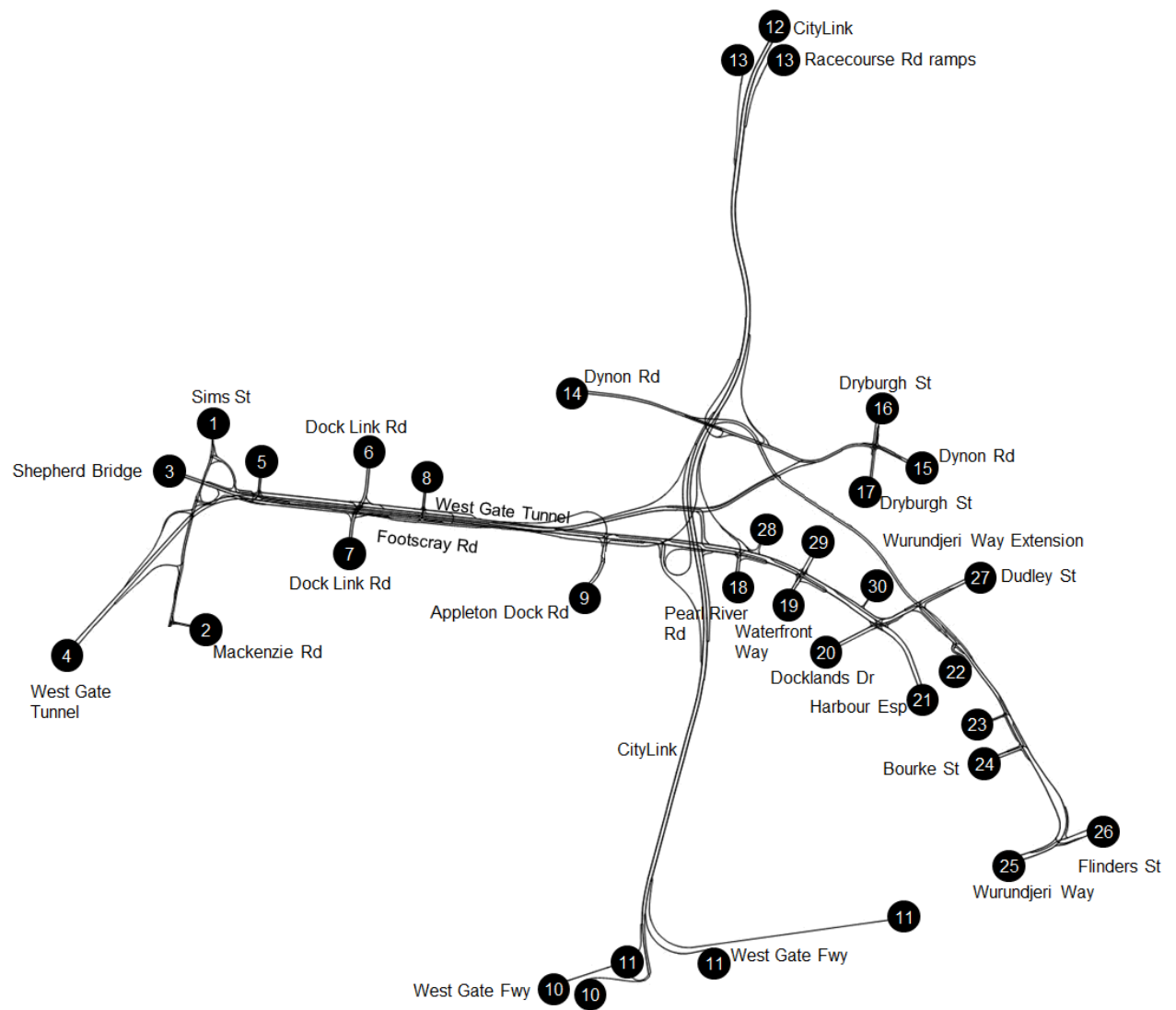


Table H3.3 - Area B - 1 hour volumes

[Not disclosed]

Table H3.4 - AADT and HV % for the purposes of fatigue assessments

| Location | AADT (per carriageway) | HV % |
|---|------------------------|------|
| West Gate Freeway M80 to Grieve Parade | 89,000 | 11% |
| West Gate Freeway Grieve Parade to Millers Road | 101,000 | 11% |
| West Gate Freeway Millers Road to Williamstown Road | 99,000 | 14% |
| Grieve Parade over West Gate Freeway | 20,000 | 26% |
| Dynon Road | 20,000 | 8% |

Table Notes:

This Table 3.4 is solely for the purpose of fatigue assessments carried out in accordance with section 3.1(a)(iv) of Part B and is not to be relied upon for any other purpose.

3. Design Traffic Loadings

- (a) The minimum design traffic loadings for all pavement design specified as equivalent standard axles (ESAs), for the roads nominated in Table H3.5, are as set out in Table H3.5.

Table H3.5 – Equivalent Standard Axle Loads

| Location | Total number of ESAs | Design Life basis of ESAs |
|---------------------------|----------------------|---------------------------|
| Millers Road | 1.7×10^8 | 20 years |
| Williamstown Road | 1.0×10^8 | 20 years |
| Hyde Street | 5.0×10^7 | 20 years |
| Footscray Road | 1.2×10^8 | 20 years |
| Dynon Road | 5.0×10^7 | 20 years |
| Wurundjeri Way (widening) | 8.1×10^7 | 20 years |
| Dryburgh Street | 1.20×10^7 | 20 years |

| Location | Total number of ESAs | Design Life basis of ESAs |
|--|--|---------------------------|
| Grieve Parade at West Gate Freeway | 1.0×10^8 | 20 years |
| West Gate Freeway <ul style="list-style-type: none"> - All eastbound and westbound express carriageways and collector-distributor carriageways - Eastbound connection between collector-distributor carriageway and Williamstown Road and Hyde Street exit ramps - Eastbound connection between Williamstown Road exit ramp and braided ramp to West Gate Bridge - From Grieve Parade to Kororoit Creek | 3.2×10^8 | 40 years |
| Ramps: <ul style="list-style-type: none"> - Grieve Parade ramp (G2) - All Millers Road entry ramps and exit ramp (M1, M2, M3 and M4) - All collector distributor braided ramps (A1 and A2) | 1.7×10^8 | 40 years |
| Ramps: <ul style="list-style-type: none"> - Grieve Parade entry ramp (G1) | 2.0×10^8 | 40 years |
| Ramps: <ul style="list-style-type: none"> - All Williamstown Road entry ramps and exit ramps (W1 and W2) | 1.0×10^8 | 40 years |
| Ramps: <ul style="list-style-type: none"> - All Hyde Street entry ramps and exit ramps (H1 and H2) - Westbound connection between Hyde Street and Williamstown Road entry ramps and collector-distributor carriageway | 5.0×10^7 | 40 years |
| Ramps <ul style="list-style-type: none"> - Port Ramps (P1 and P2) - Port Ramps (P3 and P4) - Footscray Road Ramps (F1 and F2) - Dynon Road Ramps (D1 and D2) | 3.1×10^8 2.8×10^8 1.0×10^7 5.0×10^7 | 40 years |

4. Traffic Volumes for the Future Base Traffic Noise Level

Table H3.6 – Traffic volumes for the Future Base Traffic Noise Level

[Not disclosed]

5. Not Used

Part H4 - Intersections and Interchanges

1. Intersections and Interchanges

- (a) Project Co must provide new interchange ramp control with the Roads as defined in Table H4.1.

Table H4.1 - Interchange traffic control

| Interchanges | Control |
|---|------------------|
| Hyde Street / West Gate Tunnel Ramps (Ramp H1) | Traffic Signals |
| MacKenzie Road / West Gate Tunnel Ramps (Ramps P1/P2) and Footscray Road / MacKenzie over-height bypass | Traffic Signals |
| Appleton Dock Road / West Gate Tunnel Ramps (Ramps P3) | Traffic Signals |
| Footscray Road / West Gate Tunnel Ramps (Ramp F1/F2) | Traffic Signals |
| Dynon Road / West Gate Tunnel Ramps (Ramp D1/D2) | Traffic Signals |
| Simcock Avenue / West Gate Tunnel Ramps (Ramp H2) | Priority Control |
| Ramps D1/D2 and Ramps F1/F2 | Traffic Signals |

- (b) Project Co must provide new intersection control with the Roads as defined in Table H4.2.

Table H4.2 - Intersection traffic control

| Location | Control |
|--|-----------------|
| Wurundjeri Way Extension / West Gate Tunnel Ramps (Ramp D1/D2) | Traffic Signals |
| Wurundjeri Way Extension / Dynon Road | Traffic Signals |
| Simcock Avenue / Douglas Parade | Traffic Signals |

Part H5 - Traffic Performance Criteria

1. Performance Criteria

- (a) Freeways and ramps must accommodate the peak hour design volumes and vehicle mixes in Part H3 with at least an operating Level of Service of D based on density assessment outputs from a microsimulation model, complying with the RMS Traffic Modelling Guidelines.
- (b) Intersections and interchanges listed in Table H5.1 must accommodate the design hour traffic volumes in Part H3 with:
 - (i) except as identified in Table H5.2, a degree of saturation of no more than 0.9 based on SIDRA analysis taking into account closely spaced intersections or a Level of Service of D based on outputs from a microsimulation model; and
 - (ii) all turning lanes accommodating 95 percentile traffic queue lengths.
- (c) Intersections and interchanges listed in Table H5.2, must meet the criteria set out in section 1(b) as modified by the criteria set out in the 'Constraints' column of Table H5.2,

Table H5.1 – Intersections and interchanges to be assessed

| Location |
|--|
| Little Boundary Road and Geelong Road |
| Grieve Parade and Blackshaws Road |
| Grieve Parade and West Gate Freeway (Ramp G1/G2) |
| Millers Road and West Gate Freeway (Ramp M1/M2/M3/M4) |
| Williamstown Road and West Gate Freeway (Ramp W1/W2/W3/W4) |
| Hyde Street and West Gate Tunnel Ramp (Ramp H1) |
| Hyde Street and Francis Street |
| West Gate Tunnel Ramp (Ramp H2) and Simcock Avenue |
| Douglas Parade and Simcock Avenue |
| MacKenzie Road and West Gate Tunnel (Ramp P1/P2) |
| Footscray Road and MacKenzie Road over-height bypass |
| Footscray Road and Sims Street loop |
| Footscray Road and Linfox access |

| Location |
|--|
| Footscray Road and Dock Link Road |
| Footscray Road and Melbourne Market Gate 1 |
| Footscray Road, Appleton Dock Road and West Gate Tunnel (Ramp P3) |
| Footscray Road and CityLink NB Entry Ramp |
| Dynon Road ramps (Ramp D1/D2) and Footscray Road ramps (Ramp F1/F2) |
| Footscray Road, CityLink SB Entry Ramp and West Gate Tunnel (Ramp F1/F2) |
| Footscray Road, Pearl River Road and CityLink SB Exit Ramp |
| Footscray Road and Waterfront Way |
| Footscray Road, Docklands Drive, Wurundjeri Way and Harbour Esplanade |
| Wurundjeri Way and Dudley Street |
| Wurundjeri Way and Docklands Stadium Entry (Car Park D&E) |
| Wurundjeri Way and Docklands Stadium Entry (Car Park C) |
| Wurundjeri Way and Bourke Street |
| Wurundjeri Way and Flinders Street |
| Dynon Road and CityLink NB Entry Ramp |
| Dynon Road and CityLink SB Exit Ramp |
| Dynon Road and West Gate Tunnel (Ramp D1/D2) |
| Dynon Road and Wurundjeri Way Extension |
| West Gate Tunnel (Ramp D1/D2) and Wurundjeri Way Extension |
| Dynon Road and Dryburgh Street |

Table H5.2 - Intersection Performance Criteria

| Location and Time | Constraint |
|---|---|
| Footscray Road, Docklands Drive, Harbour Esplanade, | The degree of saturation must not exceed 0.95 |

| Location and Time | Constraint |
|--|---|
| Wurundjeri Way AM | |
| Footscray Road, Docklands Drive, Harbour Esplanade, Wurundjeri Way PM | Lowest possible degree of saturation without significant physical changes to the intersection. |
| Hyde Street, Francis Street | Lowest possible degree of saturation without significant physical changes to the intersection. |
| Footscray Road and CityLink NB Entry Ramp | Lowest possible degree of saturation without widening the existing bridge structure. The intersection must include the provision of two right turn lanes from Footscray Road eastbound to CityLink NB Entry Ramp. |
| West Gate Tunnel Ramp (Ramp H2) and Simcock Avenue | Optimise the design of the intersection within the scope of works set out in the Concept Design based on traffic volumes provided by the State. |

Part H6 - Public Transport Facilities and Pedestrian and Cyclist Paths

1. Existing Bus, Tram and Train Services

Project Co must retain all existing bus, tram and train services and meet the requirements in Part H13.

2. Pedestrian, Veloway and Cycle Paths

- (a) Project Co must retain all existing pedestrian and cyclist connections within the Construction Site, and provide new connections as detailed in Table H6.1.
- (b) Design requirements (e.g. design life, geometry, vertical clearance etc.) must be in accordance with the requirements provided in Part B and Part H14.

Table H6.1 Pedestrian, Veloway and shared use paths

| Location | Pedestrian (Ped) path, Veloway or Shared Use Path (SUP) | Pedestrian, Veloway and Shared Use Path Scope |
|---|---|--|
| Kororoit Creek | SUP - both sides | <p>Provide shared use paths on both sides of Kororoit Creek within the bridge works area in accordance with Hobsons Bay City Council requirements.</p> <p>Provide SUP extensions on east side of Kororoit Creek extending to Grieve Parade (south of West Gate Freeway), and connecting to existing SUP north of Geelong Road with an additional connection along the south of Geelong Road to the intersection with Grieve Parade.</p> |
| Between Grieve Parade and Millers Road | Ped - across WGF | <p>Reinstate grade separated pedestrian connection over the West Gate Freeway. Pedestrian connection to be provided at all times through duration of Works.</p> <p>Provide stair connections in addition to DDA compliant ramps and locate ramp entrance points as close as practicable to the existing locations.</p> <p>Provide increased accessibility to overpass from all routes from Lynch Road to Houston Court via footpath connections on the northern side of the West Gate Freeway.</p> |
| Between Old Geelong Road / Kororoit Creek intersection and Millers Road | SUP – upgrade of existing | Upgrade the existing Federation Trail along the current alignment from Millers Road to Old Geelong Road / Kororoit Creek intersection. The upgrade is to include the replacement of the existing pavement. |
| Millers Road | SUP - both sides | Shared use path on both sides of Millers Road to connect with the West Gate Freeway ramp intersections and Federation Trail. Requires modification to existing bridge abutments. |

| Location | Pedestrian (Ped) path, Veloway or Shared Use Path (SUP) | Pedestrian, Veloway and Shared Use Path Scope |
|--|---|--|
| Newport Freight Rail Line | SUP - west side | <p>Provide shared use path connection under the West Gate Freeway on the west side of the Newport Freight Railway Line connecting to the Federation Trail on the north side, and connecting to existing road or path networks north and south of the West Gate Freeway.</p> <p>All new structures to maintain the existing top of abutment setback to the rail line as is provided by existing structures.</p> |
| Between the Newport Freight Railway Line and Williamstown Road | Ped - across WGF | <p>Reinstate grade separated pedestrian connection over the West Gate Freeway. Pedestrian connection to be provided at all times through duration of works.</p> <p>Provide stair connections in addition to DDA compliant ramps and locate ramp entrance points as close as practicable to the existing locations.</p> |
| Williamstown Road | SUP - both sides | <p>Provide shared use path on both sides of Williamstown Road (connecting across all West Gate Freeway on ramps and off ramps, and connecting to paths accessing Federation Trail north of the West Gate Freeway).</p> |
| Federation Trail - Millers Road to Williamstown Road | SUP | <p>Retain/replace Federation Trail on north side of the West Gate Freeway. Crossing at Millers Road remains at grade using the traffic signals.</p> <p>Provide new off-road Federation Trail shared use path on north side of the West Gate Freeway, adjacent to Fogarty Avenue between Mc Ivor Reserve and Williamstown Road.</p> |
| Federation Trail extension - Williamstown Road to Hyde Street | SUP | <p>Provide continuation of Federation Trail to provide a continuous off-road shared use path to Hyde Street, including:</p> <ul style="list-style-type: none"> - Grade separated SUP over Williamstown Road; - Grade separated SUP over Williamstown railway line; - Connection to Hyde Street on the north side of the West Gate Bridge; - Connection to Hall Street, extending to Spotswood train station; - Connect to Stony Creek and Hyde Street reserve shared path (including new crossing of Stony Creek) and path to Hughes Street; and - Provision of a signalised crossing to connect Federation Trail to the existing shared use path on the east side of Hyde Street. |

| Location | Pedestrian (Ped) path, Veloway or Shared Use Path (SUP) | Pedestrian, Veloway and Shared Use Path Scope |
|---|---|---|
| Yarraville - Footscray connection | SUP | A segregated integrated bicycle connection linking Hyde Street to Maribyrnong River, including a grade-separated crossing of Whitehall Street to Harris Street. Provide connection to link to the new shared use path bridge over the Maribyrnong River adjacent to Footscray Road. |
| Footscray Road generally between Shepherd Bridge and the western bank of the Moonee Ponds creek | Veloway | <p>Provide an elevated and fully grade separated Veloway connection from the new shared use path bridge over the Maribyrnong River to the western bank of the Moonee Ponds Creek, including grade separations at:</p> <ul style="list-style-type: none"> - MacKenzie Road over-height vehicle bypass; - Footscray Road; - Dock Link Road; - Appleton Dock Road; - South Dynon precinct access road; and - Ramps F1, F2 and F4. <p>The new Veloway is to include two secure and alarmed emergency egresses to the existing shared use path on the southern side of Footscray Road at appropriate locations.</p> <p>The Veloway path must not encroach onto the Port of Melbourne land.</p> |
| Footscray Road - existing SUP | SUP | Retain existing Footscray Road SUP, and upgrade existing sub-standard width path crossing Moonee Ponds Creek on south side of Footscray Road, with a new shared use path bridge between Pearl River Road and east of Moonee Ponds creek. |
| Footscray Road crossing (Moonee Ponds Creek section of Capital City Trail connection to Footscray Road shared use path) | SUP | Improve the safety and efficiency of the Capital City Trail crossing of Footscray Road considering the large volume of cyclists using this crossing as well as the signalised intersection performance criteria. |
| Footscray Road - western bank of Moonee Ponds Creek to east of Waterfront Way | SUP | Provide a new shared use path from the western bank of Moonee Ponds Creek (north of Footscray Road) to connect to the southern side east of Waterfront Way, including a grade separated crossing of Footscray Road. |

| Location | Pedestrian (Ped) path, Veloway or Shared Use Path (SUP) | Pedestrian, Veloway and Shared Use Path Scope |
|------------|---|--|
| Dynon Road | Ped - on Dynon Road south side + SUP for missing link | Retain/replace the Dynon Road bridge pedestrian path, and provide a shared use path between Dynon Road east end (Ireland Street) to connect to existing shared use path near CityLink ramps. This must also provide a connection to the Capital City Trail along Moonee Ponds Creek. |

Part H7 - Freeway Ramp Metering Signals

1. Freeway ramp metering signals

- (a) For ramps outside the Leased Area as set out in Table H7.1, and Table H7.1A, freeway ramp signals must:
- (i) consist of the number of lanes at the stop line identified in Table H7.1 and Table H7.1A;
 - (ii) provide the storage requirements identified in Table H7.1;
 - (iii) accommodate the design volumes identified in Table H7.1A;
 - (iv) meet the requirements of the VicRoads Freeway Ramp Signals Handbook, based on a four minute wait time; and
 - (v) be connected to the VicRoads FMS Communication Network.

Table H7.1 – Freeway ramp signal lanes

| Ramp | Storage Req. | No. Lanes at the stop line | Notes |
|--|--------------|----------------------------|---|
| CityLink / West Gate Freeway Interchange | | | |
| CityLink SB to West Gate Freeway WB | 680 m | 2 | CityLink SB to West Gate Freeway WB |
| M80 Ring Road / Princes Freeway / West Gate Freeway Interchange | | | |
| Geelong Road to Princes Freeway (Ramp R11) | 1,120 m | 4 | |
| M80 Ring Road to Princes Freeway (Ramp R7) | 1,570 m | 4 | Storage length to be clear of upstream noses including future upstream Boundary Road ramp nose as contemplated in Attachment B. |

Table H7.1A – Freeway ramp signal requirements

| Ramp | Design Volume | No. Lanes at the stop line | Notes |
|---|---------------|----------------------------|-------|
| M80 Ring Road / Princes Freeway / West Gate Freeway Interchange | | | |
| Princes Fwy to eastbound collector-distributor (Ramp R3) | 1,600 veh/h | 4 | |

| Ramp | Design Volume | No. Lanes at the stop line | Notes |
|--|---------------|----------------------------|-------|
| M80 Ring Road to eastbound collector-distributor (Ramp R5) | 1,990 veh/h | | |

- (b) For Ramps within the Leased Area as set out in Table H7.2 and Table H7.3, freeway ramp signals must:
- (i) consist of the number of lanes at the stop line in accordance with the VicRoads Freeway Ramp Signals Handbook unless specified in Table H7.2 and Table H7.3;
 - (ii) accommodate the design volumes identified in Table H7.2;
 - (iii) have lane storage lengths calculated to VicRoads Freeway Ramp Signals Handbook, based on a four minute wait time unless specified in Table H7.3; and
 - (iv) be connected to the Project Co Communication Network and then connect to the VicRoads FMS Communication Network to operate.

Table H7.2 – Freeway ramp signal requirements

| Ramp | Design Volume | No. of Lanes at the stop line | Notes |
|--|--|-------------------------------|--|
| West Gate Fwy | | | |
| Williamstown Rd westbound entry ramp (Ramp W4) | 1,250 veh/h (1,000 veh/h from Williamstown Road, 250 veh/h from Hyde Street WB (Ramp H2)) | 3 | |
| Millers Rd westbound entry ramp (Ramp M4) | 950 veh/h | | |
| West Gate Tunnel | | | |
| West Gate Tunnel exit ramp to CityLink (Ramp C1) | 1,120 veh/h | 2 | |
| Footscray Road northbound entry ramp to CityLink (Ramp F3) | 1,130 veh/h | 2 | |
| Ramps D2 + F2 | 2,000 veh/h | | Single ramp meter to be located downstream of Ramps D2 and |

| Ramp | Design Volume | No. of Lanes at the stop line | Notes |
|--|---------------|-------------------------------|-------|
| | | | F2 |
| Footscray Rd westbound entry ramp west of Appleton Dock Rd (Ramp P4) | 250 veh/h | 2 | |

Table H7.3 – Freeway ramp signal requirements

| Ramp | Storage Req. | No. of Lanes at the stop line | Notes |
|---|--------------|-------------------------------|--|
| West Gate Fwy | | | |
| Grieve Parade east bound entry ramp (Ramp G1) | 750m | 3 | Layout is a metered priority lane. Refer to Figure 6.9 of VicRoads Freeway Ramp Signals Handbook. Priority lane is for trucks and buses only (not T2). |
| Millers Road eastbound entry ramp (Ramp M2) | 800m | 3 | Layout is a metered priority lane. Refer Figure 6.9 of VicRoads Freeway Ramp Signals Handbook. Priority lane is for trucks and buses only (not T2). |
| MacKenzie Road westbound entry ramp (Ramp P2) | 360m | 2 | |

Part H8 - [Not disclosed]

1. [Not disclosed]

Part H9 - Directional Signage

1. Directional Signage Requirements

- (a) Directional signage must meet the requirements in section 1(a)(i) to (iv).
 - (i) Objective - The objective of the directional signage scheme is the development, implementation and maintenance of a comprehensive, integrated and easily understood directional signage system for the Freeway and the surrounding road network that:
 - A. supports the integration of the Freeway with the existing arterial road system, and the efficient operation of the road network;
 - B. promotes the safe operation of the Freeway and the overall road network;
 - C. facilitates navigation on the road network, including access to, travel along, and egress from the Freeway; and
 - D. ensures consistency with the existing direction signing system on Melbourne's arterial roads, including freeways and tollways, as documented in VicRoads Traffic Engineering Manual and other references as listed in the Reference Documents.
 - (ii) Types - The types of signage that constitute directional signage include:
 - A. advance direction signs;
 - B. intersection direction signs;
 - C. trailblazer signs;
 - D. advance exit signs;
 - E. exit direction signs; and
 - F. reassurance direction signs.
 - (iii) Extent - The directional signing scheme must be developed, implemented and maintained to cover, as a minimum, the extent of the Freeway, Roads and the surrounding road network identified in Diagram H9.1.
 - (iv) Design and Implementation
 - A. Design
 - 1) Project Co must conduct an inventory of the existing directional signage within the extent of the directional signage scheme defined in section 1(a)(iii).
 - 2) Project Co must prepare a directional signage scheme for all directional signs within the extent of the directional signage scheme and obtain VicRoads agreement.

- 3) Project Co must prepare a sign face design for these directional signs and obtain VicRoads agreement.

B. Construction

- 1) Project Co must supply and erect new and modified signs and supports within the extent of the directional signage scheme.
- 2) Project Co must effectively secure, mask and subsequently unmask signs as necessary.
- 3) Project Co may not remove existing directional signage until agreed by VicRoads.
- 4) Project Co must remove all redundant directional signs and supports within the extent of the directional signage scheme area as shown in Diagram H9.1.

Diagram H9.1 - Directional Signage Area



Part H10 - [Not disclosed]

Part H11 - Communication Infrastructure

1. Communication Infrastructure

- (a) Project Co must:
 - (i) provide the necessary communication infrastructure for the sole use of the State which must:
 - A. consist of a concealed communication conduit containing 1 x 96 core fibre in each direction of the Freeway and within the ITS Interface Area, each of which is isolated from any Project Co conduit;
 - B. include all appropriate pits for the communication conduits;
 - C. include a new hut and node and all associated infrastructure connected to the new communications conduits:
 - 1) located in the ITS Interface Area near the West Gate Freeway at the M80 Ring Road Interchange; and
 - 2) connected to the VicRoads communications network; and
 - D. be in accordance with VicRoads usual requirements; and
 - (ii) maintain the VicRoads communications conduits, fibres and access pits up to and including the last access pit within the Leased Area. Maintenance of the part of the communications conduits and fibres in the Leased Area after the last pit will be the responsibility of the State.
- (b) Project Co must:
 - (i) provide the necessary communication infrastructure for the sole use of the State which must:
 - A. consist of a separate concealed communication conduit containing a 1 x 144 core fibre on one side of the Freeway, which is isolated from any Project Co conduit;
 - B. include all appropriate pits for the communication conduits;
 - C. include node access points the number of which is to be agreed in consultation with VicTrack and the State;
 - D. be in accordance with VicTrack usual requirements; and
 - (ii) maintain the communications conduits, fibres and access pits up to and including the last access pit within the Leased Area. Maintenance of the part of the communications conduits and fibres in the Leased Area after the last pit will be the responsibility of the State.

2. Vehicle to Infrastructure

Project Co must provide cabling for a Vehicle to Infrastructure roadside equipment point on all VMS and LUMS gantries. This cabling must include:

- (a) 1 x CAT6a Ethernet cable;
- (b) 1 x 3-pair, Screened Data cable; and
- (c) 1 x 2-core+E(2.5m2) Power cable.

Part H12 - RSS and Tolling Back Office

Part H12A - RSS

1. General

Project Co must supply an RSS comprising works, equipment, hardware, software and processes, which has the functionality and capability to detect, identify, record and manage information about Vehicles using the Freeway, including OBUs for use within Vehicles. The RSS must transmit such information to the TBO to enable toll collection activities in relation to the Freeway.

2. RSS Performance Requirements

2.1 Verification

- (a) Where an Error Rate is stipulated in this Part H12A, the verification of the performance of the relevant sub-system of the RSS against that Error Rate is to be carried out for each Detection Zone at least once in each successive 12-month period during the Term, with the first of those periods commencing on the date of Tolling Completion.
- (b) The verification method for each Detection Zone will consist of Project Co conducting tests as described in the following sections for the relevant Toll Point (where an Error Rate is stipulated) and comparing the performance of the relevant sub-system of the RSS against the Error Rates. These tests will include testing:
 - (i) at the relevant Toll Point;
 - (ii) involving a sample size of traffic, density of traffic and composition of Vehicles within the parameters set out in section 2.2(c); and
 - (iii) where applicable, during a period of typical peak usage of the Toll Point which allows for a statistically significant number of events to be measured.
- (c) Project Co will provide the State with a written report setting out the nature of the verification tests performed under section 2.1(b) above and the results of that testing:
 - (i) within 10 Business Days after the completion of that testing, if that testing indicates non-compliance with the stipulated Error Rates (such report to include proposed remediation activities); or
 - (ii) otherwise, in the next monthly progress report submitted to the State in accordance with Part F7.
- (d) For the purposes of calculating an Error Rate stipulated in this Part H12A, the extent to which the Error Rate for a Detection Zone has been impacted by:
 - (i) third party faults and damage caused by service providers and other civil contractors not engaged by Project Co and/or OpCo which cannot reasonably be mitigated by Project Co;
 - (ii) restrictions or controls imposed by the Emergency Services;
 - (iii) events beyond the reasonable control of Project Co, and the effects of which cannot reasonably be mitigated by Project Co or OpCo;

- (iv) defects in systems maintained by the State or its Associates independently of Project Co, OpCo and their respective contractors causing Device or system outages;
- (v) physical damage to components of the RSS caused by traffic incidents;
- (vi) actions reasonably required to comply with a direction from the State or its Associates in accordance with this Agreement or otherwise lawfully given; and
- (vii) outages of the relevant sub-system of the RSS during a period of planned maintenance of a sub-system of the RSS that occurs in accordance with the O&M Manuals or O&M Phase Management Plan,

will be disregarded in the calculation of that Error Rate.

2.2 Vehicle Detection Performance

- (a) The RSS must have a Vehicle detection capability (**Vehicle Detection Capability**) which detects all Vehicles passing through each Detection Zone.
- (b) The Vehicle Detection Error Rate must be ≤[Not disclosed]% for each Relevant Period, within the traffic and environmental parameters set out in section 2.2(c) below, where the **Vehicle Detection Error Rate** is defined as:

$$\text{Primary Vehicle Detection Error Rate} = \frac{t_V - d_V}{t_V}$$

Where:

t_V = actual number of Vehicles passing the relevant Detection Zone during the Relevant Period

d_V = number of Vehicles passing the relevant Detection Zone within the traffic and environmental parameters set out in section 2.2(c) below, which are detected by the Vehicle Detection Capability during the Relevant Period.

This metric is independent of whether or not the Vehicle is carrying an OBU.

- (c) The Vehicle Detection Capability for each Detection Zone must accurately detect Vehicles and otherwise operate in accordance with the requirements of this Part H12A within the following traffic and environmental conditions:
 - (i) Vehicles travelling at any speed from 0 – 160 km/h inclusive;
 - (ii) Vehicles at a traffic density of up to 55 Vehicles per lane per minute;
 - (iii) Vehicles at a peak traffic density of one Vehicle per lane per second for simultaneous convoys of ten Vehicles per lane simultaneously through all lanes at the relevant Toll Point;
 - (iv) in all weather conditions applicable for Melbourne including fog, mist, lightning and rain (with a maximum rainfall of no more than 100mm per hour);
 - (v) in all ambient light conditions applicable for Melbourne;
 - (vi) at any angle of incident sun light;

- (vii) detect as separate Vehicles any pair of Vehicles where the lateral distance (i.e. from lane to lane) between the Vehicles is ≥ 0.5 m; and
- (viii) detect as separate Vehicles any pair of Vehicles where the longitudinal distance between the Vehicles (i.e. from the front and rear) is ≥ 0.6 m when the Vehicles are travelling up to 40km/h and ≥ 2 m where the Vehicles are travelling greater than 40 km/h and up to 100 km/h.
- (d) The Vehicle Detection Capability for each Detection Zone must record the time of detection of each Vehicle using the RSS Reference Time. All sub-systems and components of the RSS must be regularly (and no less frequently than quarterly) synchronised to the actual time and date to avoid material time drift between the RSS Reference Time and the actual time and date.

2.3 Vehicle Classification Performance

- (a) The RSS must have a Vehicle classification capability which undertakes a preliminary classification of each Vehicle travelling through the relevant Detection Zone into the applicable Vehicle Class based upon the characteristics of the Vehicle and (subject to section 2.3(b) below) irrespective of any trailer attached to the vehicle or, in relation to any motorcycle, any sidecar or fore car attached to the Vehicle. The accuracy of the preliminary Vehicle classification will be confirmed and the correct Vehicle Class for application of tolls determined by the TBO, irrespective of the Vehicle Class determined by the RSS.
- (b) An HCV will be classified as an HPFV when its length (inclusive of trailers) exceeds 26m.

2.4 Tag Detection Performance

- (a) The RSS must include a Tag detection capability (**Tag Detection Capability**) for each Detection Zone.
- (b) The Tag Detection Capability for each Detection Zone must:
 - (i) be capable of successfully completing a Tag Transaction with any Tag that is compliant with AS4962 including all Interoperable Tags on issue in Australia;
 - (ii) operate within the traffic and environmental parameters set out in section 2.2(c) with a Tag Detection Error Rate of \leq [Not disclosed]% for each Relevant Period. The **Tag Detection Error Rate** is defined as:

$$\text{Tag Detection Error Rate} = \frac{t_T - n_T}{t_T}$$

Where:

t_T = true number of Tags passing the relevant Toll Point within the traffic and environmental parameters set out in section 2.2(c) during the Relevant Period; and

n_T = true number of Tags passing the relevant Toll Point within the traffic and environmental parameters set out in section 2.2(c) during the Relevant Period; and for which a Tag Transaction Error does not occur,

provided that the values t_T and n_T above each exclude:

- (1) Tags that are not installed by a road user in accordance with the applicable manufacturer's instructions; or
- (2) Tags that are hand-held in Vehicles; or
- (3) Tags in Vehicles in which multiple Tags are installed at the time of the Vehicle passage through the Detection Zone; or
- (4) Tags that are not performing due to damage by the road user or for reasons of battery failure.

When verifying the Tag Detection Error Rate under section 2.1, for the purposes of section 2.1(b)(iii), a Test Sample will be taken to be a statistically significant number of events and for the purposes of that verification the formulae in this section 2.4(b)(ii) will be applied as though the words "for each Relevant Period" or "during the Relevant Period" were replaced with "for the Test Sample". A **Test Sample** means 200 instances of a Tag or Tags passing the relevant Toll Point, where such Tag or Tags has/have been provided and installed in Vehicles by or on behalf of Project Co so that the exclusions in paragraphs (1) to (4) above do not apply to the passage of those Tags through the Toll Point;

- (iii) not conduct a Tag Transaction with, or otherwise interact, with any Tag at a time when that Tag is outside of the relevant Detection Zone.

- (c) For each Tag travelling through the relevant Detection Zone, the Tag Detection Capability must:

- (i) accurately record the time of detection of the Tag using the RSS Reference Time; and
- (ii) accurately and securely process and record all data elements associated with a Tag Transaction, without a Tag Transaction Error,

for a Tag Transaction to be taken to have been completed successfully.

2.5 Image Capture Performance

- (a) The RSS must automatically capture and record the following images of all Vehicles passing through any Detection Zone:
 - (i) front image including the area containing the Vehicle's licence plate at a sufficient image quality to enable a human image reviewer using the RSS to accurately determine the Licence Plate Number and State of Registration of the Vehicle from the captured image; and
 - (ii) rear image including the area containing the Vehicle's licence plate at a sufficient image quality to enable a human image reviewer using the RSS to accurately determine the Licence Plate Number and State of Registration of the vehicle from the captured image.
- (b) For each Detection Zone, the RSS must capture at least one front or rear image to the required quality for every Vehicle passing through the Detection Zone with an Image Capture Error Rate A of \leq [Not disclosed]% for each Relevant Period in any traffic conditions, where the **Image Capture Error Rate A** is defined as:

$$\text{Image Capture Error Rate } A = \frac{d_V - n_V}{d_V}$$

Where:

d_V = detected number of Vehicles passing the relevant Detection Zone during the Relevant Period

n_V = number of Vehicles passing the relevant Detection Zone during the Relevant Period for which either the front or rear image was captured as required by section 2.5(a).

- (c) For each Detection Zone, the RSS must capture all of the front and rear images to the required quality for every Vehicle passing through the Detection Zone with an Image Capture Error Rate B of \leq [Not disclosed]% for each Relevant Period under any traffic conditions, where the **Image Capture Error Rate B** is defined as:

$$\text{Image Capture Error Rate B} = \frac{d_V - c_V}{d_V}$$

Where:

d_V = detected number of Vehicles passing the relevant Detection Zone during the Relevant Period

c_V = number of Vehicles passing through the relevant Detection Zone during the Relevant Period for which each front and rear image was captured as required by section 2.5(a)

2.6 Monitoring

- (a) The RSS must include a capability to detect and alert reduction in the level of performance of the Vehicle Detection Capability (**Monitoring Capability**).
- (b) The Monitoring Capability must enable a threshold of performance to be established and when not met, an alert must be sent to the appropriate operator for investigation.
- (c) The Monitoring Capability must include RSS components that can operate independently of the TBO.

2.7 OCR Capability Performance

- (a) The RSS must process the images captured for each Vehicle passing through any Detection Zone to automatically identify, and record the LPN of, the Vehicle making that passage and provide a confidence level (**Confidence Level**) for each identified character and the overall identified LPN (**OCR Capability**).
- (b) For each Vehicle passing through a Detection Zone, the OCR Capability for that Detection Zone must:
- (i) determine and record the Confidence Level in its determination of the relevant LPN (and of each distinct character in the relevant LPN);
 - (ii) automatically determine and record the LPN for the Vehicle;
 - (iii) automatically determine and record the State of Registration for the Vehicle; and
 - (iv) determine and record the Confidence Level in the accuracy of the determined State of Registration.

- (c) Where the RSS is unable to automatically identify a Vehicle passing through a Detection Zone, the RSS must record this fact in association with the information required to be recorded under section 2.2(d) for that passage of the Vehicle through that Detection Zone.
- (d) The OCR Capability must perform in accordance with the following performance criteria:
 - (i) in at least [Not disclosed]% of detected and determined LPNs over each Relevant Period, the result provided is correct under the following conditions:
 - A. the front of the Vehicle, including the Licence Plate area, is not being obscured or rendered unreadable by interference, damage or dirt; and
 - B. the rear of the Vehicle, including the Licence Plate area, is clearly visible in at least one image without being obscured or rendered unreadable by interference, damage or dirt.

2.8 Correlation of Vehicle Information Performance

- (a) The RSS must generate complete records correlating all the data relating to each Vehicle passing any Toll Point including:
 - (i) the Vehicle detection information as described in section 2.2(d);
 - (ii) the Vehicle classification information as described in sections 2.3(a) and 2.3(b);
 - (iii) any Tag Transaction information referred to in section 2.4(c) for where the spatial and temporal location of the Tag in the relevant Detection Zone is physically correlated to the spatial and temporal location of the Vehicle;
 - (iv) the images captured of the Vehicle as described in section 2.5(a); and
 - (v) the OCR Capability results described in section 2.7(b) and 2.7(c).
- (b) The RSS must correctly correlate the information required to be captured in section 2.8(a) for [Not disclosed]% of Vehicles passing the relevant Toll Point over a Relevant Period.
- (c) The RSS must identify when it detects that a likely duplication has occurred due to inability to confidently correlate the information in section 2.8(a).

2.9 Exchange of Information with TBO

- (a) The RSS must interface with the TBO for the exchange of the following:
 - (i) all transactional information required to be collected by the RSS;
 - (ii) operational status information for the RSS; and
 - (iii) status lists for OBUs.

2.10 RSS Stored Data

- (a) The RSS must have the capacity to store all transactional information (including images) for the passage of Vehicles through any Detection Zone without manual intervention for at least 14 days (regardless of traffic conditions).
- (b) The RSS must provide mechanisms to prevent, and enable detection of, unauthorised access to or tampering with, all data collected in relation to the passage of Vehicles and/or OBUs through a Detection Zone, including images and associated data blocks. This mechanism must include the generation of secure digital signatures based on robust encryption algorithms and cryptographic keys over all messages, images and image data blocks.
- (c) The RSS must include methods of maintaining a system of cryptographic keys used to provide the digital signatures used for access and tamper protection and which:
 - (i) protects the key values from unauthorised access or disclosure at all times; and
 - (ii) enables the keys to be changed over at any time whether due to exposure of a key or as part of reasonable information security operations and practices.
- (d) The RSS must be able to securely load and store the Roadside Keys for each issuer of Interoperable Tags in Australia, with minimum storage for at least 50 distinct EFC Context Marks.
- (e) The RSS must maintain all data used by the functions of the Roadside System in a manner that ensures the consistency and integrity of the data between the various functional modules of the RSS at all times.

2.11 Manage RSS Configuration

The RSS must enable remote access to each Toll Point for the purposes of administration and configuration of the Toll Point and monitoring and control of all aspects of the sub-systems and components installed at the Toll Point that do not require physical interaction of the Operator with the Roadside Equipment.

2.12 Manage RSS Operations

- (a) The RSS must be capable of producing a passage report for any period nominated by the Operator all passages of Vehicles through any Detection Zone, and all data required under this Part H12A to be collected and stored in respect of such passage, within that period.
- (b) The RSS must provide detailed and automated monitoring of all of its sub-systems, including as a minimum:
 - (i) the current operational status of hardware and software;
 - (ii) adverse operational conditions of hardware (servers, storage devices, network components), including:
 - A. the identification of hardware elements operating beyond defined thresholds for resource utilization (including CPU idle and disk space);

- B. identification of hardware elements operating outside of designed operating environmental conditions (including temperature);
- C. identification of hardware elements that have failed (even if these components have failed-over to a redundant sub-component); and
- D. identification of hardware elements operating in degraded modes,

to the extent that sub-section (ii) requires the provision of detailed and automated monitoring of CPU and RAM usage and environmental conditions of shock, dust and humidity, such monitoring is not required explicitly for each and every piece of equipment.

(iii) adverse operational conditions of all software (both custom and COTS), including:

- A. processing throughput;
- B. the availability of resources;
- C. identification of software elements that have failed (even if the sub-component has failed-over to a redundant sub-component); and
- D. identifications of software elements operating in degraded modes, and

in respect of sub-section 2.12(b)(iii)A and 2.12(b)(iii)B, such monitoring is not required for each and every piece of equipment; and

(iv) automatic generation of alarms when sub-systems, components and/or sub-components are experiencing adverse operational conditions as set out in sections 2.12(b)(ii) or 2.12(b)(iii).

- (c) The RSS must monitor sub-systems, components and sub-components in real-time.
- (d) The RSS must provide an Operator with visibility of the status of all sub-systems, components and sub-components of the RSS.
- (e) The RSS must support operation in a number of different modes including:
 - (i) operational mode;
 - (ii) off-line mode;
 - (iii) test mode; and
 - (iv) maintenance mode.

2.13 RSS Availability

- (a) The availability of the RSS must be as defined in Part H19.
- (b) The RSS must be able to suffer any single-point failure and recover on repair of that failure:

- (i) without corruption or loss of data already committed (that is, stored on a disc in RSS, ready for transmission to TBO) at the time the failure occurred;
- (ii) without loss of data integrity for data already committed at the time the failure occurred;
- (iii) without the need for manual manipulation of data; and
- (iv) without reduction in the security of the RSS.

2.14 RSS Data Security

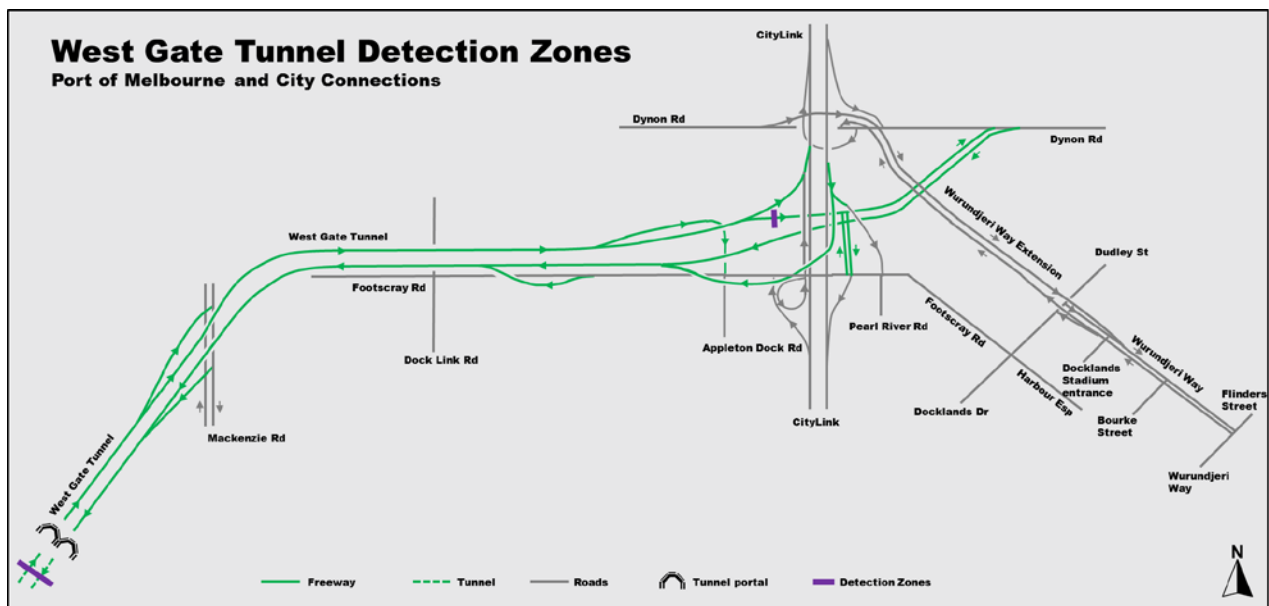
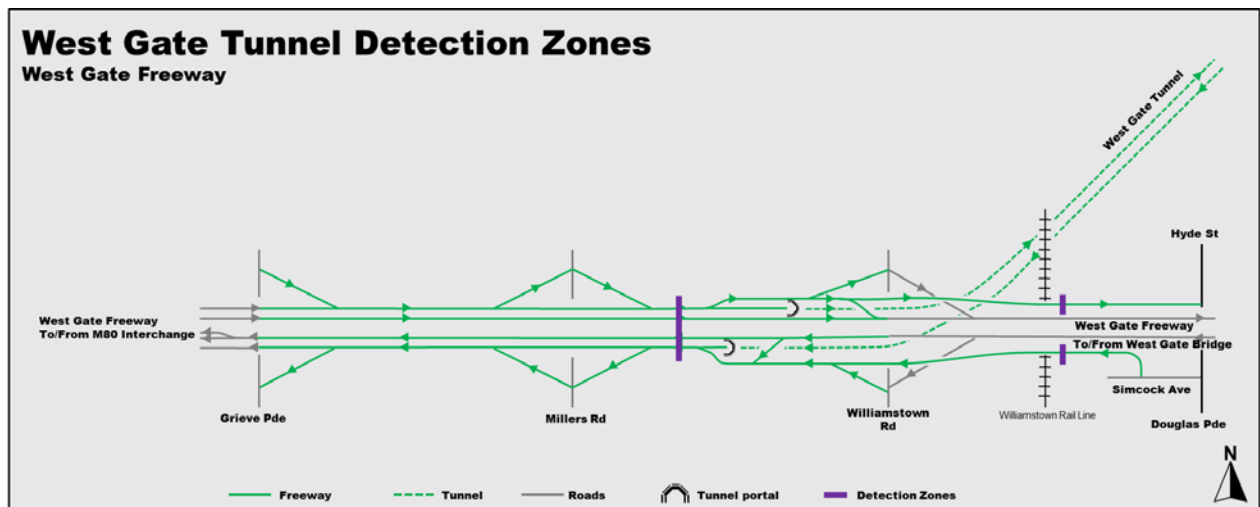
- (a) The RSS must use Best Industry Practices in regard to data security and access.
- (b) The design of the RSS must include taking all reasonable steps necessary to ensure that no unauthorised party:
 - (i) is allowed physical or electronic access to the RSS; and
 - (ii) prevents the RSS from being available.
- (c) The design of the RSS must incorporate all reasonable steps necessary to ensure that no virus, worm, trojan horse or other software or configuration that may cause an unauthorised change to the RSS is allowed in or access to the RSS through password and physical shielding.

3. RSS Infrastructure Requirements

3.1 General

- (a) Toll Points are to be provided on the Freeway to accommodate Roadside Equipment to be used specifically to capture information from passing Vehicles for the purposes of tolling.
- (b) Diagram H12.1.1 shows the high level plan of the proposed Detection Zones that require Toll Points on the Freeway. The Detection Zones are:
 - (i) on the West Gate Freeway between Millers Rd and Williamstown Rd;
 - (ii) on the Hyde St entry/exit ramps to/from the West Gate Freeway (Ramps H1 and H2);
 - (iii) on the Freeway at a point east of the Williamstown Road and Hyde St entry/exit ramps (Ramps W1 and W4, Ramps A1 and A2 and Ramps H1 and H2) and before the MacKenzie Road entry/exit ramps (Ramps P1 and P2); and
 - (iv) on the inbound lanes of the Freeway at a point east of Appleton Dock Rd and the CityLink exit and before the Footscray Road eastbound exit ramp (Ramp F1).

Diagram H12.1.1 – West Gate Tunnel Detection Zones



3.2 RSS Infrastructure

- (a) Any roadside technical shelter should be located in such a way that it is provided protection from traffic in accordance with applicable safety standards of the State (and applicable Australian Standards).
- (b) Any roadside infrastructure must be located in such a way that it can be accessed by maintenance personnel freely and safely.
- (c) The RSS must operate in a manner that does not impede the free flow of Vehicles through any Toll Point.
- (d) The RSS must use equipment in accordance with the requirements described in the PSR.
- (e) The RSS must be installed to comply with all relevant Standards.

3.3 Toll Point General Requirements

- (a) An appropriate envelope must be established to provide a location for the Roadside Equipment including any poles or gantries for mounting Roadside Equipment, and any roadside technical shelters or cabinets for each Toll Point location.
- (b) Toll Points must comply with the following requirements:
 - (i) a minimum clearance of 25m either side of the tolling gantry is required to be free of other road furniture inside the barriers or boundaries of the carriageway to avoid interference with the RSS;
 - (ii) a Tolling Node Point into which Project Co can connect into a dual-redundant communications network and dual-redundant power supply;
and
 - (iii) 2 x 100mm Electrical and 2 x 100mm communications conduits from the Tolling Node Point to the Toll Point location specifically for the purposes of the tolling Roadside Equipment.

Part H12B - Not Used

Part H13- Allowances for Future Infrastructure

1. General

- (a) The Works must:
- (i) not preclude, the design and construction of the future infrastructure as identified in sections 2, 3, 4, 5, 7(a), 8, 9, and 11 in this Part H13 and items LVP3 and LVP4 in Part H21; and
 - (ii) make allowance for the future infrastructure as identified in sections 6, 7(b) and 10,
- and must be constructed to ensure any required future modifications to the Relevant Infrastructure and the Returned Facilities which are required to construct the Future Infrastructure are minimised to the extent practicable.
- (b) Preliminary Design Documentation and Certified Design Documentation must demonstrate that the Works have been designed and will be constructed to meet the requirements of section 1(a).
-

2. Western Road Corridor - Northern Route

Do not preclude a connection to a future freeway from near the Maribyrnong River crossing to the M80 north of Boundary Road.

3. Tram line along Dynon Road

Do not preclude the provision for a tram line along Dynon Road between the City and Footscray.

4. Future Tram Depot

Do not preclude a new tram depot between Dynon Road and Footscray Road in the general vicinity of the Moonee Ponds Creek.

5. Bus connections along Footscray Road

Do not preclude any future bus routes along Footscray Road between the City and Footscray.

6. M80 Ring Road and Princes Freeway

- (a) Allowance must be made for any future widening and/or connections including ITS infrastructure, to both the M80 north of the West Gate Freeway and the Princes Freeway west of the M80 as shown in Diagram H13.1 and as set out in Attachment B.
- (b) Works must provide for civil infrastructure including earthworks, pavement and drainage from the westbound collector-distributor diverge at Ramp R10/R12 to the expansion joint at the eastern abutment of Ramp R9 to allow for a future separated carriageway from the westbound collector-distributor carriageway to Boundary Road at the M80 interchange.

7. Newport to Sunshine Freight Line

- (a) Do not preclude the provision for one additional track on the Newport to Sunshine Freight Line between Francis Street and Brunel Street.
- (b) Allowance must be made in the Construction Area for the future lowering of the Newport to Sunshine Freight Line between Francis Street and Brunel Street with a minimum vertical clearance of 7.1 metres to all overhead structures along the rail corridor.

8. Rail corridor parallel to Wurundjeri Way

Do not preclude the future widening of the rail corridor parallel to Wurundjeri Way between La Trobe Street and Dudley Street including the rail bridge over Dudley Street to accommodate an additional two tracks for freight services.

9. FMS

The Works must not preclude VicRoads' ability to deliver the VicRoads' Vehicle-to-Infrastructure and Infrastructure-to-Vehicle Cooperative ITS roadmap "*Getting VicRoads fit in time by 2020*".

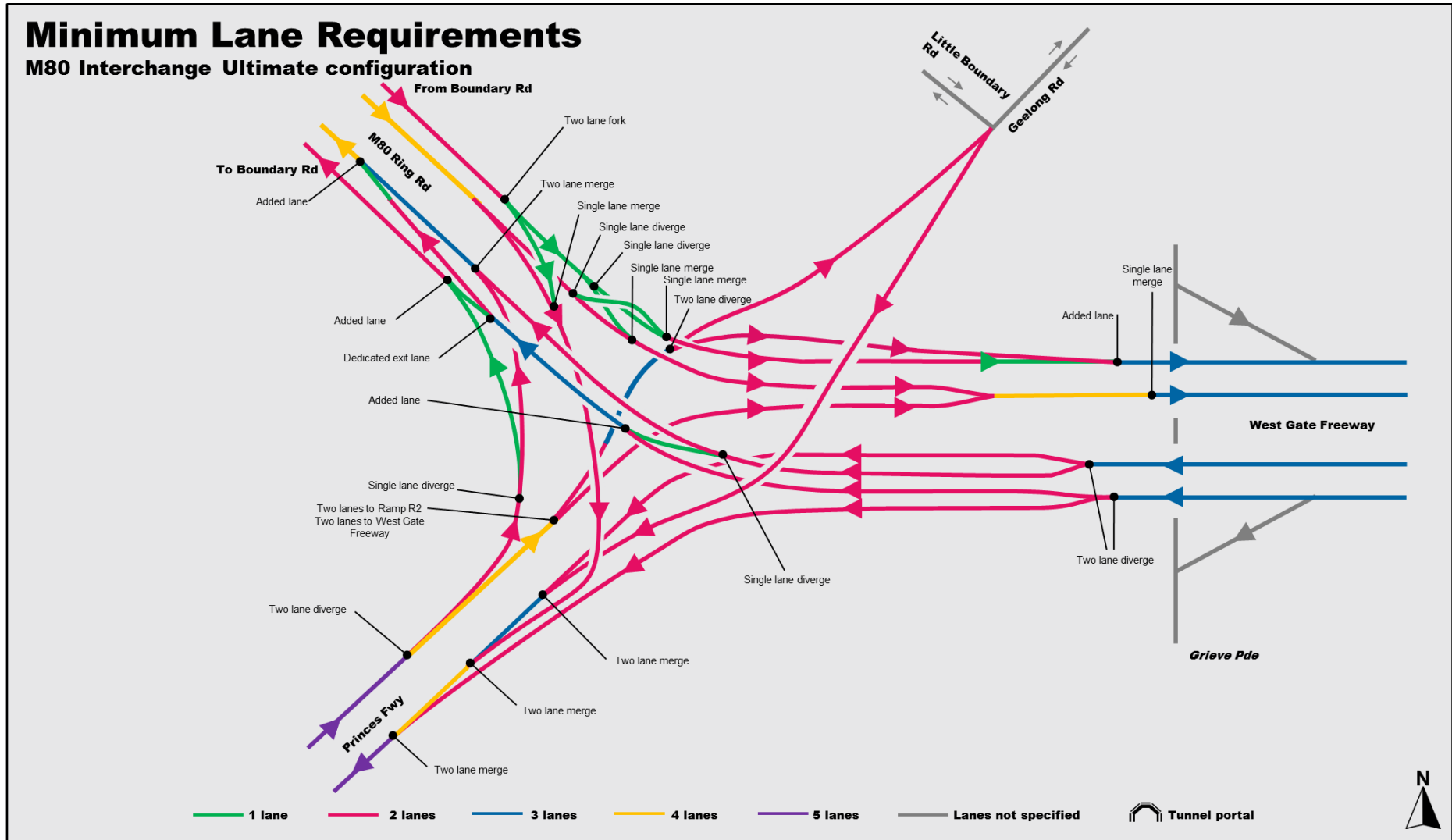
10. North Yarra Main Sewer

In the event that the North Yarra Main Sewer is relocated as part of the Works, the relocation must consider the future network plans of Melbourne Water for the North Yarra Main Sewer.

11. Freight Rail Connection

Do not preclude an additional two tracks for freight services from the western side of Dudley Street to the port rail line which provides access to the Port of Melbourne under Footscray Road at the Appleton Dock Road intersection.

Diagram H13.1 – M80 Ring Road and Princes Freeway



Part H14 - Over-Dimensional Routes, Higher Mass Limit and B-Double Network

1. Over-dimensional routes 5, 5a and 8

Where the Works may impact or overlap over-dimensional (OD) Route 5, Route 5a and Route 8, Project Co must ensure that in carrying out the Works:

- (a) OD Route 5, Route 5a and Route 8 are maintained at all times unless otherwise agreed by VicRoads as part of a WTMP for OD Route 5, Route 5a and Route 8 as at Financial Close;
- (b) a minimum vertical clearance of 5.9m for new overhead constraints is maintained on OD Route 5, Route 5a and Route 8;
- (c) a minimum vertical clearance of 6.1m for overhead pedestrian structures is maintained on OD Route 5, Route 5a and Route 8;
- (d) OD Route 5, Route 5a and Route 8 are able to meet VicRoads usual requirements for over dimensional vehicle routes;
- (e) a minimum vertical clearance of 5.9m under:
 - (i) Ramp R6 (M80 Ring Road to eastbound main carriageway);
 - (ii) Ramp R7 (M80 Ring Road to Princes Freeway);
 - (iii) the Grieve Parade overpass above all carriageways;
 - (iv) the Geelong Road overpass (Ramp R11); and
 - (v) new overhead constraints being installed on Princes Freeway approaching the M80 interchange; and
- (f) for Dohertys Road overpass:
 - (i) no reduction in vertical clearance on existing carriageways and ramps; and
 - (ii) a minimum vertical clearance of 5.4m on new carriageways and ramps.

2. Over-dimensional route - MacKenzie Road

Provision must be made for over-dimensional vehicles from MacKenzie Road to access OD Route 5a on Footscray Road.

3. Higher Mass Limits (HML) Network and B-Double Network

- (a) Where the Works impact upon the existing HML Network or B-Double Network, Project Co must ensure that in carrying out the Works:
 - (i) the HML Network or B-Double Network (as applicable) is maintained at all times unless otherwise agreed by VicRoads as part of a WTMP; and
 - (ii) the HML Network or B-Double Network (as applicable) is able to meet VicRoads usual requirements for HML or B-Double routes (as applicable).

Part H15 Access Requirements

Table H15.1 – Conditional Access

[Not disclosed]

Table H15.2 – Additional Land Parcels A

[Not disclosed]

Table H15.3 – Additional Land Parcels B

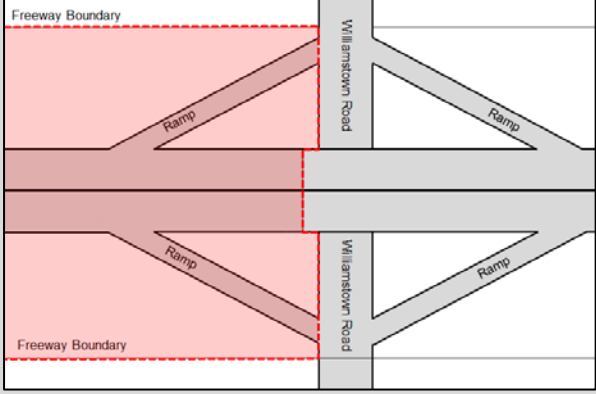
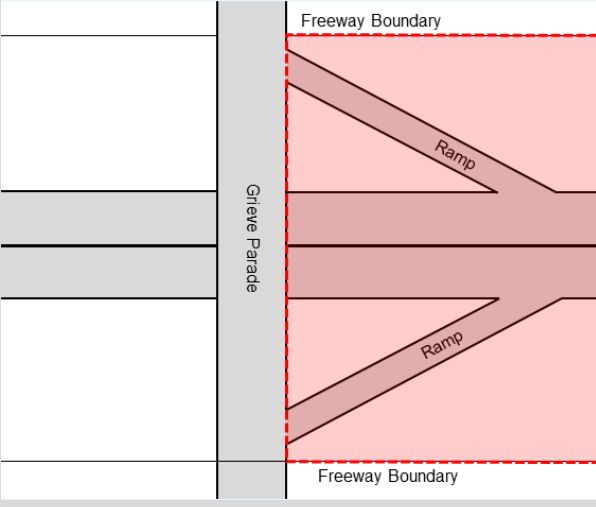
[Not disclosed]

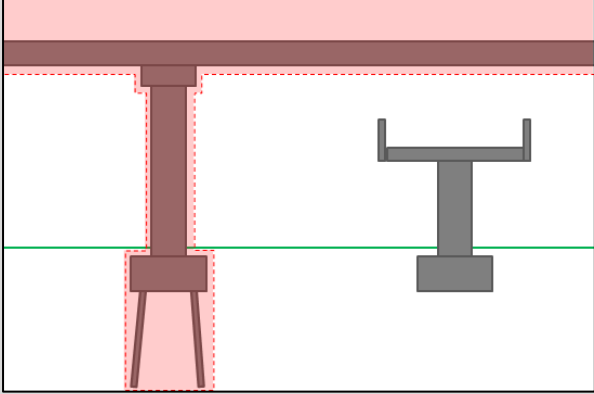
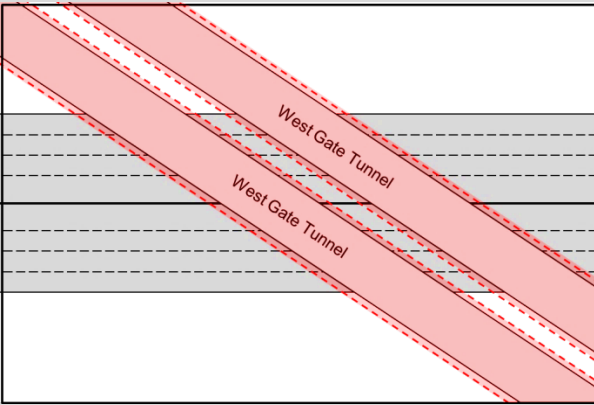
Part H16 – Lease Principles

1. Boundary of Lease

- (a) The boundary of the Leased Area will be that shown on the Proposed Leased Area Plans set out in section 2 of Part J, unless modified in accordance with this Part H16.
 - (i) The vertical limits of the Leased Area are to:
 - A. extend 15 metres below the existing surface; and
 - B. extend vertically above the existing surface to the extent required to cover that part of the Works installed to operate the Freeway and to enable use of the Freeway for the passage of vehicular traffic,unless otherwise varied in accordance with Diagram H16.1.
 - (ii) The Lease Plans will be developed as follows:
 - A. to include all of the West Gate Freeway reservation from the eastern drip line of the Grieve Parade bridge to the western expansion joint of the bridge over Williamstown Road (LP01 and LP02);
 - B. where the Freeway or ramps are supported on earth embankments or retaining walls, the boundary shall be three metres past the toe of the batter or three metres from the base of the retaining wall; and
 - C. where the Freeway or ramps are in cut, the boundary shall be three metres from the top of the cut.
 - (iii) Where the Lease Principles result in parcels of acquired land that are of a size that is not suitable for redevelopment or are landlocked, these parcels will be incorporated into the Leased Area.

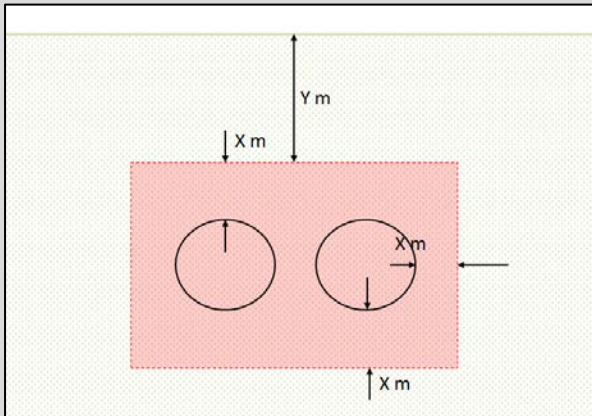
Diagram H16.1 – Lease Principles

| Location | Lease Principle |
|--|--|
| <p data-bbox="188 342 440 376">West Gate Freeway</p> <p data-bbox="188 421 756 454">LP01 – West Gate Freeway eastern connection</p>  <p>The diagram shows a plan view of the West Gate Freeway's eastern connection. A central vertical road is labeled 'Williamstown Road'. Two ramps, labeled 'Ramp', cross the freeway from left to right. The freeway lanes are shaded in light red. Dashed red lines indicate the 'Freeway Boundary' on both the top and bottom. The ramps are also shaded in light red, extending from the freeway lanes across Williamstown Road.</p> | <p data-bbox="925 421 1110 454"><u>Area Boundary</u></p> <p data-bbox="925 488 1385 607">The eastern boundary of the Leased Area on the West Gate Freeway is the western expansion joint of the bridge over Williamstown Road.</p> |
| <p data-bbox="188 925 761 958">LP02 – West Gate Freeway western connection</p>  <p>The diagram shows a plan view of the West Gate Freeway's western connection. A central vertical road is labeled 'Grieve Parade'. Two ramps, labeled 'Ramp', cross the freeway from left to right. The freeway lanes are shaded in light red. Dashed red lines indicate the 'Freeway Boundary' on both the top and bottom. The ramps are also shaded in light red, extending from the freeway lanes across Grieve Parade.</p> | <p data-bbox="925 925 1110 958"><u>Area Boundary</u></p> <p data-bbox="925 992 1369 1111">The western boundary of the Leased Area is the eastern drip line of the Grieve Parade bridge over the West Gate Freeway.</p> |

| Location | Lease Principle |
|---|---|
| <p data-bbox="188 280 821 313">LP03 – Structures over land not leased to Project Co</p>  <p data-bbox="422 772 662 806">Longitudinal section</p>  <p data-bbox="486 1332 598 1366">Plan view</p> | <p data-bbox="925 280 1125 313"><u>Lower Boundary</u></p> <p data-bbox="925 347 1380 470">The Leased Area will provide 100 mm buffer around the pier, pile cap, piles and under the structures as shown by the dotted line.</p> <p data-bbox="925 504 1109 537"><u>Area Boundary</u></p> <p data-bbox="925 560 1396 660">The Leased Area will extend one metre past the outside of the outer bridge barriers (as shown in plan view).</p> |

Tunnels

LP04 – Tunnels - *other than cut and cover*



Tunnel cross section

All Boundaries

Where no Tunnel infrastructure extends more than 1m out from the tunnel lining, $X = 5\text{m}$ from the tunnel inner lining.

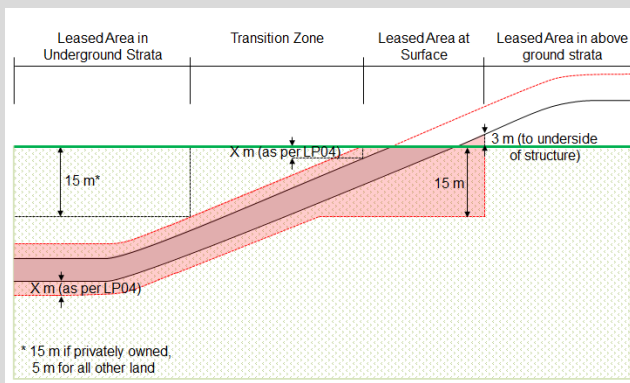
Where Tunnel infrastructure extends more than 1m out from the tunnel inner lining, the boundary is to be extended vertically and/or horizontally to cater for the protrusion with $X = \text{protrusion from the tunnel inner lining} + 3\text{m}$.

Upper Boundary

Additionally

Under residential property the distance between the natural surface and the top of the Leased Area (Y) must be greater than 15m.

LP05 – Transition between Tunnel to surface and surface to above ground

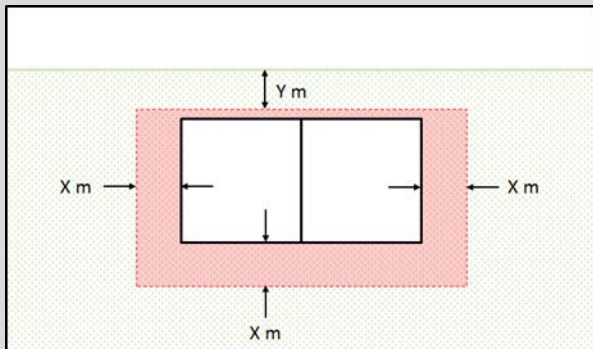


Upper Boundary

The upper limit of the Leased Area in the transition zone will be determined in a case by case basis for each property.

Tunnels

LP06 – Cut and Cover Tunnels



Upper Boundary

Higher of:

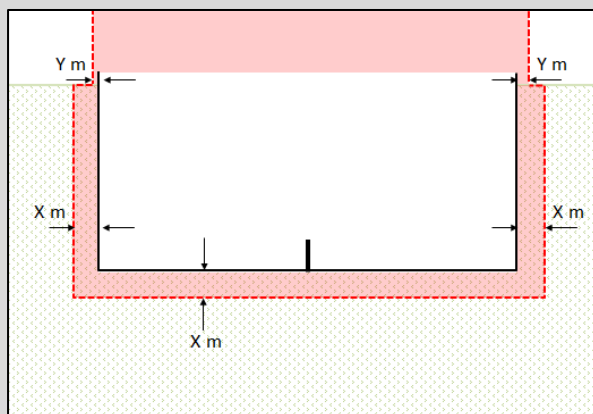
- the upper most surface of the structural component; and
- Y.

Y = 5 metres below the natural surface.

Side and Lower Boundary

As per LP04

LP07 – Transition from cut and cover Tunnels and surface road



Area Boundary

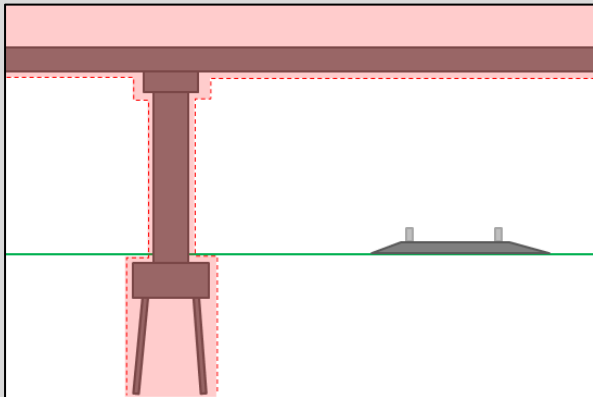
For distance Y (measured from the outside of the structural element)

- When abutting land is park land Y = 1m
- When land abutting is roadside Y = 100mm
- When land abutting is road pavement Y = 0m (ie the outside face of the structure and/or barrier)

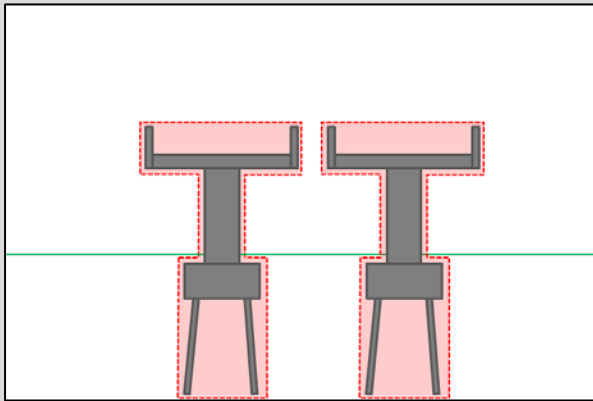
For distance X as per LP04.

Over rail

LP08 – West Gate Tunnel over rail



Longitudinal section



Cross Section

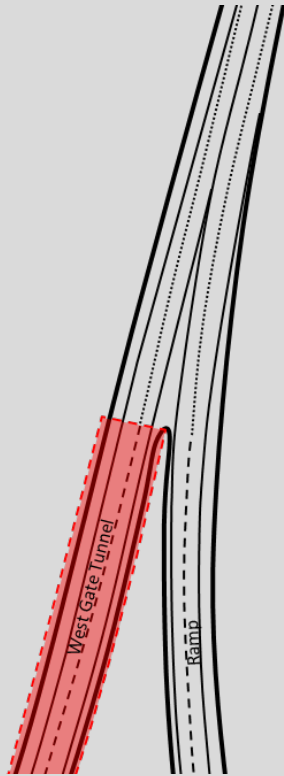
Lower Boundary

As per LP03

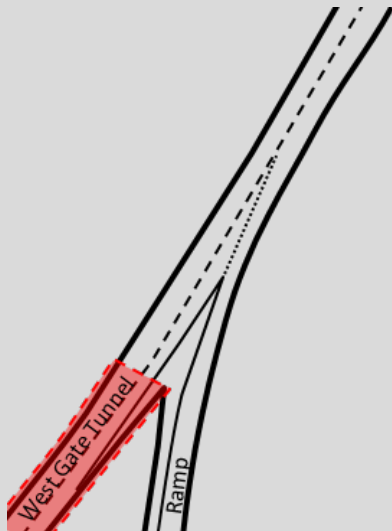
Area Boundary

As per LP03

LP09 – Entry and exit ramps



West Gate Tunnel exit Ramp - plan view



West Gate Tunnel entry Ramp – plan view

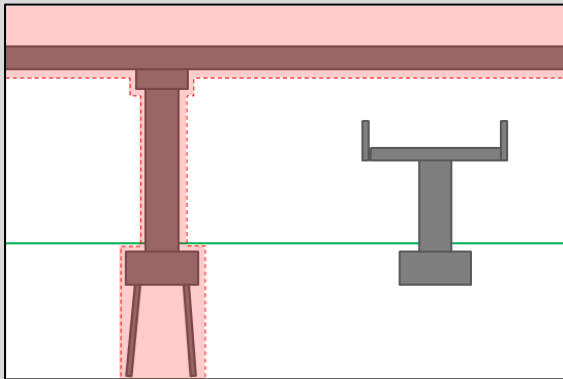
Area Boundary

Perpendicular across the ramp from the ramp concrete nose or the barrier attenuator, whichever gives the larger area.

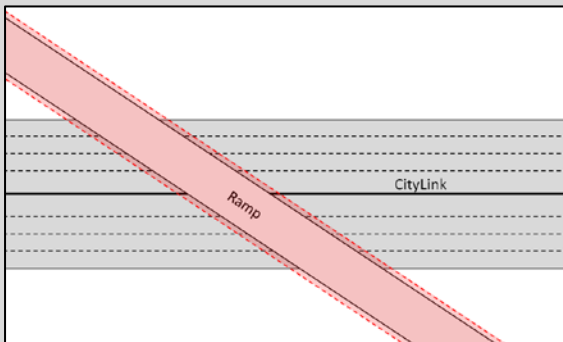
The barrier attenuator is within the Leased Area.

CityLink

LP10 – Eastern interchange over CityLink



Longitudinal section



Plan view

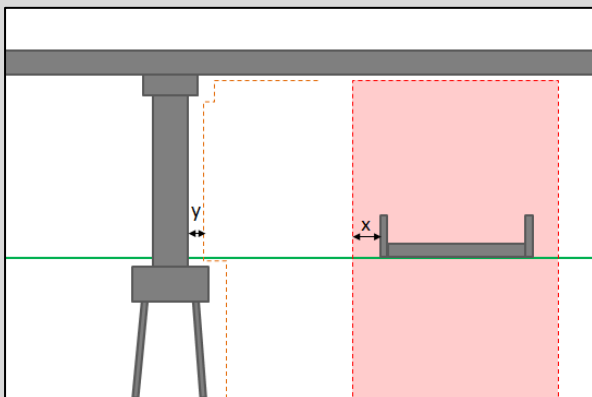
Lower Boundary

Provide 100mm buffer around the pier, pile cap, piles and under the structure as shown by the dotted line.

Area Boundary

1m past the outside of the outer bridge barriers (as shown in plan view).

LP11 – Eastern interchange under CityLink



Longitudinal section

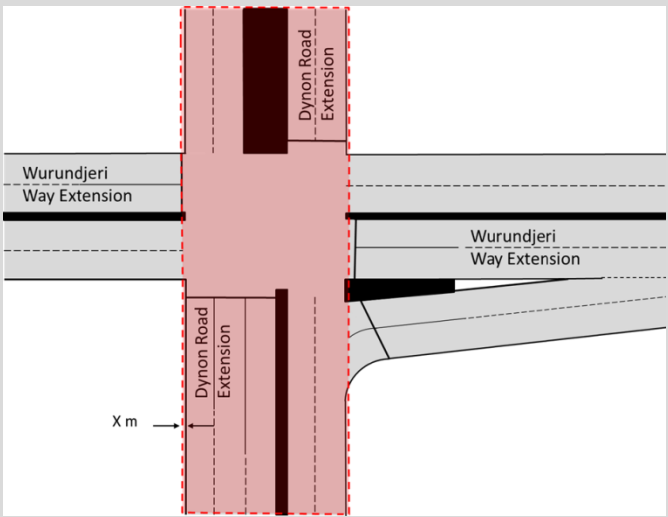
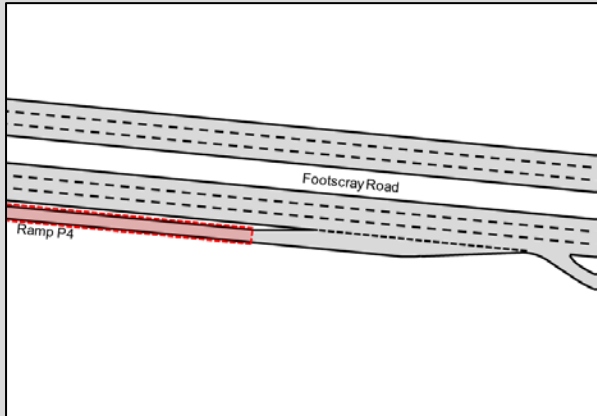
Upper Boundary

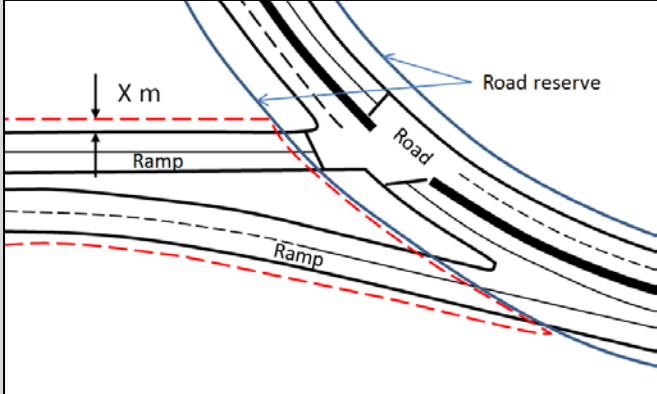
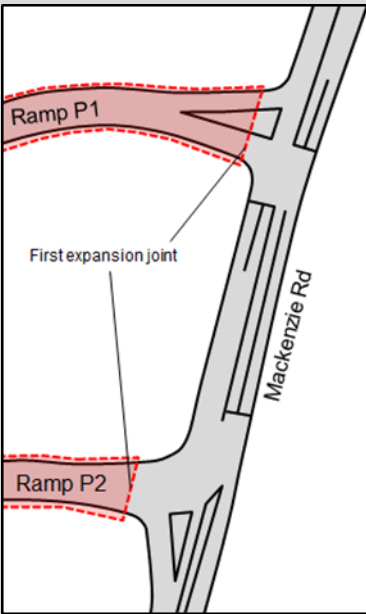
Provide 100mm buffer from the underside of the structure.

Area boundary

1m from the back of the barrier (X).

If CityLink piers or infrastructure is within 1m from the back of the barrier, the Leased Area boundary is 100mm from that infrastructure (Y).

| Intersections with Roads | |
|--|--|
| <p>LP12 – Dynon Road Link Intersection with Wurundjeri Way Extension</p>  | <p><u>Area Boundary</u></p> <p>The Leased Area will extend past the outside of the outer bridge barriers as shown.</p> <p>Project Co is not required to maintain traffic signals at this intersection and must allow the Responsible Road Authority access rights in accordance with clause 25.5(d)(ii) of this Agreement to maintain the traffic signals as State Assets.</p> <p>X = the lesser of:</p> <ul style="list-style-type: none"> the back of barrier to the boundary of the Project Area; and 1.0m. |
| Location | Lease Principle |
| <p>LP13 – Footscray Road westbound on-Ramp (Ramp P4)</p>  | <p><u>Area Boundary</u></p> <p>Perpendicular across the ramp from the ramp concrete nose.</p> <p>Lateral boundary is the back of kerb or face of the retaining wall.</p> |

| Location | Lease Principle |
|---|---|
| <p>LP14 – Other intersections of West Gate Tunnel Ramps at signalised intersections with other Roads (including Hyde Street and other Footscray Road ramps)</p>  | <p><u>Area Boundary</u></p> <p>X = Minimum 3 m from the back of kerb or as shown on the Lease Plans. Road reserve forms boundary between West Gate Tunnel Ramp and adjacent road.</p> <p>At the intersection of the ramps with the other road the boundary across the ramp will be as per the green line identified in Figure 2 of the Road Management Act 2004 – Code of Practice – Operational Responsibility for Public Roads.</p> <p>Project Co is not required to maintain traffic signals at these intersections and must allow the Responsible Road Authority access rights in accordance with clause 25.5(d)(ii) of this Agreement to maintain the traffic signals as State Assets.</p> <p>For the avoidance of doubt, traffic signals referred to above does not include ramp signals.</p> |
| <p>LP15 - West Gate Tunnel Ramps at MacKenzie Road</p>  | <p><u>Area Boundary</u></p> <p>Perpendicular across the ramp from the first expansion joint on the ramp.</p> <p>Other boundaries as per LP03</p> |
| <p>Other</p> | |

LP16

Any minor areas of land identified by the State which would otherwise result in that area being inaccessible or land locked is to be included in the Leased Area.

LP17

Any other area of land agreed with the State, which would otherwise be included in the definition of Maintained Off-Freeway Facilities is to be included in the Leased Area.

LP18 - Shared Use Paths - Any sections of SUP constructed as part of the Project that are within the Proposed Leased Area Plans and that are not otherwise covered by the preceding Lease Principles

Width:

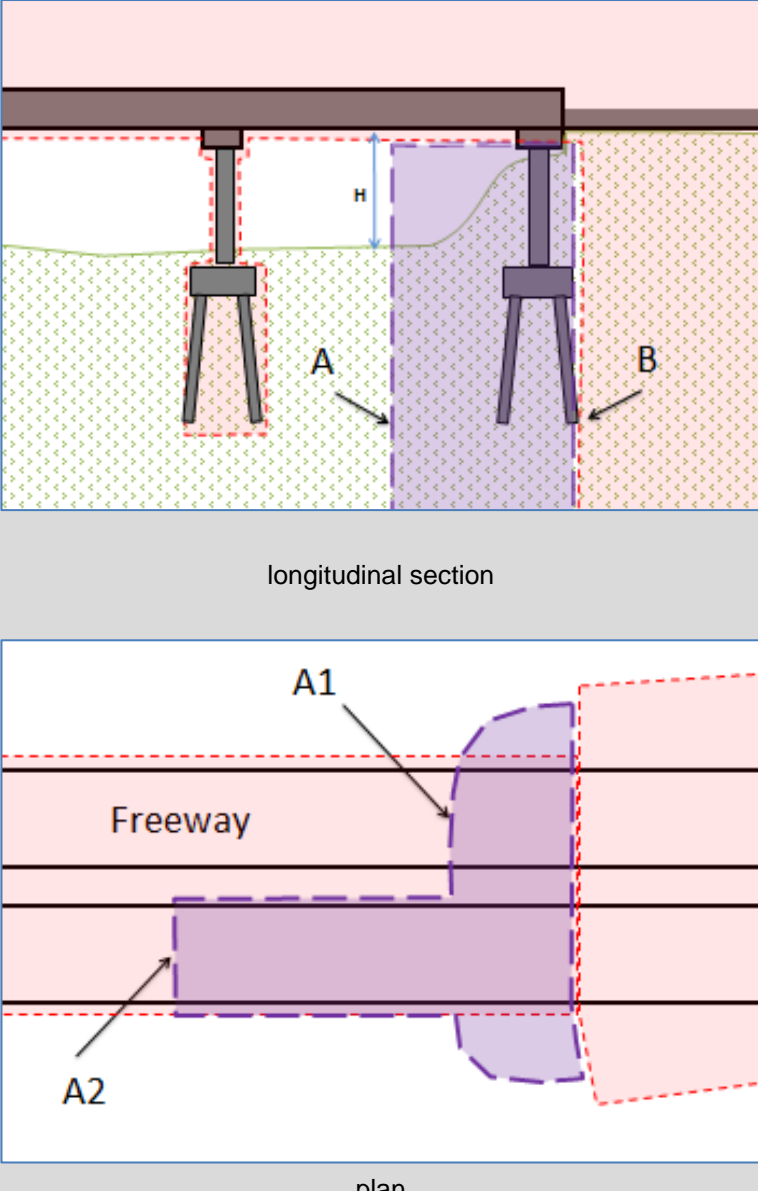
- Where SUP is at grade, the path and 0.5m either side of the paved area
- Where SUP is on structure, boundaries as per LP03
- Transition from surface to structure to occur when the distance to the underside of structure is 1.5m.

Table notes:

West Gate Tunnel Leased Area

Part H17 - Maintenance Principles

Table H17.1

| Location | Guideline |
|--|---|
| MP01 – Freeway related signage | <p>The following are Maintained Off-Freeway Facilities:</p> <p>All signs and associated support structures, and direction signs attached to the same support structures, that incorporate electronic equipment operated by Project Co.</p> |
| <p>MP02 – Freeway abutments</p>  <p>longitudinal section</p> <p>plan</p> | <p>The areas within the following boundaries are Maintained Off-Freeway Facilities:</p> <p><u>Upper Boundary</u> Strata Leased Area boundary.</p> <p><u>Boundary A</u> When Road underneath, boundary is the outer edge of the footpath or shared use path. Otherwise it is the greater of:</p> <ul style="list-style-type: none"> • 3m past the toe of batter as per A1; or • the point at which H becomes greater than 2m as per A2. <p><u>Boundary B</u> Leased Area boundary.</p> |

| Location | Guideline |
|---|--|
| MP03 – Freeway supported by retaining wall. | 3m past base of retaining wall. |
| MP04 – Entry and exit Ramps connecting the Freeway to Roads that are not within the Leased Area and not within the area enclosed by the relevant green line identified in the Road Management Act 2004 – Code of Practice – Operational Responsibility for Public Roads – Figure 2. | <p>The areas within the following boundaries are Maintained Off-Freeway Facilities:</p> <ul style="list-style-type: none"> • The boundary (across the Ramp) nearest to the intersection, being as per the green line in Figure 2; • The boundary (across the Ramp) furthest from the intersection being the boundary of the Leased Area; and • The boundary either side of the Ramp being in accordance with the principles depicted in Figure 2. |
| <p>MP05 – Shared use paths</p> <p>All sections of shared use path (SUP) constructed as part of the Project, including structures, at the locations shown on the plans attached in Attachment D.</p> | <p>Unless otherwise shown in the plans the Maintenance Area will be:</p> <ul style="list-style-type: none"> • Where the SUP is at grade, the path and 0.5m either side of the paved area. • Where the SUP is on structure, the boundaries shown in LP03 of the Lease Principles. • Transition from surface to structure to occur when the distance to the underside of structure is 1.5m. |
| <p>MP06 - Landscaping</p> <p>All new areas of landscaping constructed as part of the Project at the locations shown on the plans attached in Attachment D.</p> | Precise boundaries to be determined post completion of the landscaping. |
| <p>MP07 – Incident Response Staging Areas</p> <p>The Works constructed for the purposes of providing permanent incident response staging areas in accordance with sections 2.10(c) to 2.10(e) of Attachment C.</p> | |
| <p>MP08 - Stormwater Drains</p> <p>All sections of stormwater drainage constructed as part of the Project outside of the Leased Area including pipes, pits and other structures at the locations shown on the plans Attachment D.</p> | Physical limits of new drainage infrastructure |

| Location | Guideline |
|----------|-----------|
|----------|-----------|

Table Notes :

The diagram consists of two overlapping rectangular areas. The upper area is a light red rectangle with a red dashed border, containing the text "Project Co Leased Area". The lower area is a light purple rectangle with a purple dashed border, containing the text "Maintained Off Freeway Facility". The two areas overlap in the center.

Part H18 – ITS Interface Area

1. ITS Interface Area

- (a) The ITS Interface Area is outlined in Table H18.1.
- (b) Additional VMS gantries must be provided within and on the approach to the ITS Interface Area as specified in Table H18.2.

Table H18.1 – ITS Interface Area

| Freeway Section | From | To |
|---------------------------|--|-----------------|
| Princes Freeway eastbound | 2,050m west along the carriageway from the Doherty's Road overpass | M80 interchange |
| M80 Ring Road southbound | Pipe Road | M80 interchange |

Table H18.2 – VMS Gantries

| Freeway Section | Location |
|---------------------------|--|
| Princes Freeway eastbound | 500m in advance of ITS Interface Area |
| Princes Freeway eastbound | 1500m in advance of the Kororoit Creek Road overpass |

Part H19 - System and Traffic Incident Response Requirements

Table H19.1 – System and Traffic Incident Response Requirements

| System | Performance Requirement ² | Primary Monitoring and Reporting Period ¹ |
|---|--|--|
| Tunnel Information Signing System | System Availability must be \geq [Not disclosed]% | OMCS/Monthly |
| Emergency telephones and communications system | System Availability must be \geq [Not disclosed]% | OMCS/Quarterly |
| Tunnel public address system | System Availability must be \geq [Not disclosed]% | OMCS/Quarterly |
| Road safety camera electrical system ³ | System Availability must be \geq [Not disclosed]% | OMCS/Quarterly |
| Lane Use Management System | System Availability including Variable Speed Limit Signs \geq [Not disclosed]% | OMCS/Quarterly |
| Variable Message Signing System | System Availability must be \geq [Not disclosed]% | OMCS/Monthly |
| Traffic Data System | System Availability must be \geq [Not disclosed]% | OMCS/Quarterly |
| Automatic Incident Detection System | System Availability must be \geq [Not disclosed]% | OMCS/Quarterly |
| Automatic Incident Detection System | At least 75% of detected AID Incidents are True Positive with an accuracy of +/- [Not disclosed]% based on average traffic platoon speed | SAT (System Acceptance Testing) at West Gate Tunnel Completion |
| Automatic Incident Detection System | Mean time to detect AID Incidents within 10 sec with an accuracy of +/- [Not disclosed]% | SAT (System Acceptance Testing) at West Gate Tunnel Completion |
| Automatic Incident Detection System | Incident alert/alarm to be raised within 20 secs from detection with a +/- [Not disclosed]% accuracy | SAT (System Acceptance Testing) at West Gate Tunnel Completion |
| Closed Circuit Television System | System Availability must be \geq [Not disclosed]% | OMCS/Quarterly |
| Communication Network | System Availability \geq [Not disclosed]% | NMS / Monthly |
| Communication Network | System Availability of backbone routers must be \geq [Not disclosed]% | NMS / Monthly |
| Transmission of TMCS data | Performance of the communication services between the central system to end devices, namely: | SAT (System Acceptance Testing) at West Gate Tunnel Completion |

| System | Performance Requirement ² | Primary Monitoring and Reporting Period ¹ |
|--|---|--|
| | <ul style="list-style-type: none"> • Vehicle detectors • Field processor: <ul style="list-style-type: none"> ○ LUMS ○ Freeway ramp signals ○ VMS • Closed Circuit Television System: <ul style="list-style-type: none"> ○ less than 40ms one way | |
| Help phone system | System Availability \geq [Not disclosed]% | OMCS/Quarterly |
| Traffic Incident response | Respond ⁴ to Traffic Incidents within 15 minutes ⁶ after identification or receiving notification of the Traffic Incident \geq [Not disclosed]% of the time | OMCS/Monthly |
| Traffic Incident response | Clear ⁵ Traffic Incidents within 30 minutes ⁷ after identification or receiving notification of the Traffic Incident \geq [Not disclosed]% of the time | OMCS/Monthly |
| Over-height Vehicle System | System Availability \geq [Not disclosed]% | OMCS/Monthly |
| Over-height Vehicle System | Mean time to detect within 40 milliseconds with an accuracy of +/- [Not disclosed]% | SAT (System Acceptance Testing) at West Gate Tunnel Completion |
| Over-height Vehicle System | Alerts/Alarms (excluding advisory) data transmission rate less than 40 milliseconds one way from detection with a +/- [Not disclosed]% accuracy | SAT (System Acceptance Testing) at West Gate Tunnel Completion |
| Over-height Vehicle System | Display of warning message data transmission rate less than 40 milliseconds one way with an accuracy of +/- [Not disclosed]% | SAT (System Acceptance Testing) at West Gate Tunnel Completion |
| Tunnel Portal Barrier System | System Availability \geq [Not disclosed]% | OMCS/Monthly |
| Tunnel Air Monitoring System | System Availability \geq [Not disclosed]% | OMCS/Monthly |
| Tunnel Air Monitoring System | Alerts/Alarms within 2 secs from detection with a +/- [Not disclosed]% accuracy | SAT (System Acceptance Testing) at West Gate Tunnel Completion |
| RSS Availability | System Availability ⁸ \geq [Not disclosed]% in each calendar month | TBO / Monthly |
| System Availability means the value calculated in accordance with the following formula: | | |

| System | Performance Requirement ² | Primary Monitoring and Reporting Period ¹ |
|--------|--|--|
| | <p>System Availability =</p> $\frac{((HP \times ND) - HL)}{((HP \times ND) - NA)} \times 100$ <p>where:</p> <p>HP = number of hours in reporting period (with the reporting period being that period set out in the column titled "Primary Monitoring and Reporting Period");</p> <p>ND = number of individual Devices;</p> <p>HL = aggregate total number of hours for which individual Devices are unavailable or not operational in the reporting period (whether simultaneously or otherwise), aggregated for each Device rounded up to the nearest hour (e.g. if 1 Device has 20 minutes of unavailability in the reporting period, and a second Device has 1 hour and 15 minutes of unavailability in the reporting period, HL = 2).</p> <p>Devices = the last item in the system that interacts with or monitors the User of the Freeway;</p> <p>NA = aggregate total number of hours (aggregated for each Device and rounded up to the nearest hour) in the reporting period in respect of which:</p> <ul style="list-style-type: none"> • Project Co can demonstrate to the State's reasonable satisfaction that a Device did not need to be operational; or • a relevant Device or system is unavailable due to: <ul style="list-style-type: none"> ○ a State Act of Prevention; ○ a Key Risk Event; ○ a Force Majeure Event to the extent it is not a Key Risk Event; ○ an FMS Failure; ○ faults or damage caused by third party service providers or other civil contractors not engaged by Project Co and/or OpCo which cannot reasonably be mitigated by Project Co; ○ road space availability - where a fault, defect or inoperability is detected on any of the systems during peak periods (6am - 8pm weekdays) Project Co is not required to address this issue if it would require lane closures or reduced speed limits to do so. Where these instances occur, these hours will be deducted from the System Availability calculation; ○ restrictions or controls imposed by the Emergency Services; ○ events beyond the reasonable control of Project Co or OpCo (including where damage is caused by traffic incidents or a third party), and the effects of which cannot reasonably be minimised, mitigated or avoided by Project Co or OpCo; ○ defects in systems maintained by the State or its Associates independently of Project Co, OpCo and their respective contactors causing Device or system outages; ○ a defect in or unavailability of a VicRoads nominated supplier device (only when spares or replacements are not reasonably available); | |

| System | Performance Requirement ² | Primary Monitoring and Reporting Period ¹ |
|--------|--|--|
| | <ul style="list-style-type: none"> ○ actions reasonably required to comply with a direction from the State or its Associates in accordance with this Agreement or otherwise lawfully given; ○ outage of the relevant Device during a period of planned maintenance of the Device or an underlying system in accordance with the O&M Manuals or the O&M Phase Management Plan; ○ Devices not accessible or available due to major road works; ○ a failure by the State to comply with its obligations, or an exercise by the State of its rights, under the FMS Agreement; or ○ Utility Interruption. <p>Table Notes:</p> <p>¹ The primary monitoring system in the column titled 'Primary Monitoring and Reporting Period' is only the primary system for this monitoring. Other systems or methods of monitoring may be required to determine the system's performance.</p> <p>² These performance requirements only apply to the systems and devices located within the Leased Area and the Maintained Off-Freeway Facilities.</p> <p>³ "Road safety camera electrical system" means the power supply to each distribution board within Project Co's responsibility to operate and maintain under the State Project Documents, that supplies power to the road safety camera site.</p> <p>⁴ "Response", "Respond" or "Responded" means, for the purposes of this Part H19, arrival of Project Co's incident response crew at the site of the relevant Traffic Incident.</p> <p>⁵ "Clearance", "Clear" or "Cleared" means, for the purposes of this Part H19, that all Lanes (excluding any shoulders used as emergency stopping lanes) affected by the relevant Traffic Incident is clear for the safe, continuous and efficient passage of vehicles.</p> <p>⁶ The timeframes within which a Traffic Incident must be Responded to will not apply to:</p> <ul style="list-style-type: none"> ● any Traffic Incident where: <ul style="list-style-type: none"> ○ a State Act of Prevention; ○ a closure of any part of the road network by the State or its Associates; ○ a User or other third party (except where such third party is an Associate of Project Co); ○ a failure by the State to comply with clause 6.5(ba) of this Agreement; ○ a failure by the State to comply with its obligations, or an exercise by the State of its rights, under the FMS Agreement; ○ a Key Risk Event; ○ an FMS Failure; or ○ a Force Majeure Event to the extent it is not a Key Risk Event, prevents, disrupts or hinders the ability of Project Co or its Associates to Respond to that Traffic Incident within the required timeframe, or ● any Traffic Incident which: | |

| System | Performance Requirement ² | Primary Monitoring and Reporting Period ¹ |
|--------|---|--|
| | <ul style="list-style-type: none"> ○ results in the State or other Authority assuming control of any part of the Freeway (including to allow access for Emergency Services vehicles) or intervening in any part of the management of a Traffic Incident; ○ despite the best endeavours of Project Co's relevant incident response crew, cannot be Responded to within the required timeframe as a result of: <ul style="list-style-type: none"> ▪ the level of congestion on the Freeway in the westbound express carriageway between the southern Tunnel portal and Millers Road; or ▪ the location of that crew relative to the location of the Traffic Incident at the time of identification or receipt of notification of that Traffic Incident (as applicable) and the constraints of the layout and topology of the M80 interchange; or ○ to Respond within the required timeframe would pose a serious risk to the health or safety of any person, <p>to the extent that the Traffic Incident was not caused or contributed to by a failure of Project Co to comply with the State Project Documents or any other act or omission of Project Co or any of its Associates.</p> <p>⁷ The timeframes within which a Traffic Incident must be Cleared will not apply to:</p> <ul style="list-style-type: none"> ● any Traffic Incident where: <ul style="list-style-type: none"> ○ a State Act of Prevention; ○ a closure of any part of the road network by the State or its Associates; ○ a User or other third party (except where such third party is an Associate of Project Co); ○ a failure by the State to comply with clause 6.5(ba) of this Agreement; ○ a failure by the State to comply with its obligations, or an exercise by the State of its rights, under the FMS Agreement; ○ a Key Risk Event; ○ an FMS Failure; or ○ a Force Majeure Event to the extent it is not a Key Risk Event, prevents, disrupts or hinders the ability of Project Co or its Associates to Clear that Traffic Incident, or ● any Traffic Incident which: <ul style="list-style-type: none"> ○ results in the State or other Authority assuming control of any part of the Freeway (including to allow access for Emergency Services vehicles) or intervening in any part of the management of a Traffic Incident; ○ requires the assistance of an accident allocation tow truck, heavy salvage or specialist equipment or specialist subcontractors; ○ involves an abandoned vehicle on a Lane which is not a traffic running lane; ○ involves Heavy Commercial Vehicles, High Productivity Freight Vehicles or Cars towing a trailer or caravan; ○ requires the clean-up of spills or repair of damage to the Freeway; ○ despite the best endeavours of Project Co's relevant incident response crew, cannot be Cleared within the required timeframe | |

| System | Performance Requirement ² | Primary Monitoring and Reporting Period ¹ |
|--------|--|--|
| | <p>as a result of:</p> <ul style="list-style-type: none"> ▪ the level of congestion on the Freeway in the westbound express carriageway between the southern Tunnel portal and Millers Road; or ▪ the location of that crew relative to the location of the Traffic Incident at the time of identification or receipt of notification of that Traffic Incident (as applicable) and the constraints of the layout and topology of the M80 interchange; or <ul style="list-style-type: none"> ○ to Clear within the required timeframe would pose a serious risk to the health or safety of any person, <p>to the extent that the Traffic Incident was not caused or contributed to by a failure of Project Co to comply with the State Project Documents or any other act or omission of Project Co or any of its Associates.</p> <p>⁸ For the purposes of calculating the System Availability of the RSS, the relevant Devices will be the electronic OBU readers located on the tolling gantries.</p> | |

Part H20A Urban Design Principles

1. General

This Part H20A outlines the urban design principles for the West Gate Tunnel. Project Co must design and construct the Works in a manner consistent with the urban design principles outlined in section 2.

2. Urban design principles

The design and construction of the Works must be consistent with the following eight urban design principles:

- (a) urban integration – the Freeway corridor must be integrated with the surrounding urban and open space fabric to provide a better integrated environment serving both the community and road users including to:
 - (i) ensure an integrated design that:
 - A. achieves an infrastructure solution that is integrated with the adjacent land-uses;
 - B. shows a clear analysis of and responsiveness to the existing urban context;
 - C. demonstrates alignment with strategic visions and plans of the Victorian Government and the community;
 - D. mitigates impacts on communities in the surrounding areas by:
 - 1) integrating with adjacent stakeholders' development plans and provide enhancement to the Freeway corridor's relationship to the surrounding urban and social context;
 - 2) providing a Freeway corridor that achieves the functional and operational requirements while meeting the access and amenity needs of the existing communities;
 - 3) ensuring that innovative approaches are developed to address significant urban interface challenges, specifically future urban renewal areas; and
 - 4) providing high quality outcomes for residents and adjacent private and public land users with respect to:
 - a) protection of views and privacy;
 - b) noise amelioration;
 - c) overshadowing; and
 - d) providing access and security through design;
 - E. incorporates native and naturalised Australian species into the design of the Freeway corridor; and

- F. incorporates plant species appropriate to local government landscape strategies in adjacent open space areas and, into the existing landscape throughout the Freeway corridor creating a uniform and consistent landscape that aligns with the urban context.
- (b) identity - provide a legible and distinctive set of urban design elements in the Freeway corridor that assists with navigation, orientation and wayfinding including by:
- (i) identifying the entrances of the West Gate Freeway and the West Gate Tunnel as quality thresholds to the CBD, the Port of Melbourne and Melbourne's west;
 - (ii) providing a distinctive identity for the Freeway through a variety of landscape and urban design elements between the major interchanges that recognises the different urban contexts through which the Freeway passes; and
 - (iii) enhancing the identity and character of neighbourhoods and precincts through which, the Freeway passes.
- (c) connectivity and wayfinding - provide a legible and distinctive experience for local communities and road users through application of appropriate urban design and landscape treatments including by:
- (i) integrating existing and future proposed road networks and community mobility needs to improve connectivity across the Freeway corridor for all transport modes, including cycling and walking;
 - (ii) improving Freeway legibility by reinforcing identifiable elements that assist drivers to navigate their journey;
 - (iii) rationalising wayfinding signage through a coordinated and integrated signage and information system;
 - (iv) reinforcing wayfinding through the consistent and considered use of colour;
 - (v) assisting drivers' decision making and anticipation of route changes through the use of urban form as markers and threshold treatments; and
 - (vi) supporting the shared use path connections for pedestrians, cyclists and all commuters who use public and private transport.
- (d) resilience and sustainability - support measures to assist the West Gate Tunnel to become sustainable, enduring and resilient including by:
- (i) enhancing the surrounding environment by avoiding and where not possible, providing mitigation to minimise noise, light, odour and air pollution;
 - (ii) providing a design that is enduring and functional for generations to come, meets the required Design Life, is readily maintainable, and provides a positive built legacy;
 - (iii) promoting positive and relevant social and cultural values through the design elements and integration of the Freeway alignment; and

- (iv) implementing environmentally sustainable design to minimise water and energy usage, improve ecological resilience in the natural environment and employ ecologically sensitive construction methodologies.
- (e) amenity - provide improved amenity for local communities, places and environs through which the Freeway passes including by:
 - (i) enhancing the amenity of the surrounding areas by avoiding and where not possible, minimising and mitigating the visual and physical impacts of the West Gate Tunnel; and
 - (ii) ensuring that the design of the alignment and elements of the Freeway considers the future commercial, residential and industrial development and enhances opportunities for open space amenity and meets the requirements relating to future public transport requirements (as listed in Part H13).
- (f) vibrancy - support and integrate with future and existing key civic spaces that support prosperous and healthy experiences including by conserving and enhancing safe public spaces through well considered and integrated design.
- (g) safety - create safe environments that assist in the development of a series of connected and resilient communities including by:
 - (i) improving personal safety along the route and in the surrounding areas through improved passive surveillance and application of safety design principles;
 - (ii) providing a design that supports the engendering of civic pride through the use of materials and products that are not easily vandalised and are readily maintainable;
 - (iii) maximising visibility and visual connections in the design; specifically in relation to overpasses, underpasses and blind corners; and
 - (iv) maximising visibility and visual connections through the design including in relation to overpasses, underpasses and blind corners.
- (h) accessibility - support accessible and inclusive environments so that positive activation and contribution to prosperity, well-being and the perception of care within communities is developed including by:
 - (i) maintaining accessibility through to the surrounding areas for all members of the community, whether able bodied or mobility impaired without barriers or differentiation;
 - (ii) creating functional pathways aimed at prioritising pedestrian and cycling accessibility across and through the Freeway corridor.

Part H20B - UDS Requirements

1. General

- (a) Project Co must design and construct the Works in a manner which:
 - (i) is consistent with the design measures outlined in section 2;
 - (ii) is consistent with the precinct and local area design guidelines outlined in section 3; and
 - (iii) without limiting section 1.2 of Part F5, is consistent with the intention and detail of the Urban Design Concept.
-

2. Design Measures

2.1 General

- (a) Achieve urban design excellence that resolves all urban integration issues and provides a clear and distinctive identity and character for the Project that is authentic, culturally relevant and that makes a positive contribution to the western region and serves as an enduring feature within Melbourne's greater urban environment.
- (b) Deliver a high quality urban design outcome that contributes to the cultural value and meaning of the urban environment, including through the conceptual approach, its detailed resolution and execution. The urban design outcome will demonstrate the effective collaboration between technical and urban design disciplines, including architectural and landscape design; deliver a solution that is integrated in detail and operates effectively at regional and local scales; and ensures that architectural, landscape and urban design elements and spaces are durable, easy to operate and maintain, and will age gracefully, consistent with the Urban Design Concept and strategic intent.
- (c) Deliver refined and well-resolved structural solutions that integrate visual, architectural and urban design considerations with technical requirements including structures and services to ensure well-proportioned, uncluttered and elegant structural outcomes that are consistent with the Urban Design Concept.
- (d) Provide clear strategies for the accommodation of and integration with adjacent future community use and urban renewal, including a design of Wurundjeri Way Extension which allows for the future E-Gate to implement a land/development bridge across the rail corridor to connect to the North Melbourne station level.
- (e) Minimise the loss of existing open space, in particular public open spaces, and improve the quality of existing public open spaces affected by the project, including minor and incidental landscapes and areas.
- (f) Develop new public open spaces, including:
 - (i) approximately 3.0 hectares of green open space adjacent to the southern westbound portal, south of the West Gate Freeway and west of the Newport railway line, Altona North;
 - (ii) approximately 1.7 hectares of green open space, north of the West Gate Bridge, south of Stony Creek and east of the Williamstown railway line, Yarraville;

- (iii) approximately 2.8 hectares of green open space and wetlands area east of Whitehall Street and south of Youell Street, Yarraville;
 - (iv) public access to the Maribyrnong River frontage precinct; and
 - (v) approximately 1.4 hectares of green open space north of Footscray Road and west of Moonee Ponds Creek, West Melbourne.
- (g) Increase the overall tree canopy and improve the quality and biodiversity of tree canopy and understorey cover across the Project Area, including through:
- (i) protection of retained existing trees and understorey areas;
 - (ii) establishment of new tree and understorey plantings in a rehabilitated industrial parcel of land adjacent to the southern Tunnel portal westbound;
 - (iii) establishment of new tree, understorey and riparian plantings in a rehabilitated parcel of land between the West Gate Bridge, Stony Creek and the Newport railway line;
 - (iv) establishment of new tree, understorey and riparian plantings within a new wetland environment in a rehabilitated industrial parcel of land adjacent to the northern Tunnel portal;
 - (v) establishment of new tree planting and understorey species along the Maribyrnong River environs, excluding the Port Lease Land but including the Port Transaction Land (both as defined under the Port Land Deed); and
 - (vi) establishment of new tree and understorey plantings within a rehabilitated industrial area adjacent to and within the Moonee Ponds Creek environs and within disused rail and industrial land.
- (h) Enable safe, amenable and convenient pedestrian movement including enabling walkable, well-connected neighbourhoods and bicycle movements for both current and future populations adjacent to the Relevant Infrastructure, including through:
- (i) upgrades and improvements to existing pathways and adjacent landscapes affected by the project;
 - (ii) creation of new connections to link existing pathways and spaces, including the Federation Trail;
 - (iii) integrated illumination of new structures and associated spaces to ensure clear sightlines and good visual linkages for pedestrians within pedestrian bridges, around entry and exit points to structures, and to pathways to and from surrounding areas;
 - (iv) a new Veloway with two emergency egress points; and
 - (v) new SUP bridge structures as listed in Part H6 using perforated steel cladding that is backlit at night unless otherwise stated in Part H6.
- (i) Incorporate relevant urban design requirements contained within local government Authority master plans, strategies and policies, including those set out in the:
- (i) City of Melbourne Urban Forest Strategy;
 - (ii) City of Melbourne Moonee Ponds Creek Draft Master Plan, including:

- A. upgrade of the Moonee Ponds creek riparian environments, creating biodiversity through new indigenous understorey plantings in bio-retention swales and along the riparian edges of the creek;
 - B. improvement of the soil conditions through the use of the bio-retention swales;
 - C. inclusion of rest areas, incorporating interpretative signage and indigenous cultural heritage references; and
 - D. upgrade of the current rail and industrial land use areas, creating new open space along Footscray Road and Moonee Ponds Creek and opening up future recreation and parkland opportunities for the Moonee Ponds Creek;
- (iii) City of Melbourne Urban Ecology and Biodiversity Strategy;
- (iv) Maribyrnong City Council Stony Creek Future Directions Plan, including the upgrade of Stony Creek on both sides of the creek corridor resulting in:
- A. developing the SUP connections to Hyde St;
 - B. an increase in riparian and parkland planting within Stony Creek, including ground treatment and weed control;
 - C. a new crossing of Stony Creek to connect with Hall Street and the existing Stony Creek pedestrian trails;
 - D. an upgrade to the Stony Creek backwash area entrance, with seating and signage to improve interpretation of environmental and cultural heritage references, and
 - E. an improvement of the connections to the SUP along Fogarty Avenue and the upgrade of the existing bridge crossing and access to the existing playground at The Boulevard;
- (v) Hobsons Bay City Council Donald McLean Reserve Plan, including:
- A. landscaping of the batter planting area alongside the ramp with additional canopy trees in line with the Donald McLean Reserve Plan;
 - B. planting additional canopy trees along the reserve boundary in areas affected by construction access in line with the Donald McLean Reserve Plan;
 - C. subject to any applicable Approvals, refurbishing the modular site office building as a new clubhouse facility, in line with the Donald McLean Reserve Plan;
 - D. subject to any applicable Approvals, using fill from construction works to create a buffer mound along Melbourne Road in line with the Donald McLean Reserve Plan; and
- (vi) subject to any applicable Approvals, Footscray River Edge Masterplan, including providing connectivity to the Maribyrnong River, to enable future implementation of the:

- A. Maribyrnong River Master Plan;
 - B. City of Melbourne Open Space Strategy;
 - C. City of Melbourne Arden Macaulay Structure Plan (April 2015 update);
 - D. City of Melbourne Access Docklands Strategy;
 - E. City of Melbourne Docklands Public Realm Plan; and
 - F. Victorian Planning Authority Draft Arden Vision & Framework.
- (j) Collaborate with relevant local government Authorities and a qualified public art consultant to facilitate the inclusion of public art that is high quality, integrated, and consistent with the Urban Design Concept by those local government Authorities (in open space outside the Leased Area).
 - (k) Incorporate both active and passive methods of graffiti and vandalism management.

2.2 Bridges, Viaducts, Elevated Roads and Other Structures

- (a) Deliver urban design excellence and a high quality, integrated design outcome.
- (b) Achieve innovative, effective and elegant design solutions to solve critical project challenges to meet urban design objectives, and which are of a quality that meets or exceeds the quality of the most highly awarded bridge and elevated road projects, as assessed through the Urban Design Review Panel.
- (c) Provide an elegant, well-proportioned, uncluttered design outcome for all bridge and elevated road structures, ensuring their form, language, expression and detail is consistent with and contributes to the Urban Design Concept.
- (d) Integrate low energy lighting as a key urban design element or feature, including energy efficient long-life LED.
- (e) Provide a well-defined, responsive and sensitive response to enrich local community urban character, identity, significant views, linkages and open space amenity.
- (f) Ensure that all bridge and elevated road structures fulfil a clearly articulated role in wayfinding strategy for the project, consistent with the Urban Design Concept.
- (g) Integrate technical and urban design aspects of bridges and elevated road structures including structures and services to ensure concealment of drainage and conduits, and to facilitate safety and access for maintenance.
- (h) Deliver safe and non-threatening spaces associated with pathways and well-lit pedestrian bridges and under-croft areas and elevated structures, ensuring clear sightlines and good visual linkages to entry and exit points and to and from surrounding areas, and through provision of access to direct and reflected natural light, and the use of artificial lighting and CCTV in the elevated SUPs (including the Veloway) including entry and exit points;
- (i) Provide spaces associated with bridges and elevated roads to integrate current and future land uses, open spaces and community requirements, and provide high level amenity and sustainable, viable and biodiverse environments adjacent to waterways. Deliver these spaces through (subject to any applicable Approvals):

- (i) design of under-croft areas that support positive activation through informal recreation spaces such as basketball courts, table tennis tables and the like;
 - (ii) creation of informal recreation areas to support positive uses for hard paved areas of under-crofts; and
 - (iii) integration of the historic rail tracks adjacent to Maribyrnong Street to link with the existing Maribyrnong River waterfront landscape and create an interactive environment.
- (j) Achieve an innovative integrated outcome along interfaces with adjacent future urban renewal areas, including through:
- (i) Road alignments and levels that optimise availability of space for development and linkages across urban renewal sites;
 - (ii) provision for future SUP connections to Precinct 15, Bradmill and E-Gate; and
 - (iii) provision of a landscape buffer between the southern westbound Tunnel portal and Precinct 15.
- (k) Maximise access to direct and reflected light to under-croft spaces and under structures generally for the ground and creek environments to support safety, and viable landscaped areas.
- (l) Align piers and other support structures to optimise the usability and positive urban qualities of under-croft spaces.
- (m) Minimise visual clutter generally and minimise the extent of ancillary elements to new and existing bridges including traffic signs, and motorway management systems. Where applicable, design such elements as integrated, simple components that are consistent with the Urban Design Concept.
- (n) Facilitate excellent integration of and amenable, positive pedestrian interfaces with future urban renewal areas adjacent to the Footscray Road viaduct, and the city connection structures.
- (o) Minimise structural depths of the elevated viaducts including those over the Maribyrnong River, the Footscray Road viaduct and the city connections in order to reduce visual bulk and maximise access to direct light below.
- (p) Ensure that the city connections and crossings of Moonee Ponds Creek are aligned and designed to respond to and support current and anticipated land uses, and achieve design excellence in urban and riparian integration at the local scale.
- (q) Bridges, elevated roadways, viaducts and Tunnel portal structures are to be situated such that they complement the visual character of the existing natural and urban environments.

2.3 Portal, Tunnel and Ventilation Structures

- (a) Where Tunnel portals are adjacent to or within existing open space, create or enhance adjacent open spaces to improve amenity and ensure no net loss of open space.

- (b) Locate Tunnel portal and ventilation structures to minimise negative impacts on residential areas and public open spaces, and design these structures to contribute to the Urban Design Concept through their form, language, expression and detail.
- (c) Design Tunnel interiors to optimise safety, enhance the driver experience and to reference the local areas through which they pass.
- (d) Ensure Tunnel portals, ventilation structures and associated retaining walls, viaducts and ramps are designed as cohesive elements consistent with the Urban Design Concept.
- (e) Provide Tunnel portal structures that are safe, maintainable and compliant to all applicable standards.

2.4 Noise Walls

- (a) Provide noise walls to mitigate the impacts of traffic noise on residential areas and as cohesive, unifying elements that are integral to the Urban Design Concept.
- (b) All noise wall elements must minimise overshadowing of residential properties, community facilities, open spaces, waterways, and valuable natural habitats.
- (c) Noise walls must be transparent in locations abutting residential properties where their deployment would substantially interfere with access to unfiltered daylighting, view, aspect or adjoining uses.
- (d) Where transparent noise wall panels overshadow private property, they should be:
 - (i) clear; or
 - (ii) light, natural colours.
- (e) Noise wall design and detail should address the community side to provide a visual solution in keeping with the 'human' scale of adjacent residential or commercial land uses, and to contribute to local urban character through scale, texture, colour and detail, consistent with the Urban Design Concept.
- (f) Noise wall faces on the community side are to be designed to provide safe environments and to contribute to the perception of safety.
- (g) Vegetation is to be used to improve the appearance of noise walls when viewed from the community side and, where appropriate, on the opposing road side, where viable, including by planting of trees, shrubs and groundcovers to mitigate the apparent height of noise walls.
- (h) Minimise the potential for vandalism of noise walls through material selection, treatments, detailing, positioning, and placement of vegetation.

2.5 Barriers and Railings

- (a) Design all barrier and railing elements as fully integrated elements within associated structures, landscapes and landforms, and to minimise visual clutter.

2.6 Retaining Walls

- (a) Design retaining walls to ensure their consistency with and contribution to the Urban Design Concept. Integrate their design to deliver elegant relationships with bridge structures and refine their detail to integrate with the adjacent landscape.

- (b) Where drainage channels, conduits and fixings are required, these elements are to be concealed.

2.7 Urban Landscape

- (a) Employ water sensitive urban design approaches throughout the project wherever possible.
- (b) Minimise loss of existing canopy trees, and increase tree canopy overall including through:
 - (i) establishment of new tree and understorey plantings to supplement existing retained plantings wherever possible; and
 - (ii) establishment of additional tree and understorey plantings along the residential interfaces of the West Gate Freeway to screen noise walls.
- (c) Achieve integration of tree vegetation canopy cover and lower storey planting combined with water treatment or harvesting into the project in the urban landscape, including through:
 - (i) planted storm water detention basins ensuring groundwater recharge and passive irrigation, fed by storm water from adjacent bridge structures, at:
 - A. alongside Dynon Road;
 - B. within the M80 interchange;
 - C. Hyde St on ramp adjacent to the Donald McLean Reserve;
 - D. Hyde St off ramp adjacent to the new pedestrian connection to Hall Street and Stony Creek Reserve;
 - E. Stony Creek Reserve; and
 - F. in the vicinity of Precinct 15 adjacent to the West Gate Freeway; and
 - (ii) planted swales located at the base of batters and adjacent to pathways to provide passive irrigation and groundwater recharge for landscape areas.
- (d) Engage effectively with each of the City of Melbourne, Hobsons Bay City Council and Maribyrnong City Council to facilitate outcomes consistent with their respective policies and strategies. Provide a written report capturing outcomes of the relevant engagement as part of the Design Documentation.
- (e) Increase tree canopy throughout the Project Area to improve amenity, sustainability, resilience and biodiversity, to provide relief from the urban heat island effect, and to enrich visual amenity.
- (f) Use vegetation as an effective anti-graffiti mitigation measure to limit access to target surfaces.
- (g) Employ learnings gained from planting design of recent successful and failed urban landscape planting in Melbourne's west to optimise viability, including through:
 - (i) soil preparation techniques, including ripping and cultivation ensuring effective breaking up the compacted soil base; and

- (ii) use of locally indigenous species from the relevant Ecological Vegetation Classes (EVC) that are known to be successful in road environments in Melbourne's west, with a target of 90-95% of such species being successfully implemented.
- (h) Use Supportive Environment for Physical Activity (SEPA) principles published with the objective of making it easier, safer and more enjoyable for people to be physically active as part of everyday life.
- (i) Use Crime Prevention Through Environmental Design (CPTED) principles, including through:
 - (i) landscape design positioned proximate to SUP and trail routes that have good sightlines and long distance views, and minimise any tight corners where views are restricted;
 - (ii) locating pathways to ensure separation from objects and obstacles that block views and allow 'hiding spaces'; and
 - (iii) designing open space areas to support activation through recreational elements, including bike/BMX track, playground rest areas, interpretative areas or similar as relevant and appropriate in each location.
- (j) Integrate water sensitive urban design measures into the urban landscape.
- (k) Provide passive irrigation and use of permeable surfaces adjacent to softscape areas, including through:
 - (i) design of crossfall of pathways within parkland areas to be directed to the softscape edge and used within a grassed or planted swale to both direct the flow and also slow the flow allowing for infiltration of the runoff into the subgrade; and
 - (ii) lower order pathways for access tracks and pedestrian movement in sensitive area in flatter zones being surfaced with permeable gravel to provide a permeable surface, infiltration and ground water recharge.
- (l) Ensure all landscape works (hard and soft) within public open space adhere to the commensurate local government Authority requirements, standards, guidelines and technical notes.
- (m) Ensure all landscape works adhere to, as a minimum, Section 720 (February 2016) of the VicRoads Standard Specifications.

2.8 Road corridor and riparian landscape

- (a) Achieve the minimum tree replacement ratio required under Part H21 and comply with the landscape documentation as set out in Part K, and contribute to bio-diversity and viability of all landscapes within the Freeway corridor, including riparian landscapes and public open space within, adjacent to and affected by the West Gate Tunnel.
- (b) Minimise loss of tree canopy and facilitate reinstatement of canopy trees.
- (c) Increase tree canopy and planting to deliver a contribution to bio-diversity in the corridor and riparian landscapes within, adjacent to and affected by the West Gate Tunnel.

- (d) Design the road corridor landscapes and associated areas to contribute to a distinctive, responsive, viable and thriving landscape identity consistent with the Urban Design Concept.
- (e) Increase tree canopy throughout the road corridor and associated areas to improve amenity, sustainability, resilience and biodiversity; to provide relief from the urban heat island effect; and to enrich visual amenity.
- (f) Ensure tree canopy and lower storey amenity planting, combined with water sensitive urban design and water treatment/ harvesting are integrated into the Project Area.
- (g) Deliver maximum batter slopes of 3:1. Provide integrated retaining walls to minimise steep batters and to ensure excellent topsoil depth. Where steep grades are unavoidable, retaining walls are to be used to create flatter planting areas that can be successfully planted and maintained.
- (h) Use barriers (wire rope, concrete, as appropriate for the landscape character) for protection of new and existing tree planting within clear zones.
- (i) High quality site preparation techniques are to be implemented including adequate ripping, mulching and top soil inclusion, including through:
 - (i) planting areas deep ripped to 300mm and cultivated to 150mm;
 - (ii) mulching at a depth between 75mm and 100mm subject to the location (garden beds or riparian environment); and
 - (iii) topsoil depth at 150mm over cultivated sub-base.
- (j) Provide integrated land forming with benching and low retaining walls designed to be consistent with the Urban Design Concept to create improved planting conditions.
- (k) Provide opportunities for passive irrigation through water sensitive road design techniques to assist soil moisture recharge.
- (l) Ensure all landscape works adhere to VicRoads Standard Specifications, including Section 720 (February 2016) and Melbourne Water Planting and Species Guidelines as a minimum.
- (m) Adhere to and satisfy the local municipal targets for tree canopy cover, tree species diversity and biodiversity , and be consistent with the:
 - (i) Urban Forest Strategy;
 - (ii) Urban Forest Precinct Plan for North and West Melbourne;
 - (iii) Moonee Ponds Creek Plan;
 - (iv) Urban Ecology and Biodiversity Strategy;
 - (v) Maribyrnong City Council Stony Creek Future Directions Plan; and
 - (vi) Hobsons Bay City Council Kororoit Creek Regional Plan 2005 – 2030, and Donald McLean Reserve Plan.
- (n) Maximise performance, long term viability and contribution to the landscape character, amenity and design concept as a whole by considering local conditions and existing habitats and bio-diversity.

- (o) Use species that are predominantly indigenous or native, are viable in consideration of mix and micro-climate, that will thrive and require low maintenance, and that contribute to character and identity consistent with the Urban Design Concept.

2.9 Earth Mounding

- (a) Earth mounding:
 - (i) must not exceed 3 metres in height or be steeper than 3:1 (except for steepening around obstacles);
 - (ii) must include benching and low retaining walls where required to create improved planting conditions; and
 - (iii) must be formed as naturalistic elements which are seamlessly integrated with the surrounding landscape, or as design elements consistent with other aspects of the Works.

2.10 Planting and Vegetation

- (a) Landscape design must be low maintenance and designed to protect and enhance the environmental values of the Project Area.
- (b) Planting densities and the structure and composition of plant communities must be designed to maximise potential for natural regeneration, maximise habitat value and minimise competition from weeds.
- (c) Species that are, or have the potential to become, environmental weeds must not be used.
- (d) Existing vegetation and other environmentally sensitive areas, including:
 - (i) sensitive vegetation areas around the Donald McLean Reserve; and
 - (ii) sensitive vegetation areas around key waterways,
 must be fenced, maintained and protected during construction in accordance with AS 4970 2009 and applicable Project Plans.
- (e) Sensitive habitat must be permanently fenced to prevent damage from incompatible uses.
- (f) Use fencing that is consistent with the Urban Design Concept and is recessive in character (eg. black mesh).
- (g) Planting must be at the minimum densities set out in Table H20B.1.

Table H20B.1 - Planting type, density and size

| Planting type | Density | Size |
|--------------------|--------------------------------|----------------------|
| Wetland | Average 6 - 8 / m ² | Virocell / Tubestock |
| Stream restoration | 6 / m ² | Virocell / Tubestock |
| Habitat corridor | 6 / m ² | Virocell / Tubestock |
| Grasses / tussocks | 5 / m ² | Virocell / Tubestock |

| Planting type | Density | Size |
|---|----------------------|---|
| Massed ground covers | 2 / m ² | Virocell / Tubestock |
| Massed small shrub planting | 1.5 / m ² | Virocell / Tubestock |
| Massed large shrub planting | 0.7 / m ² | Virocell / Tubestock |
| Indigenous tree planting - mulched beds | 0.2 / m ² | Virocell / Tubestock |
| Indigenous tree planting - mown grass areas | N/A | Virocell / Tubestock |
| Native tree planting | N/A | (15-20 Litre pot, 1.5m high, 30mm trunk diameter) |
| Intersection feature trees | N/A | (15-20 Litre pot, 1.5m high, 30mm trunk diameter) |

- (h) Plant selection, design and layout are to:
- (i) adhere to the local government Authority tree canopy cover requirements, tree species diversity and biodiversity targets; and
 - (ii) be consistent with the Urban Forest Strategy and Urban Forest Precinct Plan for North and West Melbourne.

2.11 Pedestrian, Veloway and Cycle Infrastructure

- (a) Consult with local government Authorities and any other relevant Authorities to assist in the implementation of coordinated improvements to the shared use path and Veloway network and to support and foster new patronage where possible, including those related to the application of Part H6.
- (b) Shared use paths, Veloways and pedestrian spaces must be safe and inclusive and integrate lighting where appropriate, with effective passive surveillance and CPTED and dementia-friendly communities principles, including:
 - (i) SUPs are to incorporate lighting where appropriate including undercroft areas, and bridges and where road lighting does not provide adequate light spill;
 - (ii) the Veloway must:
 - A. follow a grade no steeper than 3.5%; and
 - B. have appropriate lighting to ensure a safe travel journey and the large radius curves allow for long sight lines to ensure CPTED principles are met;
 - (iii) improve wayfinding and legibility around sites affected by the West Gate Tunnel, with consideration of new infrastructure and impacts on existing pathways and linkages, using design and signage consistent with the Urban Design Concept; and

- (iv) ensure adherence to the Melbourne Water Shared Pathway Guidelines (2009) and the VicRoads Traffic Engineering Manual Volume 1, Chapter 5 (1999) as a minimum.

Nothing in this section 2.11(b) requires the Veloway to be otherwise than for cyclists only.

2.12 Fences, Balustrades and Screen Elements

- (a) All screen elements, balustrades and fences must be integrated as part of the technical and urban design solution, using high quality, enduring, robust and sustainable materials. Where ancillary fencing is required that is not a feature within the Urban Design Concept, design fencing to be recessive (eg. black mesh).

3. Precinct and Local Area Design Guidelines

3.1 M80 Interchange

- (a) Protect existing view lines to the 'House in the Sky' sculpture. If alterations to the view lines or to the sculpture itself are required, a local area and precinct-scaled professionally developed art strategy for this work must be provided that has been approved by the owner of the sculpture and artist.
- (b) Ensure that all Tunnel portal frame structures are of an equal or higher built and visual quality to those documented within the Urban Design Concept for the new Maribyrnong River crossing and Footscray Road structures.
- (c) Ensure that open views to the Kororoit Creek environs from the Freeway are maintained and enhanced, as part of an integrated urban design solution.
- (d) Improve amenity of SUPs both along the Kororoit Creek Trail and the Federation Trail.
- (e) Upgrade the Kororoit Creek Trail from the existing trail north to Geelong Rd following Bluestone Bridge.
- (f) Provide lead in paths to Kororoit Creek Trail from existing footpaths, on road cycling lanes and the existing off road trail network.

3.2 West Gate Freeway

- (a) Minimise impact on the W L J Crofts Reserve and D N Duanne Reserve function and quality, whilst maximising usable park spaces.
- (b) Enhance adjacent open space at Lynch Road Reserve.
- (c) Provide a landscape buffer (for example vegetation and mounding) to Donald McLean Reserve that is consistent with and supports the Donald McLean Reserve Masterplan.
- (d) Support implementation of Maribyrnong City Council's Open Space Strategy, including in relation to interface treatments to Francis Street, Stony Creek and community areas east of Williamstown Road.
- (e) Grieve Parade and Millers Road from Geelong Road to Altona Gate are to be locations for replacement and enhancement of canopy vegetation lost due to the Project, in consultation with the relevant local government Authority;

- (f) Incorporate wayfinding to nearby public transport, including a new SUP connection to Spotswood Station, including signage to assist pedestrians and cyclists to navigate along the new route.
- (g) Ensure that pedestrian bridge infrastructure is safe, attractive, well-sited to support connectivity and well integrated into the adjacent open spaces so that it is 'user-friendly' and does not negatively impact upon the functionality of the public areas.
- (h) Deliver and improve amenable, safe pedestrian and bicycle connections under all motorway overpasses.
- (i) Design noise walls to ensure sensitive siting and detail in response to adjacent residences and public realm areas, and include planting to streetscape interfaces, including along Fogarty Avenue.

3.3 Southern Tunnel Portal

- (a) Where affected by the project, Anderson Reserve and Stony Creek corridor are to be sensitively improved to integrate with any redevelopment of adjacent open space and there must be no net loss of high quality open space in the immediate reserve and creek corridor areas. Any additions to open spaces are to adhere to the Maribyrnong City Council's Stony Creek Future Directions Plan, Open Space Strategy and Recreation Strategy.
- (b) Protect and preserve open space and residential amenity for areas of Anderson Reserve, Hyde Street and the Stony Creek corridor that are not required for the Works.
- (c) Provide noise and visual attenuation strategies that include walls, earth forming and planting at the Donald McLean interface to facilitate the reserve's role as a key neighbourhood park and community social space, and to accommodate future recreation developments as outlined under Hobsons Bay City Council's Donald McLean Reserve Masterplan.
- (d) Provide integrated public art in consultation with Maribyrnong City Council and Hobsons Bay City Council and demonstrate resolved solutions within the Design Documentation, and consistent with the Urban Design Concept.

3.4 Northern Tunnel Portal

- (a) Where the West Gate Tunnel interfaces with the Maribyrnong River corridor, Footscray Wharf and other public open space areas, improve, integrate and redevelop adjacent open space to ensure no net-loss of high quality public open space in the immediate vicinity, and to address the principles set out in the Maribyrnong City Council's Footscray River Edge Masterplan.
- (b) Provide integrated public art in consultation with Maribyrnong City Council and Hobsons Bay City Council and develop resolved solutions within the Design Documentation, and consistent with the Urban Design Concept.

3.5 Maribyrnong River

- (a) Where the West Gate Tunnel interfaces with the Maribyrnong River, the urban design must improve access to the river, and the quality of public realm spaces affected and provide a framework for future open space development.
- (b) Minimise negative impacts of new structures at ground level to maximise useable, safe under-croft space through siting and design of piers, decks and ancillary elements, and to maximise access to natural light at ground level.

- (c) The bridge and its associated structures must demonstrate urban design excellence, convey a strong 'sense of place' and be consistent with the Urban Design Concept and its contribution to identity for the inner and greater western region.
- (d) Provide integrated public art in consultation with Maribyrnong City Council and Hobsons Bay City Council and develop resolved solutions, and consistent with the Urban Design Concept.

3.6 Footscray Road

- (a) Reinststate and enhance tree canopy. Innovative, practical and enduring responses must be provided which conform to the City of Melbourne's Urban Forest Strategy, including the diversity and canopy cover targets.
- (b) Incorporate water sensitive urban design, storm water collection, treatment and re-use as integrated systems within the road corridor for Footscray Road.
- (c) Deliver a safe, amenable pedestrian and cycling environment through design alignment and detail, and the use of passing areas, exits, ambulance accesses and emergency communications.

3.7 City and CityLink Connections (including Moonee Ponds Creek, Wurundjeri Way and E-Gate)

- (a) Demonstrate that urban integration strategies effectively respond to and facilitate positive long term outcomes for the E-Gate and Dynon Road urban renewal precincts.
- (b) Provide for future pedestrian and cycling access and connectivity, public open space and addresses to Footscray Road and Moonee Ponds Creek.
- (c) Maximum number of two elevated road structures over the Moonee Ponds Creek.
- (d) Achieve an improved Moonee Ponds Creek corridor as described in the City of Melbourne's Moonee Ponds Creek Plan and the City of Melbourne's Open Space Strategy. The four aspects to the creek that must be resolved and improved are, liveability, urban ecology, connectivity and flood management. Provide strategies for dealing with these four aspects of the Moonee Ponds Creek design and ensuring that the West Gate Tunnel will integrate with the City of Melbourne's Moonee Ponds Creek Master Plan and the Capital City Trail.
- (e) Ensure that the alignment of the West Gate Tunnel and its supporting structures significantly minimises the creation of isolated areas of land whose value to future urban renewal is significantly decreased.
- (f) Improve the function of the Federation Trail and Capital City Trail, including through:
 - (i) ensuring that the convergence point between the two trails minimises conflict and manages the cyclist and pedestrian volume during peak use periods; and
 - (ii) eliminating the on-grade crossing at Footscray Rd and providing a safe elevated solution that improves the function of both trails.
- (g) Provide evidence that functional and generous pedestrian linkages between North Melbourne Station, West Melbourne and the E-Gate urban renewal site will be facilitated , to support pedestrian flows to/from North Melbourne, E-Gate and Docklands.

- (h) Achieve pedestrian connectivity across Dudley Street between Harbour Esplanade and Wurundjeri Way so that it functions effectively and provides levels of safety and amenity commensurate with the broader Docklands and Digital Harbour public realms.

Part H21 - Environmental Performance Requirements

The following table sets out the Environmental Performance Requirement identifiers.

| ID | EPR |
|-----|--|
| EMP | Environmental management |
| AQP | Air quality |
| BP | Business |
| CHP | Cultural heritage |
| CSP | Contaminated soil and spoil management |
| EP | Ecology |
| GGP | Greenhouse gas emissions |
| GMP | Ground movement |
| GWP | Groundwater |
| LPP | Land use planning |
| LVP | Landscape and visual |
| NVP | Noise and vibration |
| SP | Social and community |
| SW | Surface water |
| TP | Transport |
| WMP | Waste management |

Table H21.1

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|---|--|--|----------|---|---------------|--|
| Environmental Management | | | | | | |
| Environmental Management Framework - to provide a transparent framework with clear accountabilities for managing environmental effects and hazards associated with construction and operation phases of the Project, in order to achieve acceptable environmental outcomes | AS/NZS ISO 14001: Environmental management systems – requirements with guidance for use for construction and operation Legislation and policy as identified in all EPRs | To control adverse effects and support beneficial environmental outcomes in the delivery of the project. | EMP1 | Environmental Management Strategy Prepare an Environmental Management Strategy to provide an overarching framework to address environmental requirements including relevant environmental laws, key approvals, approval conditions, the environmental performance requirements (EPRs). The Environmental Management Strategy covers the construction and operations phases of the project and is to be prepared to the satisfaction of the Minister for Planning under the Incorporated Document applicable to the project. The Environmental Management Strategy must incorporate an Environmental Management System that complies with AS/NZS ISO 14001: Environmental management systems – requirements with guidance for use for construction and operation. The approved Environmental Management Strategy must be made publicly available on a clearly identifiable website for at least five years after the commencement of operation of the project. | All | Project Co (State will publish the Environmental Management Strategy) |
| | | | EMP2 | Environmental Management Plans Prepare and implement a Construction Environmental Management Plan (CEMP), Worksite Environmental Management Plans (WEMPs), Operations Environmental Management Plan (OEMP) and other plans as required by the Environmental Performance Requirements (EPRs) in accordance with the Environmental Management Strategy. The development of the Environmental Management Strategy, the CEMP, the WEMPs and OEMP must include consultation with relevant councils, VicRoads, Melbourne Water, EPA Victoria and other authorities as relevant. These consultation processes must be described in the Environmental Management Strategy. The CEMP must be prepared in accordance with EPA Victoria Publication 480, Environmental Guidelines for Major Construction Sites (EPA 1996). The CEMP and OEMP must be prepared to the satisfaction of the IREA. | All | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|---|---|--|----------|--|---|--|
| | | | EMP3 | Environmental compliance Appoint an Independent Reviewer and Environmental Auditor to review and approve the CEMP and OEMP to ensure compliance with the Environmental Management Strategy and EPRs and to undertake environmental audits of compliance with the approved Environmental Management Strategy, CEMP, WEMPs and OEMP. The IREA must produce six monthly audit reports which Western Distributor Authority must forward to the Minister for Planning during construction and other approval authorities as appropriate. Audit reports must be made publicly available. | Pre-construction, construction, operation | Project Co (State will forward audit reports to the Minister for Planning and will publish audit reports only) |
| | | | EMP4 | Complaints management system Prior to the commencement of works, other than preparatory works as referred to in the Incorporated Document), develop and implement a process for the recording, management, and resolution of complaints from affected stakeholders consistent with Australian Standard AS/NZS 10002:2014 Guidelines for Complaint Management in Organisations. The complaints management system must be consistent with the Communications and Community Engagement Plan required under EPR SP2. | Pre-construction, construction | Project Co |
| Air Quality | | | | | | |
| Health, amenity and environmental quality – to minimise adverse air quality, noise and vibration effects on the health and | <i>Environment Protection Act 1970</i> State Environment Protection Policy (SEPP) – Ambient Air Quality SEPP – Air Quality Management (AQM) | To manage Tunnel emissions to protect the beneficial uses of the air environment | AQP1 | Tunnel ventilation system design Design and construct a tunnel ventilation system to meet the requirements of the SEPP (AQM) and in accordance with the requirements of the EPA Victoria Works Approval, including provision for retrofitting of tunnel ventilation pollution control equipment if subsequently required. | Detailed design, construction | Project Co |
| | | | AQP2 | Zero portal emissions Design and implement a tunnel ventilation system to achieve zero portal emissions. | Detailed design, operation | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|--|-----------------------------------|--|----------|--|----------------------------|---|
| amenity of nearby residents, local communities and road users during both construction and operation of the Project. | | To ensure in-tunnel air quality is safe for motorists and others using the Tunnel | AQP3 | <p>In tunnel air quality</p> <p>Design and implement a tunnel ventilation system to introduce and remove air from the tunnels to meet in tunnel air quality requirements for carbon monoxide (CO) and best practice standards for NO₂ listed below.</p> <p>Achieve a longitudinal air velocity in the Tunnels not exceeding 10 metres/second.</p> <p>In tunnel air quality must meet the following standards:</p> <ul style="list-style-type: none"> • Maximum peak CO value of 150ppm • 15-min. average CO value of 50ppm • 2-hour average CO value of 25ppm • 15-minute average NO₂ value of 0.5 ppm. <p>Apply best practice Australian management techniques to minimise impact on health from in tunnel exposure to PM^{2.5} and PM¹⁰.</p> | Detailed design, operation | Project Co. In relation to applying best practice Australian management techniques to minimise impact on health from in tunnel exposure to PM ^{2.5} and PM ¹⁰ . Project Co as per Best O&M Practices, otherwise the State. |
| | | To protect beneficial uses of the air environment for the surface sections of West Gate Tunnel Project | AQP4 | <p>Ambient air quality monitoring</p> <p>Develop and undertake an ambient air quality monitoring program in consultation with EPA to measure the air quality impacts of West Gate Tunnel Project, including monitoring during construction, and five years post opening of the Project, or such lesser period as agreed with EPA Victoria at the following air quality monitoring station locations:</p> <ul style="list-style-type: none"> • Millers Road (north of the West Gate Freeway), Brooklyn • Primula Avenue, Brooklyn • Donald McLean Reserve, Spotswood • Francis Street, Yarraville • Woods Street, Yarraville • Yarraville Gardens, Yarraville. <p>Results of the monitoring are to be made publicly available on a website related to the project, or through EPA Victoria's Air Watch website on a monthly basis.</p> | Construction, operation | Project Co |
| | | | AQP5 | <p>In-tunnel air quality and ventilation structure emissions compliance</p> | Operation | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|--------------------------|-----------------------------------|-----------------------|----------|---|---------------|-------------------|
| | | | | <p>Monitor the in-tunnel air quality and ventilation structure emissions during operation of the ventilation system to demonstrate compliance with EPR AQP3, SEPP (Air Quality Management) and the EPA Victoria licence to the satisfaction of EPA Victoria. Report the monitoring results publicly on a quarterly basis for five years post opening of the Project or such lesser period as agreed with EPA Victoria.</p> <p>Take remedial action, to the satisfaction of EPA Victoria, if standards outlined in EPR AQP3 are not met.</p> | | |
| | | | AQP6 | <p>Air quality during construction</p> <p>Manage construction activities in accordance with EPA Victoria Publication 480 Guidelines for Major Construction Sites, to maintain air quality to a standard which does not prejudice the health and amenity of nearby residents, open spaces and community facilities.</p> <p>Develop and implement an Air Quality Management and Monitoring Plan (AQMMP) as part of the CEMP including in respect of dust, odour, and construction vehicle emissions to minimise impacts during construction, including setting out requirements and methods for:</p> <ul style="list-style-type: none"> • Identifying sources and nature of airborne pollutants • Identifying the location of sensitive receptors • Monitoring • Mitigation options to minimise impacts on local air quality • Procedures for record keeping and reporting. | Construction | Project Co |
| | | | AQP7 | <p>Roadside air quality mitigation strategy</p> <p>Develop and implement a roadside air quality mitigation strategy, to the satisfaction of the EPA, for specific locations where post-construction monitoring shows a significant deterioration of air quality as a result of the Project.</p> | Operation | State |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|---|-----------------------------------|---|----------|---|-------------------------------|-------------------|
| Business | | | | | | |
| Social, business, land use, public safety and infrastructure – to minimise adverse effects on the social fabric of the community, including with regard to community cohesion, access to community services and facilities, business functionality, changes to land use, public safety and access to infrastructure. | | To minimise impacts on business and commercial facilities | BP1 | Damage or impacts on third party property and infrastructure Through detailed design and construction, and in consultation with relevant land owners and parties as necessary, design and construct the works to minimise, to the extent practicable, impacts to, and interference with, third party property and infrastructure and to ensure that infrastructure and property is protected during construction and operation. Any damage caused to property or infrastructure as a result of the Project must be appropriately remedied in consultation with the property or asset owner. | Detailed design, construction | Project Co |
| | | | BP2 | Access and amenity for business and commercial facilities Access to, and amenity of, potentially affected business and commercial facilities must be protected, where practicable, by responding to the Project urban design principles and vision and implementing the principles of Crime Prevention Through Environmental Design. Any reduction in the level of access, amenity or function of any business or commercial facility must be minimised to the extent and duration necessary to carry out the relevant construction related works. Potentially affected business and commercial facilities must be provided with adequate notification of potential impacts and temporary access arrangements. Emergency access must be maintained at all times. All permanent access to business and commercial facilities affected by the works is to be restored, or relocated as agreed with the relevant property owner, including associated landscaping and restoration works, and temporary access arrangements put in place for the duration of construction must be removed when construction has ceased. | Detailed design, construction | Project Co |
| | | | BP3 | Screening Screening must be erected at the boundary of construction sites that adjoin residential or commercial properties, consistent with the surrounding context, in consultation with the relevant local councils, affected property owners and occupiers. | Construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|--------------------------|-----------------------------------|--|----------|--|--------------------------------|-------------------|
| | | | BP4 | <p>Impacts on operation of community, private recreation and council facilities and services</p> <p>Where the operation of community, private recreation and council facilities and services are directly impacted by the Project, mitigation and management measures must be implemented in consultation with the appropriate stakeholders including the relevant local council to minimise these impacts to the extent practicable.</p> | All | Project Co |
| | | To minimise impacts on business through engagement during construction | BP5 | <p>Business Involvement Plan</p> <p>As part of the Communications and Community Engagement Plan (see EPR SP2), develop and implement a Business Involvement Plan, in consultation with affected local Councils, affected businesses, relevant local trader association, and other affected stakeholders, in advance of works commencing (other than preparatory works as referred to in the Incorporated Document).</p> <p>Councils and affected stakeholders (including affected businesses and relevant local trader association) are to be consulted on progress of construction activities, including significant milestones, potential impacts, mitigation measures, changed traffic and parking conditions, and other matters which are of interest or concern to them. The plan must be published on the project website for the duration of construction and include but not be limited to:</p> <ul style="list-style-type: none"> • Identification of relevant stakeholders • Procedures to disseminate information regarding the construction schedule, construction progress, key milestones, changes in traffic and parking conditions and environmental management measures • Procedures to engage with stakeholders including affected businesses and relevant local trader associations, and through which affected businesses and relevant local trader associations can provide comment or feedback in relation to environmental management or delivery of the Project • Procedures that would be implemented to resolve any issues or disputes that may arise between parties relating to the environmental management or delivery of the Project • Procedures to minimise impact on access to business and commercial premises during construction and to restore permanent access (refer EPR BP2). | Pre-construction, construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|--------------------------|-----------------------------------|---------------------------------------|----------|---|-------------------------------|-------------------|
| | | To minimise impacts on utility assets | BP6 | <p>Utility assets</p> <p>Through detailed design and construction, minimise impacts on utility assets, to the extent practicable, including but not limited to:</p> <ul style="list-style-type: none"> • Stormwater and sewer assets • Electricity transmissions assets (overhead and underground lines) • Gas and fuel pipelines • Communications lines (e.g. fibre optic cables and VicRoads trunk fibre). <p>To the extent relocations are required to facilitate the Project, protect and where required, modify utility assets to the satisfaction of asset owners.</p> | Detailed design, construction | Project Co |
| | | | BP7 | <p>Gas utilities</p> <p>Unless agreed otherwise with the asset owner, ensure that:</p> <ul style="list-style-type: none"> • No works are undertaken within 3.0 metres of any licensed transmission gas pipeline or underground regulating station • Subject to the requirement below, clearances to all gas assets are as per the Conditions of Works as detailed in SP AusNet Technical Standards TS2607.1, TS2607.2 and TS2607.3, as amended or replaced from time to time <p>Risk assessments and safety studies detailing the impact on gas network infrastructure are completed in accordance with AS2885, which is the Standards Australia standard for the design, construction, testing, operations and maintenance of gas and petroleum pipelines that operate at pressure in excess of 1050 kPa, as amended or replaced from time to time.</p> | Detailed design, construction | Project Co |
| | | | BP8 | <p>Business disruption</p> <p>Minimise disruption to businesses to the extent practicable from temporary occupation of land.</p> | Detailed design, construction | Project Co |
| | | | BP9 | <p>Business acquisition process</p> <p>Minimise disruption to businesses to the extent practicable from the acquisition of interests in land, and work with business and land owners to endeavour to reach agreement on the terms for possession of the land.</p> | Design, construction | State |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| Cultural Heritage | | | | | | |
| Cultural heritage – to avoid or minimise adverse effects on Aboriginal and historical cultural heritage values | <i>Aboriginal Heritage Act 2006</i> | To minimise impacts on sites of Aboriginal cultural significance | CHP1 | Cultural Heritage Management Plan Comply with and implement the Cultural Heritage Management Plan (CHMP) approved under the <i>Aboriginal Heritage Act 2006</i> . | Detailed design, construction | Project Co |
| | <i>Heritage Act 1995</i> | To minimise impacts on both known (identified) and unidentified archaeological historic sites and values and To protect structural integrity of known historic sites and values and | CHP2 | Design and construction to minimise impacts on heritage Undertake detailed design of the permanent and temporary works to minimise impacts where practicable, on the cultural heritage values of heritage places in consultation with Heritage Victoria and/or local councils (as applicable). Prior to commencement of works that affect heritage structures, features or places, develop and implement in consultation with the relevant heritage authority: <ul style="list-style-type: none"> Physical protection measures for heritage structures, features and places as appropriate A methodology for any required dismantling, storage or reinstatement of heritage fabric (with reference to the ICOMOS Burra Charter 2013). <i>Note: The project must meet the requirements of the Heritage Act 2017 (formerly Heritage Act 1995)</i> | Detailed design, pre-construction, construction | Project Co |
| | | To record historical values of buildings, streetscapes or relocate/ reuse small structures if feasible that are disturbed by the Works | CHP3 | Archaeological Management Plan Develop an Archaeological Management Plan detailing measures to avoid, minimise, mitigate or manage disturbance of archaeological sites and values affected by the works. Undertake investigations in accordance with the Guidelines for Investigating Historical Archaeological Artefacts and Sites, Heritage Victoria 2014 and to the satisfaction of the Executive Director, Heritage Victoria. The Management Plan must include: <ul style="list-style-type: none"> Requirements for background historical research, excavation methodology, research design, reporting and artefact management and analysis The incorporation of strategies relating to the protection of sites of archaeological interest in relevant master plans Protocols for managing previously unidentified historical archaeological sites discovered during the works. | Pre-construction, construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| | | | CHP4 | <p>Monitoring of heritage sites and places</p> <p>Undertake vibration monitoring during demolition, excavation and construction within an appropriate distance (as determined by a technical assessment) of heritage sites and places in the Victorian Heritage Register (VHR) at risk of impact and monitor their condition during and post construction for settlement and structural integrity disturbance as a result of the proposed works. Report the results to the Executive Director, Heritage Victoria and take remedial action, if required, to the satisfaction of the Executive Director, Heritage Victoria.</p> <p>(Also refer to EPR GMP3 and NVP11)</p> | Construction | Project Co |
| | | | CHP5 | <p>Archival photographic records</p> <p>Prior to construction, undertake archival photographic recording (interior and exterior) of all heritage buildings, streetscapes or places disturbed by the works in accordance with Heritage Victoria's specification for the archival photographic recording of heritage places.</p> | Pre-construction | Project Co |
| | | | CHP6 | <p>Port Phillip Monument</p> <p>Develop and implement an approach to maintain a link between the Port Phillip Monument and the Maribyrnong River, including establishing an appropriate setting in consultation with the City of Melbourne which allows for interpretation, either on the existing or an alternative site.</p> | Detailed design, construction | Project Co |
| | | | CHP7 | <p>Heritage interpretation strategy</p> <p>In consultation with the relevant local councils and Aboriginal community develop and implement a heritage interpretation strategy for the Project which seeks to explore historical and Aboriginal cultural heritage themes. The strategy must include an audit of existing heritage interpretation. The strategy may include installation of signage regarding local heritage places and is to have a particular focus on the Kororoit Creek area, Footscray/Maribyrnong River area, and the Moonee Ponds Creek area.</p> | Pre-construction, construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| | | | CHP8 | <p>Shipwrecks</p> <p>To confirm the presence of shipwrecks at the Maribyrnong River crossing, including the <i>Hilaria</i> (S331) which is thought to be located on the west bank of the river, undertake preliminary high-resolution sonar scan of river environs within the area to be affected by the works and targeted diving for sub-surface anomalies within the area affected by the works. Based on the results of investigations, as appropriate develop management measures in consultation with Heritage Victoria; these could include consideration in the detailed design and a detailed program of archaeological investigation.</p> <p>If the <i>Edina</i> (S199) is affected by works, record appropriately and relocate, if practicable, to a more secure location within the Maribyrnong riverine landscape or include as part of an interpretation strategy for display in the local area, to the satisfaction of Heritage Victoria.</p> <p>Engage a suitably qualified and experienced maritime archaeologist to undertake these tasks.</p> | Pre-construction, construction | Project Co |
| | | | CHP9 | <p>Maribyrnong River front (Footscray)</p> <p>Where practicable in detailed design retain evidence of historical infrastructure and services in the vicinity of the Maribyrnong River front (Footscray), including rail tracks and the bluestone drain (Billy Button Creek). If removal is required, record in accordance with EPR CHP5. Apply the heritage interpretation strategy (EPR CHP7) as appropriate.</p> | Detailed design | Project Co |
| | | | CHP10 | <p>Bluestone bridge</p> <p>Undertake any works at and/or in the immediate vicinity of the bluestone bridge over Kororoit Creek (HO259) in a manner which avoids to the extent practicable disturbing surviving evidence of early road surfacing, including to the approaches to the bridge.</p> | Construction | Project Co |
| | | | CHP11 | <p>Rail turntables</p> <p>Through detailed design, avoid impacts to rail turntables to the extent practicable. Make every effort to maintain rail turntables in situ. If it is necessary to remove one of the rail turntables, develop and implement a methodology for the salvage and storage of one of the turntables to provide the opportunity for future reinstatement at an alternative site.</p> | Detailed design | Project Co |

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| | | | CHP12 | Flinders Street Undertake any works in the vicinity of the two VHR heritage places (No. 2 Goods Shed and the Flinders Street Retaining Wall) in a manner which avoids disturbance to the extent practicable. | Construction | Project Co |
| Contaminated Soil & Spoil Management | | | | | | |
| Waste Management – to manage excavated spoil generated by the project in accordance with the waste hierarchy and relevant best practice principles | The Environment Protection Act 1970 Environment Protection (Industrial Waste Resources) Regulations 2009 SEPP – Prevention and Management of Contamination of Land | To protect the beneficial uses of land and minimise risk to human health and ecosystems from exposure to contaminated soils | CSP1 | Contaminated soil requirements The CEMP must include processes and measures to manage contaminated soil (including paste) that comply with relevant standards, guidelines, statutory requirements and best practice including but not limited to: <ul style="list-style-type: none"> • SEPP – Prevention and Management of Contaminated Land, 2002 • SEPP – Air Quality Management, 2001 (in respect of odour) • Environment Protection (Industrial Waste Resource) Regulations 2009 • Industrial Waste Management Policy (Waste Acid Sulphate Soils) 1999 • National Environment Protection (Assessment of Site Contamination) Measures 2013 • Environment Protection (Scheduled Premises) Regulations 2017 • WorkSafe Occupational Health and Safety Regulations 2007 (Asbestos) • Relevant Industrial Waste Resource Guidelines. | Construction | Project Co |
| | | | CSP2 | Contaminated soil and spoil management The CEMP must include a sub-management plan that sets out the requirements and methods for contaminated soil and spoil management developed to the satisfaction of EPA Victoria. The contaminated soil and spoil management plan must include undertaking a detailed assessment prior to any excavation of potentially contaminated areas to identify location, types and extent of any contaminated land and properties within or adjacent to the Project boundary, and sensitive land uses affected by construction activity outside the Project boundary, and assessing the potential impact for human health, environmental risk and odour. This assessment must include but not be limited to consideration of the following: | Pre-construction, construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| | | | | <ul style="list-style-type: none"> • Potential contamination risks, including landfill gas migration at the former quarry locations and landfills in accordance with Landfill BEPM publication 788 • Potential contamination risks associated with any alteration of the 220kV power lines and any other utilities • Potential contamination risks associated with any works to the North Yarra Main Sewer • Potential contamination risks and waste classification of the sediments in the Maribyrnong River and Moonee Ponds Creek • Potential impacts posed by contamination sources adjacent to the northern portal area • Presence of soil contamination where excavations are proposed in the South Dynon rail yards • Potential contamination risks in locations where public open spaces are proposed. <p>The CEMP via the contaminated soil and spoil management plan must also include requirements and methods for:</p> <ul style="list-style-type: none"> • Characterising soil prior to disposal or reuse including PFAS chemicals • EPA waste classification to enable reuse, transport and temporary storage • Identifying, and where practicable adopting, options for the reuse of spoil in accordance with the Environment Protection Act 1970 waste management hierarchy • Identifying soil containing asbestos and if present, developing management strategies in accordance with the WorkSafe Regulations • Assessing geological formations with naturally enriched metals and applicable spoil management options and/or off-site disposal to the satisfaction of EPA Victoria, in particular, tunnel spoil and the West Gate Freeway embankment material • Identifying suitably licensed facilities for the disposal or treatment of contaminated soil • Management of wastewater • Management of dust, potential stormwater run-off and seepage from stockpiled materials, including the enclosure of the spoil handling facility at the former pivot site near the northern portal | | |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| | | | | <ul style="list-style-type: none"> Assessing potential for accumulation of potentially harmful gases and vapours during tunnelling from soil and groundwater contamination zones Undertaking a baseline site assessment of areas proposed for construction laydown prior to use Management of any air pollutants released as a result of disturbance of contaminated land, in accordance with requirements of SEPP (AQM) Minimising cut and cover construction techniques in areas containing asbestos contamination Protection of the beneficial uses of land associated with current and planned future use | | |
| | | | CSP3 | <p>Acid sulphate soil</p> <p>The CEMP must include requirements and methods for the management of waste acid sulphate soil material in accordance with EPA Victoria publication IWRG 2009, EPA Victoria Publication 655.1 Acid Sulfate Soil and Rock 2009, Victorian Best Practice Guidelines for Assessing and Managing Coastal Acid Sulfate Soil.</p> <p>This will include undertaking an acid sulphate soils risk identification process in accordance with the Victorian Coastal Acid Sulphate Soil Strategy, if soil and rock within the Project boundary are suspected to be acid sulphate soil and rock.</p> | Pre-construction, construction | Project Co |
| | | To minimise odour from the excavation and transportation of contaminated material to protect local amenity | CSP4 | <p>Odour management</p> <p>The CEMP must include requirements and methods for odour management during the excavation, stockpiling and transportation of contaminated material including:</p> <ul style="list-style-type: none"> Identifying the areas of contamination that may pose an odour risk; Monitoring of the excavated material for possible odour risk Management measures to minimise odour. | Construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| Ecology | | | | | | |
| Biodiversity – to avoid or minimise adverse effects on native terrestrial, aquatic and inter-tidal flora and fauna, and address opportunities for offsetting potential losses consistent with the relevant policy | <i>Planning and Environment Act 1987</i> <i>Flora and Fauna Guarantee Act 1988</i> <i>Wildlife Act 1975</i> | To avoid where possible, and otherwise minimise adverse impacts on native vegetation and listed species and ecological communities | EP1 | Minimise vegetation removal and disturbance Develop and implement measures to avoid, where practicable, and otherwise minimise to the extent practicable impacts on native vegetation and fauna habitat through detailed design and construction, including: <ul style="list-style-type: none"> • Minimising footprint and surface disturbance of temporary and permanent works and constrain works on or near the north and south side of the West Gate Freeway and Kororoit Creek intersection, Hyde Street Reserve, Yarraville Gardens, Stony Creek and Stony Creek Reserve, Maribyrnong River, Moonee Ponds Creek, Kororoit Creek, Dynon Road and areas of amenity planting including Footscray Road • Minimising works in or near wetlands and EVC habitats (such as the Kororoit Creek Riparian Woodland, Stony Creek Coastal Saltmarsh, Moonee Ponds Creek Brackish Wetlands and Plains Grassy Woodland and Swamp Scrub patches along Dynon Road) • Minimising footprint and disturbance of potential foraging habitat for Swift Parrot, Powerful Owl and Grey-headed Flying Fox • Minimising the removal of mature trees, planted and remnant native trees and remnant vegetation, particularly large amenity trees (>30 cm DBH) and those within or connected to public reserves and parks • Arboricultural assessments to inform detailed design and maximise tree retention and long-term viability of amenity plantings in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites • Explore potential relocation of palm trees removed from Yarraville Gardens. A pre-construction site assessment must be carried out to confirm the area and number of trees and other vegetation proposed to be impacted. Area and number of trees and other vegetation actually removed is to be confirmed through a post-construction assessment. | Detailed design, pre-construction, construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| | | | EP2 | <p>Vegetation protection measures</p> <p>The CEMP must include a sub-management plan that sets out the requirements and methods for:</p> <ul style="list-style-type: none"> • Identification of areas of important flora and fauna habitat to be protected during construction • Fencing protected areas and no go zones to prevent access during construction. Fencing should be to a standard agreed with the relevant land manager • Pre-construction site assessment to confirm that vegetation and trees to be retained have been adequately protected from impact • Vegetation clearing controls and protection measures • Development and implementation of a Tree Protection Plan for protection of retained trees based on the recommendations of Australian Standard 4970-2009 Protection of Trees on Development Sites. The Tree Protection Plan must respond to the detailed design and construction methodology and identify all trees to be retained, their condition, significance, and measures to protect them from the impact of construction activities including identification of the tree protection zone • Implementation of appropriate measures to manage the risk of the spread and introduction of weeds and pathogens during construction • Procedures if unexpected endangered ecological communities or threatened species are identified. | Pre-construction, construction | Project Co |
| | | | EP3 | <p>Reinstatement</p> <p>Areas affected by temporary works must be reinstated and appropriate vegetation selected for planting to tolerate the microclimate conditions including under new road structures, such as the elevated structure over Footscray Road, in consultation with the relevant council and the land manager.</p> | Construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| | | | EP4 | <p>Fauna management measures</p> <p>The CEMP must include requirements and methods for:</p> <ul style="list-style-type: none"> Managing native fauna that may be displaced due to tree removal, in compliance with the Wildlife Act 1975 and in consultation with public land managers where relevant. The strategy should be prepared by a qualified wildlife ecologist prior to vegetation clearance. Undertaking pre-clearing surveys and inspections to confirm the on-site location of native fauna immediately prior to tree removal Minimising lighting impacts in known fauna habitats Immediate reporting of incidental or unanticipated threatened flora and fauna finds with any clearing works in the vicinity stopped until an evaluation and appropriate response can be established. <p>The surveys, inspections and management actions must be undertaken by a qualified wildlife ecologist with all necessary authorisations obtained prior to removal of relevant habitat. All management actions and any accidental fauna injuries or deaths must be reported to the IREA.</p> | Pre-construction, construction | Project Co |
| | | To manage interactions with aquatic fauna habitat in Kororoit Creek, Stony Creek Maribyrnong River and Moonee Ponds Creek | EP5 | <p>Works on waterways</p> <p>Through detailed design and construction, design, locate and construct structures to minimise, to the extent practicable, short and long-term impacts on riparian, riverbed and aquatic habitat in Kororoit Creek, Stony Creek, Maribyrnong River and Moonee Ponds Creek, in consultation with Melbourne Water and relevant authorities.</p> | Detailed design, construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| | | To replace affected planted vegetation and where practicable improve ecological outcomes | EP6 | <p>Landscaping Plan</p> <p>Prepare and implement the Landscaping Plan that includes replacement of affected planted vegetation to achieve a canopy of equal (or greater) size of healthy, mature examples of the species.</p> <p>The plan must ensure the reinstatement of soils is of sufficient quality and volumes to support the long-term viability of replacement plantings. Ensure ongoing supply of water to tree root zones, especially during their establishment stage. Employ water sensitive urban design principles (WSUD) where possible.</p> <p>The plan must achieve a minimum tree replacement ratio of 5:1 and replacement trees should be planted in areas determined in consultation with the relevant Councils and authorities. Tree reinstatement and offset planting should take into account the amenity, shade and heritage value of the canopy trees to be removed for local residents. Tree replacement to be undertaken to benefit such residents, rather than offset elsewhere in the Project.</p> <p>The plan must specify the locations where installations of advanced trees are indicated to minimise impact of tree removal, in consultation with relevant local council.</p> <p>The plan must identify locations for planting prior to construction works where feasible to do so.</p> <p>The plan must consider the contribution that vegetation and the planted replacement trees can make to the creation of habitat corridors and linkages.</p> <p>The plan must be reviewed by the IREA and developed in consultation with the relevant council, City West Water and Melbourne Water (where appropriate) with regard to local policies, strategies and relevant existing vegetation enhancement initiatives including, as applicable:</p> <ul style="list-style-type: none"> • Greening the West Strategic Plan • City of Maribyrnong Street Planting Strategy • City of Maribyrnong Stony Creek Directions Plan • City of Maribyrnong Footscray River Edge Master Plan • City of Hobsons Bay Donald McLean Reserve Master Plan • City of Maribyrnong Yarraville Gardens Conservation Plan • City of Melbourne Draft Urban Ecology and Biodiversity Strategy • City of Melbourne's Tree Retention and Removal policy, Urban Forest Strategy, and Nature in the City Strategy • The relevant City of Melbourne Urban Forest Precinct Plan. | Detailed design, pre-construction, construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| | | | EP7 | Vegetation Offsets Native vegetation offsets must be provided in accordance with the Permitted Clearing of Native Vegetation – Biodiversity Assessment Guidelines (Department of Environment and Primary Industries, September 2013), except as otherwise agreed by the Secretary to the Department of Environment, Land, Water and Planning. | Construction | State |
| Greenhouse gas emissions | | | | | | |
| Health, amenity and environmental quality – to minimise adverse air quality, noise and vibration effects on the health and amenity of nearby residents, local communities and road users during both construction and operation of the Project. | <i>Environment Protection Act 1970</i> | To manage greenhouse gas emissions by targeting an 'Excellent' rating on the ISCA rating framework for Design and As Built | GGP1 | Greenhouse gas emissions Integrate sustainable design practices into the design process to minimise, to the extent practicable, greenhouse gas emissions arising from construction, operations and maintenance of the West Gate Tunnel Project. Include mandatory actions under the Protocol for Environmental Management (Greenhouse Gas Emissions and Energy Efficiency in Industry) for selection of best practice energy usage for the tunnel ventilation and lighting systems. | Detailed design | Project Co |
| | | | GGP2 | Emissions reduction In detailed design, consider the selection of materials and monitor energy and carbon during construction, to target reductions for GHG emission impacts of materials and energy consumption in accordance with Mat-1 (Level 2) and Ene-1 (Level 2) credits of the Infrastructure Sustainability (IS) rating tool (v1.2). Investigate opportunities to use green power sourced from renewable energy and bio diesel where practicable. Target Ene-1 (Level 2.7) credits of the Infrastructure Sustainability (IS) rating tool (v1.2), above the minimum Project requirement of Level 2. | Detailed design, construction | Project Co |
| Ground Movement | | | | | | |
| Land stability – to avoid or minimise adverse effects on land and river bed or bank geomorphic stability from Project Activities, including Tunnel | | To minimise the likelihood of subsidence and lateral ground movement | GMP1 | Geotechnical model and assessment Prepare a geotechnical model of representative geological and groundwater conditions prior to excavation and tunnelling in subject area(s) to identify geological structures and groundwater features. This model must include details of proposed excavations and tunnels, construction staging, and identify surface (including road and rail infrastructure) and sub-surface structures and infrastructure (including utilities) which could be impacted by the Project, including the specific attributes of those structures. This model must be used to assess the predicted settlement, ground movement, stress redistribution and horizontal strain profiles caused by excavation and tunnelling on | Pre-construction, construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| construction and crossings of the Maribyrnong River, Kororoit Creek, Stony Creek and Moonee Ponds Creek. | | | | adjacent property and infrastructure. Maintain the predictive model throughout the construction period and review against monitoring data (EPR GMP5), to regularly assess potential ground movement impacts. | | |
| | | | GMP2 | Tunnel and portal drainage Through detailed design and construction, design tunnel and portal drainage and adopt construction methods which minimise adverse changes to groundwater levels during construction and operation to prevent or manage the effects of ground subsidence. In addition to the above, for the northern and southern portal areas design and implement engineering control measures to ensure dewatering does not result in adverse ground movement impact on property or infrastructure. | Detailed design, construction | Project Co |
| | | | GMP3 | Condition surveys and determination of settlement criteria for property and infrastructure Before works commence, and subject to receiving landowner consent on suitable terms, undertake condition surveys of property and infrastructure identified in the geotechnical model and assessment (EPR GMP1) as being at risk of damage by an independent qualified professional. Condition surveys are to include property, land, ground or infrastructure reasonably accessible and within 50 metres of project activities or other property, land, ground or infrastructure that may be affected by project activities. Post-construction condition surveys of those properties and infrastructure must be undertaken after construction of the Project is completed. The results of the condition surveys and the modelling undertaken under GMP1 must be used to determine appropriate settlement criteria for the relevant property and infrastructure. Condition surveys must be forwarded to the property owner within four weeks of the survey being undertaken. Where potential for ground movement impacts could occur, consult with affected stakeholders. Any damage caused to property or infrastructure as a result of the Project must be rectified or the landowner or asset owner compensated. Establish an independent mediation process for the assessment of claims for property and infrastructure damage to operate up to three years post opening of the Project. Ensure all stakeholder engagement activities are undertaken in accordance with the project's Communications and Community | Pre-construction, construction, operation | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| | | | | Engagement Plan (EPR SP2). | | |
| | | | GMP4 | Settlement criteria for utilities Settlement criteria for individual utility structures and infrastructure must be determined in consultation with the relevant authorities prior to commencement of any construction potentially affecting the individual utility or infrastructure. | Pre-construction | Project Co |
| | | | GMP5 | Ground movement monitoring Develop and implement a pre-construction, construction and post-construction program to monitor subsidence and lateral movement during construction activities and during operation. Implement a baseline ground movement monitoring plan, including provision for monitoring of water table and soil moisture interactions, prior to commencement of construction, in locations where construction activities with the potential to cause ground movement will occur, to assess background fluctuations. | Pre-construction, construction, operation | Project Co |
| | | | GMP6 | Mitigation of ground movement impact Implement appropriate mitigation measures should the geotechnical model (EPR GMP1), predictive groundwater model (EPR GWP4), or subsequent monitoring program identify exceedances of criteria identified in EPR GMP3 and EPR GMP4. | Construction, operation | Project Co |
| Groundwater | | | | | | |
| Hydrology and water quality – to avoid or minimise adverse effects on surface water and groundwater quality and hydrology in particular resulting from the disturbance of contaminated or acid-forming materials, and to maintain | SEPP – Groundwaters of Victoria | To protect beneficial uses of groundwater | GWP1 | Groundwater management measures Prepare and implement a CEMP and an OEMP including a sub-management plan which sets out the measures for management, monitoring, reuse and disposal of groundwater inflows during construction and operation that comply with relevant legislation and guidelines, including but not limited to: <ul style="list-style-type: none"> State Environment Protection Policy Groundwaters of Victoria 1997 (Vic) State Environment Protection Policy Waters of Victoria 2003 (Vic) State Environment Protection Policy Prevention and Management of Contaminated Land 2002 (Vic) Water Industry Regulations 2006 (Vic). The groundwater sub-management plan, developed in consultation with EPA Victoria, must include details of: <ul style="list-style-type: none"> Hydrogeological conceptual model | Pre-construction, construction, operation | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| functions and values of floodplain environments. | | | | <ul style="list-style-type: none"> • Baseline conditions • Beneficial uses • Monitoring plan • Management, mitigation and performance measures • Disposal of groundwater • Triggers for action • Reporting. | | |
| | | | GWP2 | <p>Protection of groundwater quality</p> <p>The CEMP must include requirements and construction methods that maintain groundwater quality, for example:</p> <ul style="list-style-type: none"> • Use sealing products, caulking products, lubricating products and chemical grouts applied during tunnelling construction that do not diminish the groundwater quality • Use fluids for artificial recharge activities that do not diminish the groundwater quality • Ensure compatibility of construction material with groundwater quality to provide long term durability for infrastructure design life • Develop drainage infrastructure that provides for the propensity of dissolved constituents in groundwater to precipitate out of solution and create clogging and maintenance risks • Develop a plan to assess, remove and dispose of contaminated groundwater and impacted soils associated with pile and pile cap excavation and construction. | Construction | Project Co |
| | | | GWP3 | <p>Tunnel drainage design and construction methods</p> <p>Design long term tunnel drainage and adopt construction methods which minimise changes to groundwater levels during construction and operation to manage, mitigate and minimise:</p> <ul style="list-style-type: none"> • Mobilisation of contaminated groundwater • Dewatering and potential impacts of acid sulphate soils, including both unconsolidated sediments and lithified sedimentary rock • Protection of waterways and potential groundwater dependent ecosystems (GDE), including terrestrial ecosystems • Avoid any other adverse impacts of groundwater level changes such as subsidence. <p>Design contingency measures and/or controls as required to:</p> | Detailed design, pre-construction, construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| | | | | <ul style="list-style-type: none"> Ensure maintenance of the base flow associated with a reduction or loss of groundwater discharge to Stony Creek or loss of water availability for terrestrial ecosystems. Limit acidification should monitoring indicate a potential adverse impact to water levels or quality. <p>Design contingency measures and/or controls as required should movement of contamination be identified. Contingency measures to include consideration of:</p> <ul style="list-style-type: none"> Improvements to barrier system and ground treatments at the portal to reduce inflows and drawdowns Hydraulic control of the movement of the contaminated groundwater. <p>Implement engineering control measures and/or ground treatment to minimise to the extent practicable groundwater inflow during excavation, construction and operation of tunnels, cross passages and subsurface excavations.</p> <p>Implement measures to limit groundwater inflow during construction to excavations and drawdown should monitoring indicate acidification is occurring.</p> <p>Develop and implement a plan to mitigate and manage potential future displacement of contaminated groundwater in the vicinity of the NYM sewer, in accordance with State Environment Protection Policy Groundwaters of Victoria 1997 (Vic) and State Environment Protection Policy Prevention and Management of Contaminated Land 2002 (Vic), including:</p> <ul style="list-style-type: none"> Investigate the properties identified as potentially contaminated and likely to be influenced by the changed groundwater conditions Assess the influence of changed conditions on potentially contaminated groundwater at these properties Assess the risk posed to human health and the environment, including the potential for vapour intrusion to indoor air of buildings Develop contingency measures to control any adverse risks. | | |
| | | | GWP4 | <p>Predictive groundwater model</p> <p>Develop and maintain a predictive groundwater model throughout the construction period to assess the potential impacts of dewatering during construction and develop potential contingency measures.</p> | Pre-construction, construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| | | | GWP5 | <p>Groundwater monitoring</p> <p>Develop and implement a pre-construction, construction and post-construction groundwater monitoring program to calibrate the predictive model prior to commencement of construction and verify the model predictions post-construction, manage construction activities and monitor during operation that as a minimum:</p> <ul style="list-style-type: none"> • Establishes a baseline condition for groundwater (quality, level, flow and GDE health) prior to the commencement of construction • Can be used to identify (and manage) changes to groundwater (quality, level, flow and GDE health) during construction and operation activities. • Can be used to assess (and manage) the impact of construction on: <ul style="list-style-type: none"> • Groundwater beneficial uses (or users of surface water, groundwater and land) • Areas considered a high contamination risk • Groundwater Dependant Ecosystems (e.g. Stony Creek, Yarraville Gardens) • North Yarra Main Sewer • Acid Sulphate Soils • Compressible materials • Portal, tunnel, and cross passage construction • Can be used to determine the requirement for intervention, and assess the effectiveness of mitigation measures proposed or implemented to protect groundwater • Can be used to calibrate and verify a predictive numerical model developed as part of the Project <p>Groundwater sampling undertaken consistent with EPA Victoria Publications 668 (2006) Hydrogeological Assessment (Groundwater Quality) Guidelines and 669 (2000) Groundwater Sampling Guidelines.</p> | Pre-construction, construction, operation | Project Co |

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| | | | GWP6 | <p>Interception of groundwater</p> <p>The CEMP must include requirements and methods for management of groundwater interception during construction, including:</p> <ul style="list-style-type: none"> • Identification, treatment, disposal and handling of contaminated seepage water and/or slurries including vapours in accordance with relevant legislation and guidelines • Assessment of barrier/damming effects • Subsidence management • Dewatering and potential impacts on acid sulphate soils, including both unconsolidated sediments and lithified sedimentary rock • Protection of waterways and potential groundwater dependent ecosystems including Yarraville Gardens • Contingency actions when interventions are required. | Construction | Project Co |
| | | To minimise impact on existing groundwater users | GWP7 | <p>Impacts on groundwater users</p> <p>Conduct a review and confirm the status of potential use of extraction bores within the estimated construction drawdown area. Develop and implement if required a plan to maintain water supply to identified groundwater users.</p> | Pre-construction, construction | Project Co |
| Land Use | | | | | | |
| Built environment – to protect and enhance the function and character of the evolving urban environment including built form and public realm within the immediate and broader context | Planning and Environment Act 1987 | To minimise impacts on existing and proposed future land use | LPP1 | <p>Minimise design footprint</p> <p>Through detailed design, minimise the permanent footprint of the Project to the extent practicable to reduce adverse impacts on potentially affected land uses in consultation with the relevant local Council, particularly:</p> <ul style="list-style-type: none"> • Parks • Reserves/ gardens • Waterways • Recreational and community facilities • Residential properties in proximity to the construction area • Commercial and industrial sites. | Detailed design | Project Co |

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| of the Works. | | | LPP2 | <p>Recreation facilities</p> <p>Through detailed design and construction, minimise to the extent practicable any impacts on users of recreational facilities including Westgate Public Golf Course, Crofts Reserve, Hyde Street Reserve, Donald McLean Reserve, Moonee Ponds Creek (Capital City Trail), Railway Place and Miller Street Reserve, Yarraville Gardens, and Mclvor Reserve. Access to, and amenity and function of recreation facilities is to be maintained to the extent practicable in consultation with the land manager.</p> | Detailed design, construction | Project Co |
| | | | LPP3 | <p>Future development opportunities</p> <p>Do not preclude the possibility of a future road connection between Precinct 15 (Hobsons Bay City Council) and Bradmill Precinct (Maribyrnong City Council).</p> <p>Manage, to the extent practicable, the impacts on Railway Place and Miller Street Reserve Concept Plan in consultation with City of Melbourne.</p> <p>In consultation with the relevant Council and authorities, minimise to the extent practicable, the impacts on urban renewal areas, identified in relevant planning schemes, and proposed open space areas.</p> <p>Manage, to the extent practicable, the impacts on future built form of 48–54 Digital Drive, Digital Harbour in consultation with the landowner/developer.</p> | Detailed design | Project Co |
| | | | LPP4 | <p>Pedestrian and bicycle connections</p> <p>Do not preclude the possibility of high amenity, accessible and convenient future pedestrian and bicycle connections between:</p> <ul style="list-style-type: none"> North and West Melbourne, E-Gate and Docklands to Moonee Ponds Creek (the Moonee Ponds Creek Trail/Capital City Trail) Digital Harbour and West Melbourne by upgrading pedestrian crossings at the intersection of Wurundjeri Way and Dudley Street. | Detailed design | Project Co |
| | | | LPP5 | <p>Public Land</p> <p>Through detailed design and construction reduce the disruption to the extent practicable, to current uses of public and council land resulting from temporary occupation. Reinstate public land upon completion of temporary occupation as per LVP2.</p> | Detailed design, construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|--|---|---|-------------|---|--------------------------------------|-------------------|
| Landscape and Visual | | | | | | |
| <p>Landscape, visual and recreational values – to minimise adverse effects on landscape and visual amenity values and to maximise the enhancement of these values where opportunities exist</p> | <p><i>Planning and Environment Act 1987</i></p> | <p>To minimise impacts on the built environment and landscape, including public open space, and to maximise opportunities for enhancement for public amenity and safety</p> | <p>LVP1</p> | <p>Urban design approach</p> <p>Detailed design development must respond to the West Gate Tunnel Project urban design principles and vision.</p> <p>The design response must minimise, to the extent practicable, landscape and visual impacts, and maximise opportunities for enhancement of public amenity, open space and facilities, resulting from the Project, in consultation with relevant stakeholders, particularly in relation to:</p> <ul style="list-style-type: none"> • Landmark elements • Heritage values and assets • Bridges and structures • Existing and proposed roads, streets, cycle paths, trails and footpaths • Existing and proposed landmark natural and urban elements across the Project, including CityLink • Significant views from the public domain • Existing and proposed vegetation including street trees and vegetation along waterways • Open space including, Yarraville Gardens, Hyde Street Reserve, Donald McLean Reserve, Railway Place and Millers Street Reserve, and along Maribyrnong River and Moonee Ponds Creek and proponent-proposed new open spaces • Community and recreational assets including the Yarraville Community Centre, Yarraville Gardens, Westgate Golf Club, Spotswood Cricket/Football Oval, W.L.J. Crofts Reserve, shared paths along Kororoit Creek, Maribyrnong River, Stony Creek, and Moonee Ponds Creek, various bowls and tennis clubs in the vicinity of the Project • Residential interfaces • Business interfaces • Crime Prevention Through Environmental Design, including effects on safe movements of pedestrians and cyclists; including within undercroft and open spaces areas • Detailed design to minimise overshadowing by noise walls of residential properties, community facilities, open spaces, | <p>Detailed design, construction</p> | <p>Project Co</p> |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| | | | | <p>waterways and valuable natural habitats</p> <ul style="list-style-type: none"> Design of acoustic sheds, used during construction, to have regard to the character of the area. | | |
| | | | LVP2 | <p>Reinstatement following temporary works</p> <p>Avoid direct impacts on the Yarraville Gardens unless agreed by the City of Maribyrnong.</p> <p>Reinstate public open spaces, vegetation cover and facilities disturbed by temporary works to the reasonable satisfaction of the land manager.</p> | Detailed design, construction | Project Co |
| | | To minimise the impact of light emissions | LVP3 | <p>Light spillage</p> <p>Detailed design of the works must minimise light spillage to protect the amenity of adjacent land uses and any known significant native fauna habitat to the extent practicable.</p> <p>The CEMP must include requirements and methods to minimise light spillage, to the extent practicable, during construction to protect the amenity of adjacent surrounding neighbourhoods, parks and community facilities including urban environments, in consultation with relevant stakeholders.</p> | Detailed design, construction | Project Co |
| | | | LVP4 | <p>Vegetation screening</p> <p>As part of the Landscaping Plan (refer EPR EP6), implement vegetation screening for visually impacted residential areas, public realm areas, public open spaces and the Altona Memorial Park. The plan must be prepared in consultation with the relevant Councils and include measures to ensure vegetation screening is used where practicable if Project infrastructure would be visible from residential areas and public open spaces.</p> | Construction | Project Co |
| | | | LVP5 | <p>Design review</p> <p>WDA must refer urban design plans to the OVGA for review against the relevant EPRs and the Project's urban design principles and vision.</p> | Detailed design | State, on receipt of relevant Design Documentation in accordance with the Design Review Process |

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| Noise and Vibration | | | | | | |
| Health, amenity and environmental quality – to minimise adverse air quality, noise and vibration effects on the health and amenity of nearby residents, local communities and road users during both construction of the works and operation of the West Gate Tunnel Project | | To minimise traffic noise impacts of West Gate Tunnel Project and local roads | NVP1 | Traffic noise limits Design and construct the works to meet the following limits on traffic noise levels. | Detailed design, construction | Project Co |
| | | | | <table border="1"> <thead> <tr> <th>Aspect</th> <th>External Traffic Noise Levels</th> </tr> </thead> <tbody> <tr> <td>External traffic noise levels</td> <td> a External traffic noise levels from the freeway* and Local Roads* at Category A Buildings and Category B Buildings^ facing the traffic noise, being those adjacent to or with a direct line of sight to the freeway*, must be no greater than: <ul style="list-style-type: none"> i 63dB(A) L_{10(18h)} measured between 6am and midnight for Category A Buildings; and ii 63dB(A) L_{10(12h)} measured between 6am and 6pm for Category B Buildings. b External traffic noise levels from the freeway* and Local Roads* at Category A Buildings and Category B Buildings^ which do not fall within paragraph (a) above and which are adjacent to an identified section of Local Road*, must be no greater than the predicted traffic noise level under a 'no project' scenario. The 'no project' scenario must also assume that the road traffic noise attributable to the West Gate Freeway (without the project) is: <ul style="list-style-type: none"> • 63dB(A) L_{10(18h)} measured between 6am and midnight for the relevant Category A Buildings; and • 63dB(A) L_{10(12h)} measured between 6am and 6pm for the relevant Category B Buildings. </td> </tr> <tr> <td>Applies at</td> <td> The noise criteria in paragraphs (a) and (b) above are to apply to the lowest habitable level of Category A Buildings and Category B Buildings existing and occupied or capable of being occupied at the time of announcing the design on 29 May 2017. In some cases off-site noise attenuation may be required to meet the noise criteria at any Category A or Category B Building. This may include implementation of noise attenuation measures in consultation with the owner of the relevant building to ensure that an equivalent internal level of attenuation is provided to the building. </td> </tr> </tbody> </table> | | |
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| Applies at | The noise criteria in paragraphs (a) and (b) above are to apply to the lowest habitable level of Category A Buildings and Category B Buildings existing and occupied or capable of being occupied at the time of announcing the design on 29 May 2017. In some cases off-site noise attenuation may be required to meet the noise criteria at any Category A or Category B Building. This may include implementation of noise attenuation measures in consultation with the owner of the relevant building to ensure that an equivalent internal level of attenuation is provided to the building. | | | | | |

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| | | | | <p>* Freeway means the primary road connecting the West Gate Freeway (from the M80 interchange) with the Port of Melbourne, CityLink and the city to be constructed as a result of the Project and excludes:</p> <ul style="list-style-type: none"> • The sections of the West Gate Freeway east of the Williamstown rail line, but includes the Hyde Street ramps; and • The sections of the Project which comprise widening of arterial roads, <p>but includes:</p> <ul style="list-style-type: none"> • The Dynon Road eastbound exit ramp and Dynon Road westbound entry ramp to the western abutment of the existing Dynon Road bridge over the railway lines; and • The Wurundjeri Way Extension from Dynon Road to the point at which the elevated section of the road ties into Wurundjeri Way south of Dudley Street. <p>+ Local Road means</p> <ul style="list-style-type: none"> • The sections of Grieve Parade, Millers Road, Williamstown Road/Melbourne Road, Hyde Street, MacKenzie Road, Simcock Avenue and Dynon Road which extend 100 metres from the interchange of the relevant road with the freeway; and • The sections of Footscray Road between the intersection of Footscray Road with the Footscray Road ramps and the Sims Street loop intersection with Footscray Road. <p>^ Category A Buildings and Category B Buildings means</p> <ul style="list-style-type: none"> • Category A Buildings - Residential dwellings, aged persons homes, hospitals, motels, caravan parks and other buildings of a residential nature • Category B Buildings - Schools, kindergartens, libraries and other noise-sensitive community buildings | | |

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| | | | NVP2 | <p>Traffic noise reduction at open space</p> <p>Construct noise barriers to reduce noise levels at the following open space areas:</p> <ul style="list-style-type: none"> • Crofts Reserve: extend the 8.25 metre high barrier on the south of the freeway, to the west for approximately 85 metres • Precinct 15 (frontage): provision of an additional 3 metre high barrier on the south of the freeway, approximately 210 metres extending to the west • Mclvor Reserve: extend the 8.75 metre high barrier opposite Mclvor Reserve, on the north side of the freeway, to the west for approximately 150 metres • Hyde Street Reserve: a 4.5 metre high noise barrier along the Hyde Street off ramp and shared use path adjacent to the Hyde Street Reserve for approximately 440 metres. | Detailed design, construction | Project Co |
| | | | NVP3 | <p>Maintenance of noise mitigation measures</p> <p>Traffic noise mitigation measures must be maintained to ensure that the traffic noise levels in EPR NVP1 are not exceeded for 20 years after opening of the Project for the same sensitive receptors used at the time of the design.</p> | Operation | Project Co, for maintenance of noise mitigation measures in accordance with sections 18.4 and 18.5 of Part B, otherwise State. |
| | | | NVP4 | <p>Traffic noise reduction at Millers Road north of West Gate Freeway</p> <p>Subject to the timely agreement of the relevant property owners prior to opening of the Project, agreed noise mitigation measures must be implemented, during construction, at the residential properties that front Millers Road between the West Gate Freeway and Geelong Road (to the extent EPR NVP1 is not otherwise applicable to such properties). Relevant property owners are to be consulted and provided with:</p> <ul style="list-style-type: none"> • An acoustic report predicting traffic noise levels from Millers Road in 2031 both with the project and without the project (with the | Pre-operation | State |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
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| | | | | <p>difference in these being 'the predicted traffic noise increases')</p> <ul style="list-style-type: none"> Details of practicable on-property noise reduction options such as fencing, double glazing and mechanical ventilation (or a combination of these) to achieve to the extent practicable an equivalent reduction to the predicted traffic noise increase for the relevant property The process for documenting and implementing agreed noise mitigation measures. | | |
| | | | NVP5 | <p>Construction of noise barriers</p> <p>Permanent noise attenuation must, where feasible, be installed in advance of adjacent works.</p> | Construction | Project Co |
| | | | NVP6 | <p>Traffic noise monitoring</p> <p>Traffic noise must be measured prior to and upon opening of the Project and during operation of the freeway, in accordance with the VicRoads Traffic Noise Measurement Requirements for Acoustic Consultants – September 2011, to verify conformance with the external traffic noise performance requirements set out in EPR NVP1 above.</p> <p>Remedial action must be taken as soon as practicable in the event that the measured traffic noise levels demonstrate that the external traffic noise performance requirements set out in EPR NVP1 are not met.</p> <p>Monitoring results must be made publicly available.</p> | Pre-operation, operation | <p>Project Co for the D&C Phase.</p> <p>Project Co for the O&M Phase in accordance with sections 18.4 and 18.5 of Part B, and otherwise the State.</p> |
| | | Manage surface construction noise and vibration to protect amenity | NVP7 | <p>Construction noise, vibration management, and monitoring</p> <p>Prepare and implement a Construction Noise and Vibration Management Plan (CNVMP) in accordance with the limits and methodologies outlined in the Noise and Vibration EPRs.</p> <p>The CNVMP must be informed by monitoring and modelling undertaken by a suitably qualified acoustic and vibration consultant prior to the construction works and include (but not be limited to) the following:</p> <p>A. <u>Noise and vibration management levels</u></p> <ul style="list-style-type: none"> The construction noise, vibration and regenerated noise targets as defined in EPRs NVP8, 9, 10, 11 and 12 Updated noise and vibration modelling of the noise and vibration impacts | Pre-construction, construction | Project Co |

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| | | | | <p>B. <u>Noise and vibration mitigation measures</u></p> <ul style="list-style-type: none"> • Identification of sensitive receptors potentially impacted by the construction stage of the Project • Identification of the scheduling, duration, activities and equipment with the potential to generate airborne noise or surface vibration impacts at the identified sensitive receptors • Implementation of construction noise and vibration targets including management measures, where practicable to achieve these targets such as: <ul style="list-style-type: none"> • Scheduling • Measures to manage night works • Vehicle and traffic management related to any relevant traffic management plan prepared under EPR TP3 • Temporary structures to attenuate noise impacts at the tunnel portals if required to achieve Noise and Vibration EPRs. • Detail of practicable measures that will be adopted to manage noise and vibration impacts that exceed the targets or values set out in the EPRs and CNVMP including: <ul style="list-style-type: none"> • Engagement and notification measures • Off-site measures (eg temporary relocation or respite offers) <p>C. <u>Vibration</u></p> <ul style="list-style-type: none"> • Procedures for condition surveys to be undertaken, with the prior approval of the relevant property owner and/or occupier, for property, land, ground and infrastructure that is reasonably accessible and that may be affected by the project activities • Any alternative vibration guideline values identified under EPR NVP11 (refer Note 2 of NVP11). <p>D. <u>Blasting</u></p> <ul style="list-style-type: none"> • If blasting is proposed, the values and management measures as defined in EPRs NVP9, 16 and 17. <p>E. <u>Monitoring</u></p> <ul style="list-style-type: none"> • Noise and vibration monitoring commitments (including real time monitoring in high risk areas) and response protocols for managing noise complaints and remedial action (with reference to procedures required by EPR EMP4) <p>F. <u>Community consultation</u></p> | | |

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| | | | | <ul style="list-style-type: none"> Details of the communication plan to be adopted throughout construction as part of EPR SP2 including any specific measures related to particular locations or activities Detail of the complaints management system for noise complaints, consistent with the requirements under EPR EMP4. <p>G. <u>Unavoidable works</u></p> <ul style="list-style-type: none"> A qualification rationale or list of planned works that constitute 'unavoidable works'; and response strategies best suited to mitigation of the impacts of those unavoidable works, consistent with EPA Publication 1254 – Noise Control Guidelines. Prior approval must be obtained from the IREA for planned unavoidable work to be undertaken (except for emergency works to avoid the loss of life or damage to property, or to prevent environmental harm). | | | | | | | | | | |
| | | | NVP8 | <p>Construction noise targets</p> <p>1. Sensitive areas (non-residential)</p> <p>For sensitive land uses (based on AS/NZS 2107:2016) implement management actions if construction noise is predicted to or does exceed the internal and external noise levels below, and a noise sensitive receptor is adversely impacted.</p> <p>If construction exceeds the noise levels below:</p> <ul style="list-style-type: none"> Consider the duration of construction noise Consider the existing ambient noise levels Consult with the owner or operator of the noise sensitive receptor Consider any specific acoustic requirements of land uses listed below <p>to determine whether a noise sensitive receptor is adversely impacted</p> <table border="1" data-bbox="965 1155 1733 1453"> <thead> <tr> <th data-bbox="965 1187 1323 1219">Land use</th> <th data-bbox="1330 1155 1733 1251">Construction noise management level, LAeq (15 min) (applies when properties are in use)</th> </tr> </thead> <tbody> <tr> <td data-bbox="965 1267 1323 1347">Classrooms in schools and other educational institutions including kindergartens</td> <td data-bbox="1330 1267 1733 1299">Internal noise level 45 dB(A)</td> </tr> <tr> <td data-bbox="965 1362 1323 1394">Places of worship</td> <td data-bbox="1330 1362 1733 1394">Internal noise level 45 dB(A)</td> </tr> <tr> <td data-bbox="965 1410 1323 1453">Active recreation areas characterised by sporting</td> <td data-bbox="1330 1410 1733 1442">External noise level 65 dB(A)</td> </tr> </tbody> </table> | Land use | Construction noise management level, LAeq (15 min) (applies when properties are in use) | Classrooms in schools and other educational institutions including kindergartens | Internal noise level 45 dB(A) | Places of worship | Internal noise level 45 dB(A) | Active recreation areas characterised by sporting | External noise level 65 dB(A) | Construction | Project Co |
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| Active recreation areas characterised by sporting | External noise level 65 dB(A) | | | | | | | | | | | | | |

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| | | | | <p>activities and activities which generate their own noise, making them less sensitive to external noise intrusion</p> <hr/> <p>Passive recreation areas characterised by contemplative activities that generate little noise and where benefits are compromised by external noise intrusion, for example reading, meditation</p> <hr/> <p>Community centres</p> <p>Depends on the intended use of the centre. Refer to the recommended maximum internal levels in AS/NZS 2107:2016 for specific uses.</p> <hr/> <p>Industrial premises</p> <p>External noise level 75 dB(A)</p> <hr/> <p>Offices, retail outlets</p> <p>External noise level 70 dB(A)</p> <hr/> <p>Other noise sensitive land uses as identified in AS/NZS 2107:2016</p> <p>Refer to the noise levels in AS/NZS 2107:2016 for specific uses.</p> | | | | | | | | | | |
| | | | | <p>2 Residential dwellings</p> <p>For residential dwellings, implement management actions if construction noise is predicted to or does exceed the noise targets in EPA Victoria Publication 1254 or the daytime management levels specified for noise at residences during recommended standard hours in Part 4.1.1 of the NSW Interim Construction Noise Guidelines (ICNG) with the hours amended to correspond to the EPA Victoria Publication 1254 hours as shown in the table below.</p> <table border="1" data-bbox="965 1165 1733 1452"> <thead> <tr> <th data-bbox="965 1165 1256 1257">Time of day</th> <th data-bbox="1263 1165 1733 1257">Construction noise management level, LAeq (15 min) (applies when properties are in use)</th> </tr> </thead> <tbody> <tr> <td data-bbox="965 1262 1256 1321">7am–6pm Monday to Friday</td> <td data-bbox="1263 1262 1733 1321">Noise affected Background LA90+10dB</td> </tr> <tr> <td data-bbox="965 1326 1256 1390">7am–1pm Saturday</td> <td data-bbox="1263 1326 1733 1390">Source: NSW ICNG Chapter 4.1.1 Table 2, page 12</td> </tr> <tr> <td data-bbox="965 1394 1256 1452">7am–6pm Monday to Friday</td> <td data-bbox="1263 1394 1733 1452">Highly noise affected</td> </tr> </tbody> </table> | Time of day | Construction noise management level, LAeq (15 min) (applies when properties are in use) | 7am–6pm Monday to Friday | Noise affected Background LA90+10dB | 7am–1pm Saturday | Source: NSW ICNG Chapter 4.1.1 Table 2, page 12 | 7am–6pm Monday to Friday | Highly noise affected | | |
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| 7am–6pm Monday to Friday | Highly noise affected | | | | | | | | | | | | | |

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|---|---|-----------------------|----------|---|------------------|---|---|---|---------------------------|--|--|--|
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| 7am–1pm Saturday | 75 dB(A) Source: NSW ICNG Chapter 4.1.1 Table 2, page 12 | | | | | | | | | | | |
| 6pm–10pm Monday to Friday 1pm–10pm Saturday 7am–10pm Sunday and public holidays | Noise level at any residential premises not to exceed background noise (L_{A90}) by: <ul style="list-style-type: none"> • 10 dB(A) or more for up to 18 months • 5 dB(A) or more after 18 months Source: EPA Publication 1254 Section 2 | | | | | | | | | | | |
| 10pm–7am Monday to Sunday | Noise inaudible within a habitable room of any residential premises Source: EPA Victoria Publication 1254 Section 2 | | | | | | | | | | | |
| | | | NVP9 | <p>Blasting trials and assessment</p> <p>Where blasting is proposed, a series of initial trials at reduced scale must be conducted prior to production blasting to determine site-specific blast response characteristics and to define allowable blast sizes to meet air blast overpressure and ground vibration limits. If blasting is required, an assessment of the potential noise and vibration impacts, and a strategy to minimise and manage those impacts, to the targets set out in EPRs NVP10-13 and NVP16-17, must be prepared, including preparation of an appropriate community information program.</p> | Construction | Project Co | | | | | | |

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|---|---|--|-----------------|---|--|-------------------|--|--|--|-------------------|---|---------------------|--|---|-------------------------|-----------------|---------------|-----------------|---------------|-------------|-----|-----|--------------|------------|---|-----|-----|-----|-----|-----------|-----|-----|-----|-----|--------------|------------|
| | | Manage construction vibration and regenerated noise impacts to protect amenity | NVP10 | <p>Construction vibration targets (amenity)</p> <p>Implement management actions if the following guideline target levels for continuous vibration from construction activity to protect human comfort of occupied buildings (including heritage buildings) are not achieved (levels are calculated from the British Standard BS6472-1:2008).</p> <table border="1"> <thead> <tr> <th colspan="5">Vibration Dose Values (m/s^{1.75})</th> </tr> <tr> <th colspan="2">Day (7am to 10pm)</th> <th colspan="3">Night (10pm to 7am)</th> </tr> <tr> <th>Type of space occupancy</th> <th>Preferred Value</th> <th>Maximum Value</th> <th>Preferred Value</th> <th>Maximum Value</th> </tr> </thead> <tbody> <tr> <td>Residential</td> <td>0.2</td> <td>0.4</td> <td>0.1</td> <td>0.2</td> </tr> <tr> <td>Offices, schools, educational institutions, places of worship</td> <td>0.4</td> <td>0.8</td> <td>0.4</td> <td>0.8</td> </tr> <tr> <td>Workshops</td> <td>0.8</td> <td>1.6</td> <td>0.8</td> <td>1.6</td> </tr> </tbody> </table> <p><i>Notes</i></p> <p>1 The Guideline Targets are non-mandatory; they are goals that should be sought to be achieved through the application of practicable mitigation measures. If exceeded then management actions would be required</p> <p>2 The VDVs may be converted to PPVs within a noise and vibration construction management plan.</p> | Vibration Dose Values (m/s ^{1.75}) | | | | | Day (7am to 10pm) | | Night (10pm to 7am) | | | Type of space occupancy | Preferred Value | Maximum Value | Preferred Value | Maximum Value | Residential | 0.2 | 0.4 | 0.1 | 0.2 | Offices, schools, educational institutions, places of worship | 0.4 | 0.8 | 0.4 | 0.8 | Workshops | 0.8 | 1.6 | 0.8 | 1.6 | Construction | Project Co |
| Vibration Dose Values (m/s ^{1.75}) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Day (7am to 10pm) | | Night (10pm to 7am) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Type of space occupancy | Preferred Value | Maximum Value | Preferred Value | Maximum Value | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Residential | 0.2 | 0.4 | 0.1 | 0.2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Offices, schools, educational institutions, places of worship | 0.4 | 0.8 | 0.4 | 0.8 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Workshops | 0.8 | 1.6 | 0.8 | 1.6 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | NVP11 | <p>Construction vibration targets (structures)</p> <p>Construction vibration targets for structures are summarised in the tables below.</p> <p>Guideline values for the vibration velocity to be used when evaluating the effects of short term vibration on structures.</p> <table border="1"> <thead> <tr> <th colspan="5">Guideline values for velocity (mm/s)</th> </tr> <tr> <th rowspan="2">Type of structure</th> <th colspan="3">Vibration at the foundation at a frequency of</th> <th rowspan="2">Vibration at horizontal plane of highest floor (Hz)</th> </tr> <tr> <th>1 to 10 Hz</th> <th>10 to 50 Hz</th> <th>50 to 100 Hz*</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> | Guideline values for velocity (mm/s) | | | | | Type of structure | Vibration at the foundation at a frequency of | | | Vibration at horizontal plane of highest floor (Hz) | 1 to 10 Hz | 10 to 50 Hz | 50 to 100 Hz* | | | | | | Construction | Project Co | | | | | | | | | | | | |
| Guideline values for velocity (mm/s) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Type of structure | Vibration at the foundation at a frequency of | | | Vibration at horizontal plane of highest floor (Hz) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | 1 to 10 Hz | 10 to 50 Hz | 50 to 100 Hz* | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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|--------------------------|-----------------------------------|-----------------------|----------|---|----|----------|----------|----|---------------|-------------------|
| | | | | 1. Buildings used for commercial purposes, industrial buildings, and buildings of similar design | 20 | 20 to 40 | 40 to 50 | 40 | | |
| | | | | 2. Dwellings and buildings of similar design and/or occupancy | 5 | 5 to 15 | 15 to 20 | 15 | | |
| | | | | 3. Structures that, because of their particular sensitivity to vibration, cannot be classified under lines 1 and 2 and are of intrinsic value (eg. Heritage buildings) | 3 | 3 to 8 | 8 to 10 | 8 | | |
| | | | | *At frequencies > 100 Hz, the values given in this column may be used as a minimum | | | | | | |
| | | | | <i>Notes</i> | | | | | | |
| | | | | 1 <i>Vibration levels marginally exceeding those vibration levels in the table would not necessarily mean that damage would occur and further investigation would be required to determine if higher vibration levels can be accommodated without risk of damage.</i> | | | | | | |
| | | | | 2 <i>For civil engineering structures (e.g. with reinforced concrete constructions used as abutments or foundation pads) the values for Type 1 buildings may be increased by a factor of 2</i> | | | | | | |
| | | | | 3 <i>Short-term vibration is defined as vibration which does not occur often enough to cause structural fatigue and which does not produce resonance in the structure being evaluated.</i> | | | | | | |

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|---|-----------------------------------|-----------------------|----------|---|--------------------------|-------------------|---|----|--|---|---|-----|--|--|
| | | | | <p>Guideline values for the vibration velocity to be used when evaluating the effects of long term vibration on structures.</p> <p style="text-align: center;">Guideline values for velocity (mm/s) Vibration at horizontal plane of highest floor All frequencies</p> <table border="1" data-bbox="963 454 1680 750"> <thead> <tr> <th data-bbox="963 422 1321 454">Type of structure</th> <th data-bbox="1326 422 1680 454"></th> </tr> </thead> <tbody> <tr> <td data-bbox="963 458 1321 550">Buildings used for commercial purposes, industrial buildings, and buildings of similar design</td> <td data-bbox="1326 458 1680 550" style="text-align: center;">10</td> </tr> <tr> <td data-bbox="963 553 1321 614">Dwellings and buildings of similar design and/or occupancy</td> <td data-bbox="1326 553 1680 614" style="text-align: center;">5</td> </tr> <tr> <td data-bbox="963 617 1321 750">Structures that, because of their particular sensitivity to vibration, cannot be classified under lines 1 and 2 and are of intrinsic value (eg. Heritage buildings)</td> <td data-bbox="1326 617 1680 750" style="text-align: center;">2.5</td> </tr> </tbody> </table> <p><i>Notes:</i></p> <ol style="list-style-type: none"> 1 <i>Vibration levels marginally exceeding those in the table would not necessarily mean that damage would occur and further investigation would be required to determine if higher vibration levels can be accommodated without risk of damage</i> 2 <i>Targets in the above table may need to be adjusted where deemed necessary and/or appropriate to protect the structural integrity of structures based on a pre-construction condition survey and/or modelling</i> 3 <i>Long-term vibration relates to events that may result in a resonant structural response.</i> <p>Implement management actions if, due to construction activity, the DIN 4150.3 Guideline Targets for structural damage to buildings (for short-term vibration or long-term vibration) are not achieved.</p> | Type of structure | | Buildings used for commercial purposes, industrial buildings, and buildings of similar design | 10 | Dwellings and buildings of similar design and/or occupancy | 5 | Structures that, because of their particular sensitivity to vibration, cannot be classified under lines 1 and 2 and are of intrinsic value (eg. Heritage buildings) | 2.5 | | |
| Type of structure | | | | | | | | | | | | | | |
| Buildings used for commercial purposes, industrial buildings, and buildings of similar design | 10 | | | | | | | | | | | | | |
| Dwellings and buildings of similar design and/or occupancy | 5 | | | | | | | | | | | | | |
| Structures that, because of their particular sensitivity to vibration, cannot be classified under lines 1 and 2 and are of intrinsic value (eg. Heritage buildings) | 2.5 | | | | | | | | | | | | | |

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|--|---|--|----------|---|---------------|---|--------------------------------|--------------------------------------|--|--------------------------------------|------------------|------------|--------------------------------|------------|
| | | | NVP12 | <p>Ground-borne (internal) noise targets</p> <p>Implement management actions as determined in consultation with potentially affected land owners to protect amenity at residences where the following ground borne noise guideline targets are exceeded during construction.</p> <table border="1"> <thead> <tr> <th>Time of Day</th> <th>Internal noise level measured at the centre of the most affected habitable room</th> </tr> </thead> <tbody> <tr> <td>Evening (6pm - 10pm)</td> <td>L_{Aeq} (15 minute) = 40dBA</td> </tr> <tr> <td>Night (10pm - 6am)</td> <td>L_{Aeq} (15 minute) = 35dBA</td> </tr> </tbody> </table> <p><i>Notes</i></p> <ol style="list-style-type: none"> Levels are only applicable when ground borne noise levels are higher than airborne noise levels. Management actions include community consultation to determine acceptable level of disruption and provision of respite accommodation in some circumstances. | Time of Day | Internal noise level measured at the centre of the most affected habitable room | Evening (6pm - 10pm) | L _{Aeq} (15 minute) = 40dBA | Night (10pm - 6am) | L _{Aeq} (15 minute) = 35dBA | Construction | Project Co | | |
| Time of Day | Internal noise level measured at the centre of the most affected habitable room | | | | | | | | | | | | | |
| Evening (6pm - 10pm) | L _{Aeq} (15 minute) = 40dBA | | | | | | | | | | | | | |
| Night (10pm - 6am) | L _{Aeq} (15 minute) = 35dBA | | | | | | | | | | | | | |
| | | To manage construction vibration to protect utility assets | NVP13 | <p>Utility asset protection</p> <p>Prior to construction undertake condition assessments of above and below ground utility assets and establish construction vibration limits in consultation with asset owners to maintain asset integrity. Where construction vibration limits are not agreed with the asset owner, the guideline values in the table below apply.</p> <table border="1"> <thead> <tr> <th>Pipe Material</th> <th>Guideline values for velocity measured on the pipe</th> </tr> </thead> <tbody> <tr> <td>Steel (including welded pipes)</td> <td>100mm/s</td> </tr> <tr> <td>Clay, concrete, reinforced concrete, pre-stressed concrete, metal (with or without flange)</td> <td>80 mm/s</td> </tr> <tr> <td>Masonry, plastic</td> <td>50 mm/s</td> </tr> </tbody> </table> <p><i>Notes</i></p> <ol style="list-style-type: none"> These values may be reduced by 50% when evaluating the effects of long-term vibration on buried pipework It is assumed pipes have been manufactured and laid using current technology. <p>Monitor vibration limits during construction to demonstrate compliance</p> | Pipe Material | Guideline values for velocity measured on the pipe | Steel (including welded pipes) | 100mm/s | Clay, concrete, reinforced concrete, pre-stressed concrete, metal (with or without flange) | 80 mm/s | Masonry, plastic | 50 mm/s | Pre-construction, construction | Project Co |
| Pipe Material | Guideline values for velocity measured on the pipe | | | | | | | | | | | | | |
| Steel (including welded pipes) | 100mm/s | | | | | | | | | | | | | |
| Clay, concrete, reinforced concrete, pre-stressed concrete, metal (with or without flange) | 80 mm/s | | | | | | | | | | | | | |
| Masonry, plastic | 50 mm/s | | | | | | | | | | | | | |

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|------------------------------|---|---|--|--|-----------------------------|---|----------------|---|---|----------------|---|--|------------------------------|--------------|--|--------------|
| | | | | with agreed vibration limits. Identify contingency measures to be implemented if limits are not met. Where necessary rectify any defects that are attributable to the Project. | | | | | | | | | | | | |
| | SEPP N-1 – Control of Noise from Commerce, Industry and Trade | To minimise noise impacts of the tunnel ventilation system | NVP14 | Tunnel ventilation system noise design Design and implement the tunnel ventilation system in accordance with the Works Approval and to achieve compliance with State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 (SEPP N-1). Provide detailed design to the satisfaction of EPA Victoria prior to commencement of the works permitted by the Works Approval. | Detailed design. operation | Project Co | | | | | | | | | | |
| | | | NVP15 | Tunnel ventilation system noise monitoring Measure noise from the tunnel ventilation system on commencing road operation and monitor noise from the tunnel ventilation system and report annually for up to five years post opening of the freeway, or as agreed with EPA Victoria, to verify compliance with State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 (SEPP N-1). Identify and implement contingency measures if noise level targets are not met. | Operation | Project Co | | | | | | | | | | |
| | Manage construction blasting impacts to protect amenity | NVP16 | Amenity – Blast Vibration Implement management actions if the following vibration values are not achieved. Blasting activities must comply with Australian Standard AS2187.2-2006, Explosives – Storage and use Part 2 – Use of explosives for all blasting. <table border="1" data-bbox="974 989 1691 1444"> <thead> <tr> <th>Category</th> <th>Type of blasting operations</th> <th>Peak component particle velocity (mm/s)</th> </tr> </thead> <tbody> <tr> <td>Sensitive site</td> <td>Operations lasting longer than 12 months or more than 20 blasts</td> <td>5mm/s for 95% blasts per year 10mm/s maximum unless agreement is reached with the occupier that a higher limit may apply</td> </tr> <tr> <td>Sensitive site</td> <td>Operations lasting less than 12 months or less than 20 blasts</td> <td>10mm/s maximum unless agreement is reached with occupier that a higher limit may apply</td> </tr> <tr> <td>Occupied non-sensitive sites</td> <td>All blasting</td> <td>25mm/s maximum value unless agreement is</td> </tr> </tbody> </table> | Category | Type of blasting operations | Peak component particle velocity (mm/s) | Sensitive site | Operations lasting longer than 12 months or more than 20 blasts | 5mm/s for 95% blasts per year 10mm/s maximum unless agreement is reached with the occupier that a higher limit may apply | Sensitive site | Operations lasting less than 12 months or less than 20 blasts | 10mm/s maximum unless agreement is reached with occupier that a higher limit may apply | Occupied non-sensitive sites | All blasting | 25mm/s maximum value unless agreement is | Construction |
| Category | Type of blasting operations | Peak component particle velocity (mm/s) | | | | | | | | | | | | | | |
| Sensitive site | Operations lasting longer than 12 months or more than 20 blasts | 5mm/s for 95% blasts per year 10mm/s maximum unless agreement is reached with the occupier that a higher limit may apply | | | | | | | | | | | | | | |
| Sensitive site | Operations lasting less than 12 months or less than 20 blasts | 10mm/s maximum unless agreement is reached with occupier that a higher limit may apply | | | | | | | | | | | | | | |
| Occupied non-sensitive sites | All blasting | 25mm/s maximum value unless agreement is | | | | | | | | | | | | | | |

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|--|---|---|----------|--|--|---|-----------------------------|-------------------------------|----------------|---|--|---|--|--|--------------|---|--------------|------------|
| | | | | such as factories and commercial premises | | reached with occupier that a higher limit may apply. For sites containing equipment sensitive to vibration, the vibration should be kept below manufacturer's specification or levels that can be shown to adversely affect the equipment operation | | | | | | | | | | | | |
| | | | | <p><i>Note</i></p> <p>1 Sensitive site includes houses and low rise residential buildings, theatres, schools and other similar buildings occupied by people.</p> | | | | | | | | | | | | | | |
| | | | NVP17 | <p>Amenity – Blast Overpressure</p> <p>Implement management actions if the following overpressure values are not achieved. Blasting activities must comply with Australian Standard AS2187.2-2006, Explosives – Storage and use Part 2 – Use of explosives for all blasting.</p> <table border="1"> <thead> <tr> <th>Category</th> <th>Type of blasting operations</th> <th>Peak Overpressure Value (dBL)</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Sensitive Site</td> <td>Operations lasting longer than 12 months or more than 20 blasts</td> <td>115 dBL for 95% blasts per year. 120dBL maximum unless agreement with occupier that a higher limit may apply</td> </tr> <tr> <td>Operations lasting less than 12 months or less than 20 blasts</td> <td>120dBL for 95% blasts per year. 125 dBL maximum unless agreement with occupier that a higher limit may apply</td> </tr> <tr> <td>Occupied non-sensitive sites such as factories and commercial premises</td> <td>All blasting</td> <td>125 dBL maximum value unless agreement is reached with occupier that a higher limit may apply. For sites containing equipment sensitive to vibration, the vibration should be kept below manufacturers specification or levels that</td> </tr> </tbody> </table> | | Category | Type of blasting operations | Peak Overpressure Value (dBL) | Sensitive Site | Operations lasting longer than 12 months or more than 20 blasts | 115 dBL for 95% blasts per year. 120dBL maximum unless agreement with occupier that a higher limit may apply | Operations lasting less than 12 months or less than 20 blasts | 120dBL for 95% blasts per year. 125 dBL maximum unless agreement with occupier that a higher limit may apply | Occupied non-sensitive sites such as factories and commercial premises | All blasting | 125 dBL maximum value unless agreement is reached with occupier that a higher limit may apply. For sites containing equipment sensitive to vibration, the vibration should be kept below manufacturers specification or levels that | Construction | Project Co |
| Category | Type of blasting operations | Peak Overpressure Value (dBL) | | | | | | | | | | | | | | | | |
| Sensitive Site | Operations lasting longer than 12 months or more than 20 blasts | 115 dBL for 95% blasts per year. 120dBL maximum unless agreement with occupier that a higher limit may apply | | | | | | | | | | | | | | | | |
| | Operations lasting less than 12 months or less than 20 blasts | 120dBL for 95% blasts per year. 125 dBL maximum unless agreement with occupier that a higher limit may apply | | | | | | | | | | | | | | | | |
| Occupied non-sensitive sites such as factories and commercial premises | All blasting | 125 dBL maximum value unless agreement is reached with occupier that a higher limit may apply. For sites containing equipment sensitive to vibration, the vibration should be kept below manufacturers specification or levels that | | | | | | | | | | | | | | | | |

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| | | | | <p>can be shown to adversely affect the equipment operation</p> <hr/> <p><i>Note</i> 1 Sensitive site includes houses and low rise residential buildings, theatres, schools and other similar buildings occupied by people.</p> | | |
| | | | NVP18 | <p>Construction noise management Manage construction noise in accordance with EPA Publication 1254 Noise Control Guidelines and as specified in the Construction Noise and Vibration Management Plan prepared under NVP7.</p> | Construction | Project Co |
| | | | NVP19 | <p>Traffic noise at Hyde Street, south of Francis Street In the event that voluntary acquisition is not offered for residences on the west side of Hyde Street south of Francis Street in connection with the Project, and subject to the timely agreement of the relevant property owners prior to opening of the Project, agreed noise mitigation measures must be implemented, during construction, at the residential properties on Hyde Street where acoustic modelling predicts a difference between noise levels from Hyde Street in 2031 with and without the project (with the difference in these being 'the predicted traffic noise increase'). Relevant property owners are to be consulted and provided with:</p> <ul style="list-style-type: none"> • An acoustic report predicting traffic noise levels from Hyde Street in 2031 both with the project and without the project • Details of practicable on-property noise reduction options such as fencing, double glazing and mechanical ventilation (or a combination of these) to achieve to the extent practicable an equivalent reduction to the predicted traffic noise increase for the relevant property • The process for documenting and implementing agreed noise mitigation measures. | Construction | State |
| Social | | | | | | |
| Social, business, land use, public safety and infrastructure – | <i>Planning and Environment Act 1987</i> | To minimise impacts on social and community infrastructure | SP1 | <p>Urban design principles and vision Detailed design to protect and, where practicable, improve access to and amenity and safety for potentially affected residents, open space, social and community infrastructure and commercial facilities by responding to the urban design principles and vision and</p> | Detailed design | Project Co |

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|--|-----------------------------------|---|----------|---|---|-------------------|
| to minimise adverse effects on the social fabric of the community in the project area, including with regard to community cohesion and access to community services and facilities, business functionality, changes to land use, public safety and access to infrastructure. | | | | implementing the principles of Crime Prevention Through Environmental Design. | | |
| | | To minimise impacts on the community through engagement during construction and operation | SP2 | <p>Communications and Community Engagement Plan (CCEP) Develop and implement a Communications and Community Engagement Plan in consultation with affected local councils to engage and consult the community and potentially affected stakeholders and discuss progress of construction activities and operation. The plan must be published on the project website prior to and for the duration of construction and include:</p> <ul style="list-style-type: none"> Community issues identification, complaints management and resolution approach and procedures in accordance with EPR EMP4 The BIP in accordance with EPR BP5 Approach to stakeholder identification Enquiry management and record keeping approach and procedures including making available a 24 hour telephone number, postal address, and an email address and publishing these on the project website Approach to mitigating community impacts including dust, noise and light and any relevant policies (e.g. relocations policy) Approach to changes to transport conditions for affected and potentially affected users, relevant stakeholders and relevant road authorities How it will evaluate the effectiveness of community impact mitigation measures, including through noise and vibration monitoring Identification of how stakeholders can access environmental monitoring data that is to be made publicly available Incident and emergency communications, including notification methods and timeframes in the event of a major incident or overrun Approach and processes to ensure that the workforce has appropriate community awareness and sensitivity Any innovative communications tools and methods in the CCEP which would enhance the Project's ability to effectively communicate with the community and stakeholders Approach to notifying community, business, road user and other stakeholders affected by construction activities about impacts | Pre-construction, construction, operation | Project Co |

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|--------------------------|-----------------------------------|-----------------------|----------|---|--------------------------------|-------------------|
| | | | | <ul style="list-style-type: none"> Approach to making relevant project information available to the community The role and function of the Community Liaison Group (CLG) as developed by the State. <p>The CCEP must address matters of interest or concern to the following stakeholders:</p> <ul style="list-style-type: none"> Municipalities Recreation, sporting and community groups Potentially affected residents and property owners Potentially affected business Other public facilities in proximity Religious and worship groups. | | |
| | | | SP3 | <p>Community Liaison Group participation</p> <p>Participate in the Community Liaison Group (CLG) that has been established by the State to facilitate community and stakeholder involvement for the construction phase of the Project. Participation must include:</p> <ul style="list-style-type: none"> Attendance at meetings Regular reporting of design and construction activities Timely provision of relevant information, including response to issues raised by the group Regular reporting and monitoring of community feedback, impacts and discussion of mitigation measures and their effectiveness. | Construction | Project Co |
| | | | SP4 | <p>Social and local procurement</p> <p>Develop and implement a Workforce Development Plan and a Local Industry Development Plan to provide:</p> <ul style="list-style-type: none"> Opportunities for graduates, non-engineering cadets and upskilling short courses for the project workforce Opportunities for young people such as scholarships, and structured workplace learning placements Opportunities for local businesses such as forums to inform local businesses about potential procurement opportunities. | Pre-construction, construction | Project Co |

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| | | | SP5 | Community Involvement and Participation Plan (CIPP) Develop and implement a CIPP in consultation with Hobsons Bay City Council and Maribyrnong City Council and representatives of communities affected negatively by the impacts of the Project, including Altona North, Brooklyn, South Kingsville, Spotswood and Yarraville, in order to improve community connectedness and cohesiveness. The plan should apply for the period of project construction. Social legacy outcomes and tasks that could be considered for funding under the CIPP include: community partnership programs; community support grants; running of community events and festivals; sponsorships of local sporting clubs; small capital works targeting community, sporting and recreation facilities; a wide range of other 'community led' initiatives. | Pre-construction, construction | State |
| Surface Water | | | | | | |
| Hydrology and water quality – to avoid or minimise adverse effects on surface water and groundwater quality and hydrology in particular resulting from the disturbance of contaminated or acid-forming materials, and to maintain functions and values of floodplain environments. | <i>Water Act 1989</i> SEPP – Waters of Victoria | To maintain or improve existing surface water quality during operation and construction | SWP1 | Design of discharges and runoff Meet State Environment Protection Policy (Waters of Victoria) for discharge and run-off from the Project to Kororoit Creek, Stony Creek, Maribyrnong River, Moonee Ponds Creek. | Detailed design | Project Co |
| | | | SWP2 | Water sensitive road design Integrate the stormwater treatment system into the design of the works in accordance with VicRoads Integrated Water Management Guidelines (June 2013) and the EPA Victoria Best Practice Environmental Management Guidelines for Urban Stormwater (2006). | Detailed design | Project Co |
| | | | SWP3 | Tunnel waste water Any proposed discharge of tunnel waste water from the site must be approved by the relevant authority prior to discharges occurring. | Pre-construction | Project Co |
| | | | SWP4 | Water quality monitoring Develop and implement a baseline surface water monitoring program prior to commencement of construction to assess background water quality in all receiving waters. This should be developed in consultation with the EPA Victoria and Melbourne Water. The baseline surface water monitoring program is to be used to inform the surface water sub-management plan (EPR SWP7) | Pre-construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|--------------------------|-----------------------------------|-----------------------|----------|--|-----------------|-------------------|
| | | | SWP5 | <p>Spill containment design</p> <p>Design the capacity of the stormwater drainage system for all new roads and ramps to contain hazardous spills at or prior to every stormwater outlet, to the satisfaction of EPA Victoria, and develop procedures to be implemented in response to a hazardous spill.</p> | Detailed design | Project Co |
| | | | SWP6 | <p>Management of chemicals, fuels, and hazardous materials</p> <p>Minimise chemical and fuel storage on site and store hazardous materials and dangerous goods in accordance with the relevant guidelines and requirements. Comply with the Victorian WorkCover Authority and Australian Standard AS1940 Storage Handling of Flammable and Combustible Liquids and EPA Victoria publications 480 Environmental Guidelines for Major Construction Sites and 347 Bunding Guidelines</p> <p>Develop and implement management measures for dangerous substances, including:</p> <ul style="list-style-type: none"> • Creating and maintaining a dangerous goods register • Disposing of any hazardous materials, including asbestos, in accordance with Industrial Waste Management Policies, regulation and relevant guidelines • Implementing requirements for the installation of bunds and precautions to reduce the risk of spills • Developing contingency and emergency response plans to handle fuel and chemical spills, including availability of on-site hydrocarbon spill kits. | Construction | Project Co |
| | | | SWP7 | <p>Surface Water Management during construction</p> <p>The CEMP must include a sub-management plan that sets out the Surface Water Management requirements and methods for:</p> <ul style="list-style-type: none"> • Best practice sediment and erosion control and monitoring, in accordance with EPA Victoria publications 275 (1991), 480 (1996), and 960 (2004) • Maintenance of existing flow paths, drainage lines and floodplain storage • Location and bunding of any contaminated material (including tunnel spoil and stockpiled soil) to the 1% AEP flood level and to the satisfaction of EPA Victoria and the relevant drainage authority • A flood emergency management plan including consideration of | Construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|--------------------------|-----------------------------------|---|----------|--|---|-------------------|
| | | | | <p>scheduling works</p> <ul style="list-style-type: none"> Bunding of the tunnel portals to an appropriate level during the construction phase. <p>The sub-management plan is to be informed by EPR SWP4.</p> | | |
| | | To limit the use of potable water during construction and preserve natural reserves | SWP8 | <p>Use of non-potable water</p> <p>Where available and practicable, of suitable quality, and meets health and safety requirements, stormwater, recycled water, groundwater inflow to tunnels or other water sources must be used in preference to potable water for construction activities, including concrete mixing and dust control.</p> | Construction | Project Co |
| | | To protect the bank stability of potentially impacted waterways | SWP9 | <p>Bank stability</p> <p>Develop and implement appropriate measures to maintain bank stability of Kororoit Creek, Stony Creek, Maribyrnong River, Moonee Ponds Creek during construction to the satisfaction of Melbourne Water and in consultation with relevant local councils.</p> | Construction | Project Co |
| | | | SWP10 | <p>Waterway modifications</p> <p>Design and undertake modifications to all waterways in a way to mitigate the effects of changes to flow and minimise, to the extent practicable, the potential for erosion, sediment plumes and exposure of contaminated material during construction to the satisfaction of Melbourne Water and in consultation with relevant local councils.</p> <p>Maximise the visual and aesthetic amenity of the waterways having regard to relevant strategies, policies and plans for that waterway and in consultation with Melbourne Water and relevant Councils.</p> | Detailed design, construction | Project Co |
| | | To maintain existing levels of flood protection | SWP11 | <p>Flood levels, flows and velocities</p> <p>Permanent works and associated temporary construction works must not increase flood risk (considering flood levels, flows and velocities) associated with overland flow paths to the requirements and satisfaction of Melbourne Water and in consultation with any other relevant drainage authority.</p> <p>Undertake modelling of the design of permanent and temporary works to demonstrate the resultant flood levels and risk profile to the requirements and satisfaction of Melbourne Water and in consultation with any other relevant drainage authority.</p> <p>Consider potential effects of climate change and sea level rise of 0.8m by 2100, with and without the works for both existing and proposed scenarios (for example future redevelopment in relation to Moonee</p> | Detailed design, pre-construction, construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|---|---|--|----------|--|----------------------------|-------------------|
| | | | | Ponds Creek within the Arden – Macaulay Structure Plan area) in consultation with local councils Ensure that surface water from West Gate Tunnel Project does not encroach into underground SP AusNet electricity or gas assets. | | |
| | | To maintain flood plain storage | SWP12 | Floodplain storage capacity Maintain existing floodplain storage capacity for overland flow paths potentially impacted by the Project in consultation with Melbourne Water and any other relevant drainage authority. | Detailed design | Project Co |
| | | To protect people and assets from flood waters in the Tunnel | SWP13 | Tunnel portal flood risk Design tunnel portals to exclude surface flows from external catchments during the probable maximum flood. Develop and implement measures and plans to manage flood risk to the tunnel portals. Develop operation and maintenance plans for flood protection works. | Detailed design, operation | Project Co |
| | | To maintain access to stormwater and other assets | SWP14 | Maintenance of Melbourne Water and other drainage assets Provide adequate clearances and access for ongoing maintenance of Melbourne Water and other drainage authority assets to the satisfaction of the relevant drainage authority. | Detailed design | Project Co |
| | | | SWP15 | North Yarra Main Sewer Design any proposed realignment to the North Yarra Main Sewer to the satisfaction of Melbourne Water. | Detailed design | Project Co |
| Transport | | | | | | |
| Transport capacity and connectivity – to increase transport capacity and improve connectivity to and from the west of Melbourne and, in particular, to increase freight movement via | <i>Road Management Act 2004</i> <i>Planning and Environment Act 1987</i> | To improve road-based transport connectivity between the west of Melbourne, the Port of Melbourne and the CBD and the wider metropolitan region and the State, while | TP1 | Optimise design performance Optimise the design of the works in consultation with appropriate road management authorities, public transport authorities, Melbourne Water and local councils as part of the detailed design process to: <ul style="list-style-type: none"> Maintain and where practicable reduce travel times for all transport modes, including walking, cycling and public transport Maintain, and where practicable, enhance the existing traffic movements at interchanges Design interchanges and intersections to achieve a level of service of D or degree of saturation of 0.9, where practicable within the available land, or as otherwise approved by the relevant road and transport authority Maintain, and where practicable, enhance pedestrian movements, | Detailed design | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|---|-----------------------------------|--|----------|---|---|-------------------|
| the freeway network instead of local and arterial roads, while adequately managing effects of the works on the existing broader and local transport networks, including road, public transport, cycling and pedestrian transport networks | | maintaining the connectivity of the existing local transport routes | | <p>bicycle connectivity, and shared use paths</p> <ul style="list-style-type: none"> Provide evidence that functional and generous pedestrian linkages between North Melbourne Station, West Melbourne and the E-gate urban renewal site will be facilitated, to support pedestrian flows to/from North Melbourne, E-gate and Docklands Develop a strategy with Public Transport Victoria to minimise impacts on buses, trams and rail and, where practicable, enhance public transport facilities and services that cross or run parallel to the alignment of the-Project or are in any way affected by traffic using the Project Minimise loss of car parking in consultation with relevant local councils. | | |
| | | | TP2 | <p>Traffic monitoring</p> <p>Undertake traffic monitoring in selected streets identified in consultation with the relevant Road Authority and local council pre-construction, at six monthly intervals during construction, and up to two years after construction is complete. Implement local area traffic management works in consultation with the local relevant councils.</p> <p>Develop and implement traffic performance management to monitor conditions along the West Gate Freeway during construction. Real time traffic information must be provided to drivers on the approach to the West Gate Freeway.</p> | Pre-construction, construction, operation | Project Co |
| | | <p>To minimise disruption to motor vehicle traffic, parking, bicycle and pedestrian movements during construction and</p> <p>To minimise disruption to public and commercial transport during construction</p> | TP3 | <p>Traffic Management Plans</p> <p>Develop and implement Traffic Management Plans with measures to minimise disruption, to the extent practicable, to motor vehicle traffic including on road public transport, parking, bicycle and pedestrian movements during construction in consultation with relevant road management authorities on all roads affected by the Project, including:</p> <ul style="list-style-type: none"> Management of any temporary or partial closure of traffic and cycle lanes, including but not limited to, along: <ul style="list-style-type: none"> Local and arterial roads, including provision for suitable routes for vehicles, cyclist and pedestrians to maintain connectivity for road and shared path users CityLink traffic lanes and ramps M1, M80 and Footscray Road Hyde Street, Francis Street, Whitehall Street | Pre-construction, construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|--------------------------|-----------------------------------|-----------------------|----------|---|---------------|-------------------|
| | | | | <ul style="list-style-type: none"> • Management of any temporary diversion of pedestrian or cycle paths to provide a safe, well- sign-posted alternative route and minimise impact on commuter travel times for cyclists as far as practicable • A strategy for maintaining the current capacity (number of lanes) during peak periods for works on the following key State roads – West Gate Freeway, Princes Freeway, M80, Footscray Road, Wurundjeri Way, Dudley Street, Williamstown Road, Millers Road, Grieve Parade, Melbourne Road, Douglas Parade and Hyde Street • Restrict the number of local roads to be used for construction-related transportation to minimise impacts on amenity, in consultation with the relevant road authorities • Measures to minimise construction traffic on New Street, including the provision of access to the Southern Portal Compound from the freeway or alternative routes approved by the road authority • Reinstate access to open space, community facilities, commercial premises and dwellings if disrupted, as soon as practicable • Provide suitable parking arrangements to accommodate the construction workforce while minimising traffic impacts on local and arterial roads, preventing construction-related parking on local and arterial roads or use of public car parks • Provide safe access points to laydown areas and site compounds • Implement a communications strategy (as set out in the CCEP) to advise affected users, potentially affected users, relevant stakeholders and the relevant road authorities of any changes to transport conditions • Maintain, where practicable, current local area traffic management measures during construction or reinstate upon completion in consultation with the relevant local councils • Haulage of bulk material to and from the construction areas to within a two km range of the works must be via roads operated by VicRoads, CityLink or the Port Manager or, subject to obtaining prior agreement by the relevant road authority, other parts of the road network. <p>The Traffic Management Plan may include Worksite Traffic Management Plans (WTMP) for discrete components or stages of the works having the potential to impact on roads, shared used paths,</p> | | |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|--------------------------|-----------------------------------|-----------------------|----------|---|--------------------------------|-------------------|
| | | | | <p>pedestrian paths or public transport infrastructure. WTMP must address, as applicable:</p> <ul style="list-style-type: none"> • Vehicle, bicycle and pedestrian movements • Public transport movements • Lane, road and public transport route closures • Major traffic control devices • Traffic signal operation • Vertical and horizontal alignment • Drainage • Barrier placement • Operating conditions including speed limits • Safety of the public and workers • Peak flows and road traffic capacity, including catering for special events • Signing and line marking • Lighting • Property access • Stakeholder communication and media advertising • Timing • Replacement public transport services • Utility Infrastructure access • Any interface between the responsibilities and requirements of Project Co, its Subcontractors and any other Authority • Incident management. <p>Draft WTMPs must be distributed to the State, VicRoads, the road safety auditor, any other relevant road authority for any affected Roads and, where the works affect public transport infrastructure, Public Transport interface parties for their comment.</p> | | |
| | | | TP4 | <p>Public transport</p> <p>Develop and implement measures to minimise to the extent practicable disruption during construction to all impacted railway lines, tram and bus routes in consultation with VicTrack, Yarra Trams and Metro Trains Melbourne and to the satisfaction of Public Transport Victoria.</p> | Pre-construction, construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|--------------------------|-----------------------------------|---|----------|--|--------------------------------|-------------------|
| | | | TP5 | Rail operations Minimise disruption to the rail infrastructure and operations in consultation with the relevant rail infrastructure stakeholders. | Detailed design, construction | Project Co |
| | | To minimise potential for accidents by managing road safety for all new road linkages | TP6 | Design standards Design new works (including shared use facilities) in accordance with applicable design standards and undertake independent road safety audits after each stage of detailed design and pre-opening and immediately following the opening of the works. The Veloway design must be prepared in consultation with VicRoads, the City of Melbourne, Maribyrnong City Council and Bicycle Network and include an operating path width (between hand rails) of 4.0 metres. | Detailed design, construction | Project Co |
| | | | TP7 | Traffic Management Liaison Group A Traffic Management Liaison Group (TMLG) must be established and convene prior to the commencement of any works that may impact on existing roads, paths or public transport infrastructure. The TMLG must include representatives from the State, VicRoads and Project Co. Other relevant agencies as nominated by the State may be included as required including relevant local councils. The TMLG will be a forum for exchange of information and discussion of issues associated with Traffic Management Plans. The TMLG must be provided with the Traffic Management Plans, details as to timing of implementation, information about construction traffic monitoring conducted by Project Co, and other reports as relevant. The TMLG must meet at least monthly until the completion of construction. | Pre-construction, construction | Project Co |
| | | | TP8 | River navigation Navigational channel of Maribyrnong River must not be impeded without approval of the relevant authority. | Construction | Project Co |
| | | | TP9 | Melbourne Metro Rail Authority interface Consult and coordinate with Melbourne Metro Rail Authority to manage and where possible minimise, cumulative impacts of construction vehicles. | Construction | Project Co |

| EES Evaluation Objective | Applicable Legislation and Policy | Performance Objective | EPR Code | Environmental Performance Requirement | Project Phase | Responsible Party |
|---|---|--|-------------|--|---|-------------------|
| Waste Management | | | | | | |
| <p>Waste management – to manage excavated spoil and other waste streams generated by the Project in accordance with the waste hierarchy and relevant best practice principles.</p> | <p><i>Environment Protection Act 1970</i></p> | <p>To manage all wastes from the construction and operation of the Project</p> | <p>WMP1</p> | <p>Waste management Develop and implement management measures for waste (excluding soils) minimisation during construction and operation in accordance with the <i>Environment Protection Act 1970</i> waste management hierarchy and management options, to address: Litter management Construction and demolition wastes including, but not limited to, washing residues, slurries and contaminated water Organic wastes Inert solid wastes.</p> | <p>Detailed design, construction, operation</p> | <p>Project Co</p> |

Glossary of abbreviations

The following glossary of abbreviations is for the purpose of this Part H21.

| Term | Definition |
|-----------------------|---|
| AQMP | Air Quality Management Plan |
| CCEP | Communications and Community Engagement Plan |
| CEMP | Construction Environment Management Plan |
| CIPP | Community Involvement and Participation Plan |
| CLG | Community Liaison Group |
| CNVMP | Construction Noise and Vibration Management Plan |
| CHMP | Cultural Heritage Management Plan under the <i>Aboriginal Heritage Act 2006</i> |
| EPR | Environmental Performance Requirement |
| EPA | Environment Protection Authority (Victoria) |
| GDE | Groundwater Dependent Ecosystem |
| GHG | greenhouse gas |
| HO | Heritage Overlays |
| ICNG | NSW Interim Construction Noise Guidelines |
| Incorporated Document | The West Gate Tunnel Incorporated Document that is included in the Melbourne, Port of Melbourne, Hobsons Bay, Maribyrnong, Brimbank and Wyndham Planning Schemes. |
| IREA | The Independent Reviewer and Environmental Auditor for the project |
| ISCA | Infrastructure Sustainability Council of Australia |
| NYM Sewer | North Yarra Main Sewer |
| OEMP | Operations Environmental Management Plan |
| OVGA | Office of the Victorian Government Architect |
| PPV | Peak particle velocity |

| Term | Definition |
|------|--|
| SEPP | State Environment Protection Policy (Victoria) |
| TMLG | Traffic Management Liaison Group |
| VHR | Victorian Heritage Register |
| WDA | Western Distributor Authority |
| WEMP | Worksite Environmental Management Plan |

Part H22 - State Road Network Access Requirements

1. Introduction

- (a) This Part H22 applies during the D&C Phase in relation to the following State roads as listed:
- (i) West Gate Freeway, from the M80 interchange to Williamstown Road (**West Gate Freeway**);
 - (ii) Princes Freeway, from Kororoit Creek Road to Dohertys Road (**Princes Freeway**);
 - (iii) M80, from the M80 interchange with the West Gate Freeway to Boundary Road (**M80**);
 - (iv) Footscray Road, from Wurundjeri Way to Shepherds Bridge (**Footscray Road**);
 - (v) Wurundjeri Way, from Dudley Street to Flinders Street (**Wurundjeri Way**);
 - (vi) Dudley Street, between Adderley Street and Wurundjeri Way (**Dudley Street**);
 - (vii) Williamstown Road, between Francis Street and Hudsons Road (**Williamstown Road**);
 - (viii) Millers Road, between Blackshaws Road and Geelong Road (**Millers Road**); and
 - (ix) Grieve Parade, between Blackshaws Road and Geelong Road (**Grieve Parade**),
- (Key State Roads).**
- (b) For the avoidance of doubt, access requirements in respect of the following works are not subject to this Part H22:
- (i) works having an impact upon CityLink, to which the CityLink Access Deed applies; and
 - (ii) works associated with MacKenzie Road or within the Port Transaction Land to which the WGT Road Licence and Port Land Deed apply.
- (c) Notwithstanding any other provision of this Agreement, if there is any inconsistency, ambiguity or discrepancy between this Part H22 and the other Parts of the PSR, this Part H22 will prevail to the extent of the inconsistency, ambiguity or discrepancy (and only in relation to the Key State Roads).
- (d) In relation to Works on Key State Roads:
- (i) the provisions of Part F1 and Part F6 in relation to CTMPs and WTMPs will apply; and
 - (ii) the CTMPs and WTMPs must also comply with the provisions of this Part H22.

- (e) Without limiting the obligations of Project Co under this Agreement, Project Co acknowledges and agrees that maintaining access to Key State Roads and the management of traffic on Key State Roads is a key requirement of the Project.
- (f) In planning for and carrying out work on a Key State Road, Project Co must in respect of the relevant Key State Road:
 - (i) minimise the impact on traffic and disruption to road users;
 - (ii) provide a safe environment for the travelling public and construction personnel;
 - (iii) minimise public vehicle interaction with construction vehicles and activities;
 - (iv) cater for the needs of all traffic travelling along or across the Key State Road;
 - (v) maintain consistent traffic management treatments across the entire Key State Road;
 - (vi) without limiting the above, take into account, where simultaneous lane closures are occurring on multiple roads, how these can be managed so as not to limit any potential detour or diversion routes around the Works on Key State Roads;
 - (vii) consider the cumulative effect of lane closures from other major infrastructure projects in the vicinity of the Key State Road, including the works in the Arden Street and Macaulay Road area associated with the State's metropolitan rail infrastructure project (known as the "Melbourne Metro" project);
 - (viii) communicate the purpose of the proposed traffic impact to users of the Key State Road in accordance with Part G;
 - (ix) communicate the arrangements for, and impacts of, any event affecting traffic on the Key State Road to relevant stakeholders impacted by the works on the Key State Road in accordance with Part G;
 - (x) provide updates to the State in regard to re-opening times where there is an Unplanned Traffic Impact on the Key State Road;
 - (xi) provide continued provision of variable message signs for the full duration of any Unplanned Traffic Impact on the Key State Road, including reviewing and updating messaging as necessary;
 - (xii) provide key/media messaging regarding any Unplanned Traffic Impact on the Key State Road to the State in accordance with the relevant WTMP and Part G; and
 - (xiii) be responsible for all radio/print/online advertising costs associated with any Unplanned Traffic Impact on the Key State Road.

2. Permitted Lane Closures

- (a) Without limiting the approvals process of WTMPs in Part F6, access to Key State Roads will only be approved in accordance with Part F6 and this Part H22 and where the relevant WTMP:

- (i) has been prepared, taking into account the requirements of section 1(f);
 - (ii) is in accordance with the lane closures permitted in the Lane Closure Schedules; and
 - (iii) demonstrates that appropriate consideration has been given to the Major Events as listed in Schedule 2 of this Part H22.
- (b) Any closed lane or shoulder approved under a WTMP on a Key State Road must be fully re-opened and accessible to traffic by the earlier of:
- (i) the time required by the relevant Lane Closure Schedules; and
 - (ii) the time specified in the approved WTMP.

3. Specific requirements for the West Gate Freeway, M80 and Princes Freeway

- (a) Where Works are required on the West Gate Freeway, M80 or Princes Freeway, access to these Key State Roads will only be approved by the State under Part F6 where the WTMP demonstrates compliance with the following additional requirements:
- (i) subject to sections 3(a)(ii) and 3(a)(iii), speed limits cannot be reduced below 80 km/h for the duration of the Works on the West Gate Freeway, M80 or Princes Freeway (as applicable);
 - (ii) subject to section 3(a)(iii), the State may agree to worksite speed limits below 80 km/h for the carrying out of work in the short term where such a reduction can be justified and will not affect the throughput of the relevant Key State Road at the time proposed for the work to be carried out;
 - (iii) speed limits on the West Gate Freeway, M80 or Princes Freeway (as applicable) can be reduced below 80km/h in respect of any emergency incident that is not the subject of a WTMP, in which case the speed limit will be set at that level prescribed under the standard applicable to the safe management of that emergency incident;
 - (iv) subject to section 3(b), each freeway carriageway and ramp traffic lane on the West Gate Freeway, M80 or Princes Freeway (as applicable) must not be less than 3.35 metres wide, and inner and outer shoulder widths must not be less than 0.5 metres wide;
 - (v) subject to section 3(b), the route on the West Gate Freeway, M80 or Princes Freeway (as applicable) must be maintained to allow for over dimensional (OD) vehicles at all times;
 - (vi) where a continuous 3.0m wide shoulder is not available for at least 500 metres, emergency breakdown bays for motorists must be provided at intervals of a minimum of one breakdown bay between interchanges. Breakdown bays must be paved and sealed; and
 - (vii) where an existing ramp functions as a lane gain, it must remain as a lane gain and not as a merge.
- (b) If the requirements of sections 3(a)(iv) or 3(a)(v) cannot be complied with for the full duration of the Works the subject of the WTMP, any reduction in width or height clearance:

- (i) must be approved by the State; and
- (ii) Project Co must advise VicRoads' Transport Safety Services State-wide Permit Group at least two weeks prior to the proposed reduction.

4. Specific requirements for Footscray Road, Dudley Street and Wurundjeri Way

- (a) Where Works are required on Footscray Road, Dudley Street or Wurundjeri Way, access to these Key State Roads will only be approved by the State under Part F6 where the WTMP demonstrates compliance with the following additional requirements:
 - (i) subject to sections 4(a)(ii) and 4(a)(iii), speed limits cannot be reduced by more than 20 km/h below the posted speed limit for the duration of the Works on Footscray Road, Dudley Street or Wurundjeri Way (as applicable);
 - (ii) subject to section 4(a)(iii), the State may agree to worksite speed limits reductions of more than 20 km/h below the posted speed limit for short term works where such a reduction can be justified and will not affect the throughput of the relevant Key State Road at the time proposed for the work to be carried out;
 - (iii) speed limits on Footscray Road, Dudley Street or Wurundjeri Way (as applicable) can be reduced by more than 20 km/h below the posted speed limit in respect of any emergency incident that is not the subject of a WTMP, in which case the speed limit will be set at that level prescribed under the standard applicable to the safe management of that emergency incident;
 - (iv) where alterations to traffic signal phasing are proposed, Project Co must allow in the WTMP a notice period to VicRoads of not less than six weeks to allow the traffic signal controller to be re-programmed; and
 - (v) reductions in lane widths must consider the high volumes of commercial vehicles using these roads and Project Co must demonstrate that the proposed lane widths will be able to accommodate the anticipated volumes of commercial vehicles on the relevant Key State Road.

5. Unplanned Traffic Events

- (a) An Unplanned Traffic Event occurs when Project Co:
 - (i) implements a new (as opposed to continuing with an existing) lane closure on a Key State Road which is not in compliance with an approved WTMP or any relevant Lane Closure Schedule; or
 - (ii) fails to fully re-open a closed lane to traffic on a Key State Road where required by an approved WTMP in accordance with section 2(b),
(Unplanned Traffic Event).
- (b) In the event of any Unplanned Traffic Event, Project Co must:
 - (i) immediately notify the State:

- A. of the commencement of the Unplanned Traffic Event, including the time of commencement;
 - B. if by the time of the notice, the Unplanned Traffic Event has ceased, the period of the Unplanned Traffic Event and the time the Unplanned Traffic Event ceased; and
 - C. if by the time of the notice, the Unplanned Traffic Event is continuing, the expected duration of the Unplanned Traffic Event;
- (ii) unless already included in a notice under section 5(b)(i), notify the State when the Unplanned Traffic Event ceases;
- (iii) take all necessary steps to bring the Unplanned Traffic Event to an end as soon as possible; and
- (iv) submit to the State, within two Business Days of the commencement of the Unplanned Traffic Event, a rectification plan which:
 - A. identifies the reasons why the Unplanned Traffic Event occurred;
 - B. describes the steps to be taken by Project Co (including any changes to operating procedures, policies or practices of Project Co) to ensure that Unplanned Traffic Events do not re-occur; and
 - C. includes such other information as the State may reasonably request.
- (c) The State, within three Business Days of receiving a rectification plan from Project Co under section 5(b)(iv), will consider the rectification plan and provide Project Co with a notice either:
 - (i) stating that the State is satisfied with the rectification plan; or
 - (ii) specifying the reasons why the State is not satisfied with the rectification plan.
- (d) If the State fails to provide Project Co with a notice in accordance with section 5(c) within three Business Days after receiving the rectification plan from Project Co, the State will be deemed to have given notice in accordance with section 5(c)(i).
- (e) Without limiting section 5(f), where the State issues a notice to Project Co under section 5(c)(ii), Project Co must amend the rectification plan to address the reasons identified by the State in its notice and re-submit the amended rectification plan under section 5(b) and section 5(c) will apply to the re-submitted rectification plan.
- (f) Without limiting the State's obligations under this Agreement, where three or more Unplanned Traffic Events occur in any continuous 12 month period, the State may, at its discretion:
 - (i) notify Project Co that it must put in place additional measures to ensure that Unplanned Traffic Events do not re-occur, including any additional measures or conditions of access as identified by the State; and/or
 - (ii) suspend Project Co's access to all or any part of the relevant Key State Road until such time as the State is satisfied with the rectification plan

submitted by Project Co under section 5(b) or re-submitted by Project Co under section 5(e).

- (g) Project Co must comply with:
 - (i) any rectification plan submitted under section 5(b)(iv) in respect of which the State has provided, or has deemed to have provided, notice under section 5(c)(i); and
 - (ii) any additional measures or conditions of access identified by the State in a notice under section 5(f)(i).
- (h) Where the State exercises its rights to suspend Project Co's access to all or any part of the relevant Key State Road under section 5(f)(ii):
 - (i) Project Co must:
 - A. immediately stop work in the relevant part of the Key State Road;
 - B. as soon as practicable, leave the relevant part of the Key State Road in a safe condition; and
 - C. continue to carry out all of its other obligations in respect of the Site other than on those parts of the relevant Key State Roads in respect of which Project Co's access has been suspended; and
 - (ii) Project Co will not be entitled to make any Claim against the State, arising in connection with the exercise by the State of its rights under section 5(f).

6. FMS during Construction

- (a) The existing FMS on the West Gate Freeway must be maintained in place so that it remains operational for as long as possible during the carrying out of the Works.
- (b) Project Co must ensure that the FMS forming part of the Works on the West Gate Freeway is erected and made operable at the earliest possible time to assist with traffic management.
- (c) Subject to sections 6(a) and 6(b), Project Co may remove the existing FMS to allow the Works to proceed.

7. Incident Response and Maintenance on the West Gate Freeway

From 24 February 2018, Project Co will be responsible for carrying out maintenance in accordance with the requirements of section 6 of Part F6, including all aspects of the FMS, for the West Gate Freeway in both directions.

8. Incident Response on the Service Area

- (a) On and from the later of the date which is 4 months after Financial Close and 1 May 2018, until West Gate Tunnel Completion, Project Co must:
 - (i) provide Incident Response Services in accordance with this section 8 of Part H22 for the Service Area; and
 - (ii) maintain the Agreed Resource Allocation.

(b) For the purposes of this section 8 of Part H22:

(i) **Additional Resources** means:

- A. tip truck with operator;
- B. sweeper with operator;
- C. elevated work platform; or
- D. general utility vehicle with crew,

(or any of them together as the context requires).

(ii) **Agreed Resource Allocation** means the number of incident response patrols for the Service Area as follows:

| Day | Time | Incident Response Patrols |
|--------------------------|--------------|---------------------------|
| Monday - Friday | 0:00 - 6:15 | 2 |
| | 6:15 - 19:00 | 4 |
| | 19:00 - 0:00 | 2 |
| Saturday | 0:00 - 8:00 | 2 |
| | 8:00 - 19:00 | 3 |
| | 19:00 - 0:00 | 2 |
| Sunday / Public Holidays | 0:00 - 9:00 | 2 |
| | 9:00 - 19:00 | 3 |
| | 19:00 - 0:00 | 2 |

(iii) **Contracted Resources** means a specialist external contractor required to assist in the remediation of an incident, including:

- A. mobile crane;
- B. prescribed work removalist;
- C. decontamination specialist; or
- D. traffic management contractor,

(or any of them together as the context requires).

(iv) **Incident Response Services** means the services set out in Schedule 3 .

(v) **Planned Events** means any event planned by or with the consent of VicRoads in the Service Area including planned road works, planned road and lane closures, planned or advertised civil disobedience and public events.

(vi) **Response Time** means the amount of time which could reasonably be expected to have been taken by a reasonable road incident response service provider having regard to:

- A. the impact of the Works on the performance of the Incident Response Services; and

- B. the Agreed Resource Allocation.
- (vii) **Service Area** means the live trafficable lanes and, to the extent not occupied, fenced or otherwise controlled by Project Co, the shoulders and emergency stopping bays, of:
- A. the M80 interchange east of Pipe Road to the West Gate Freeway mainline;
 - B. the Princes Freeway from drainage culvert west of Gordon Luck Avenue to the West Gate Freeway mainline;
 - C. the West Gate Freeway mainline until Williamstown Road (Yarraville);
 - D. the West Gate Freeway on-ramps from each of the following adjoining Roads:
 - 1) Melbourne Road (Spotswood);
 - 2) Millers Road (Brooklyn and Altona North); and
 - 3) Grieve Parade (Brooklyn and Altona North),to the West Gate Freeway mainline; and
 - E. the West Gate Freeway off-ramps until the stop line at each of the following adjoining Roads:
 - 1) Williamstown Road (Yarraville);
 - 2) Millers Road (Brooklyn and Altona North); and
 - 3) Grieve Parade (Brooklyn and Altona North),
- in each case, to the extent such lanes are within the Construction Areas and excluding, for the avoidance of doubt, any Roads, parts of the West Gate Freeway and any off-ramps or on-ramps east of Williamstown Road (Yarraville).
- (c) For the avoidance of doubt, this section 8 is not subject to the access requirements set out in sections 1 to 6 of this Part H22.

Schedule 1 – Lane Closure Schedules

Diagram H22.1

West Gate Freeway Lanes Available for Closure

West Gate Freeway - eastbound between M80 Ring Road and Williamstown Road

| | Inbound (Eastbound) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|---------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|---|---|---|---|---|---|---|---|---|---|---|---|---|---|-----------|
| | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | | | | | | | | | | | | | | | |
| | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | | | | | | | | | | | | | | | |
| Monday | 3 | 3 | 3 | 3 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Monday |
| Tuesday | 3 | 3 | 3 | 3 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Tuesday |
| Wednesday | 3 | 3 | 3 | 3 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Wednesday |
| Thursday | 3 | 3 | 3 | 3 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Thursday |
| Friday | 3 | 3 | 3 | 3 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Friday |
| Saturday | 3 | 3 | 3 | 3 | 3 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Saturday |
| Sunday | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 2 | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Sunday |

West Gate Freeway - westbound between M80 Ring Road and Williamstown Road

| | Outbound (Westbound) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|----------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|---|---|---|---|---|---|---|---|---|---|---|---|---|--------|-----------|
| | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | | | | | | | | | | | | | | | |
| | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | 0:30 | | | | | | | | | | | | | | | |
| Monday | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Monday | |
| Tuesday | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Tuesday |
| Wednesday | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Wednesday |
| Thursday | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Thursday |
| Friday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Friday |
| Saturday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Saturday |
| Sunday | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Sunday | |

Legend

| | |
|-------------|---|
| Zero Lanes | 0 |
| One Lanes | 1 |
| Two Lanes | 2 |
| Three Lanes | 3 |
| Four Lanes | 4 |

Footscray Road Lanes Available for Closure

Footscray Road eastbound - 2 lane section near Shepherd Bridge

| | Inbound (Eastbound) | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|---------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|---|-----------|
| | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | | |
| Monday | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Monday |
| Tuesday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Tuesday |
| Wednesday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Wednesday |
| Thursday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Thursday |
| Friday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Friday |
| Saturday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Saturday |
| Sunday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Sunday |

Footscray Road westbound - 2 lane section near Shepherd Bridge

| | Outbound (Westbound) | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|----------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|---|-----------|
| | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | | |
| Monday | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Monday |
| Tuesday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Tuesday |
| Wednesday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Wednesday |
| Thursday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Thursday |
| Friday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Friday |
| Saturday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Saturday |
| Sunday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Sunday |

Legend

| | |
|-------------|---|
| Zero Lanes | 0 |
| One Lanes | 1 |
| Two Lanes | 2 |
| Three Lanes | 3 |
| Four Lanes | 4 |

Diagram H22.6

Footscray Road Lanes Available for Closure

Footscray Road eastbound - 4 lane sections between Maribyrnong River and Moonee Ponds Creek

| | Inbound (Eastbound) | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|---------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|---|-----------|
| | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | | |
| Monday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Monday |
| Tuesday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Tuesday |
| Wednesday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Wednesday |
| Thursday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Thursday |
| Friday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Friday |
| Saturday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Saturday |
| Sunday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Sunday |

Footscray Road westbound - 4 lane sections between Maribyrnong River and Moonee Ponds Creek

| | Outbound (Westbound) | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|----------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|---|-----------|
| | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | | |
| Monday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Monday |
| Tuesday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Tuesday |
| Wednesday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Wednesday |
| Thursday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Thursday |
| Friday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Friday |
| Saturday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Saturday |
| Sunday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Sunday |

Legend

| | |
|-------------|---|
| Zero Lanes | 0 |
| One Lanes | 1 |
| Two Lanes | 2 |
| Three Lanes | 3 |
| Four Lanes | 4 |

Diagram H22.7

Footscray Road Lanes Available for Closure

Footscray Road eastbound - 3 lane sections between Maribyrnong River and Moonee Ponds Creek

| | Inbound (Eastbound) | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|---------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|---|-----------|
| | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | | |
| Monday | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | Monday |
| Tuesday | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | Tuesday |
| Wednesday | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | Wednesday |
| Thursday | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | Thursday |
| Friday | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | Friday |
| Saturday | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | Saturday |
| Sunday | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | Sunday |

Footscray Road westbound - 3 lane sections between Maribyrnong River and Moonee Ponds Creek

| | Outbound (Westbound) | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|----------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|---|-----------|
| | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | | |
| Monday | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | Monday |
| Tuesday | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | Tuesday |
| Wednesday | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | Wednesday |
| Thursday | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | Thursday |
| Friday | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | Friday |
| Saturday | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | Saturday |
| Sunday | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | Sunday |

Legend

| | |
|-------------|---|
| Zero Lanes | 0 |
| One Lane | 1 |
| Two Lanes | 2 |
| Three Lanes | 3 |
| Four Lanes | 4 |

Diagram H22.8

Footscray Road Lanes Available for Closure

Footscray Road eastbound - 4 lane section between Moonee Ponds Creek and Little Docklands Drive

| | Inbound (Eastbound) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|---------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|---|---|---|---|---|---|---|---|---|---|---|---|-----------|
| | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | | | | | | | | | | | | | |
| Monday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Monday |
| Tuesday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Tuesday |
| Wednesday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Wednesday |
| Thursday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Thursday |
| Friday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Friday |
| Saturday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Saturday |
| Sunday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Sunday |

Footscray Road westbound - 4 lane section between Moonee Ponds Creek and Little Docklands Drive

| | Outbound (Westbound) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|----------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|--------|----------|-----------|---|--------|
| | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | | | | | | | | | | | | | | | | | | | | | | | | | |
| Monday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | Monday | | | | |
| Tuesday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | Tuesday | | |
| Wednesday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | Wednesday | | |
| Thursday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | Thursday | | |
| Friday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | Friday | | | | |
| Saturday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | Saturday | | | |
| Sunday | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | Sunday |

Legend

| | |
|-------------|---|
| Zero Lanes | 0 |
| One Lane | 1 |
| Two Lanes | 2 |
| Three Lanes | 3 |
| Four Lanes | 4 |

Diagram H22.9

Wurundejri Way Lanes Available for Closure

Wurundejri Way southbound between Dudley Street and Flinders Street

| | Inbound (Southbound) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|----------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---|---------|----------|----------|---|---|---|-----------|----------|
| | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | | 9:00 PM | 10:00 PM | 11:00 PM | | | | | |
| Monday | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | Monday |
| Tuesday | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | Tuesday |
| Wednesday | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | Wednesday | |
| Thursday | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | Thursday | |
| Friday | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Friday |
| Saturday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Saturday |
| Sunday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Sunday |

Wurundejri Way northbound between Dudley Street and Flinders Street

| | Outbound (Northbound) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|-----------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---|---------|----------|----------|---|---|-----------|---------|----------|
| | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | | 9:00 PM | 10:00 PM | 11:00 PM | | | | | |
| Monday | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | Monday |
| Tuesday | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | Tuesday | |
| Wednesday | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | Wednesday | | |
| Thursday | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | Thursday | | |
| Friday | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Friday | |
| Saturday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Saturday |
| Sunday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Sunday |

- Legend**
- Zero Lanes 0
 - One Lane 1
 - Two Lanes 2
 - Three Lanes 3
 - Four Lanes 4

Diagram H22.10

Dudley Street / Wurundejri Way Lanes Available for Closure

Wurundjeri Way / Dudley Street eastbound between Footscray Road and Adderley Street

| | Inbound (Southbound) | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|----------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|---|-----------|
| | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | | |
| Monday | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Monday |
| Tuesday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Tuesday |
| Wednesday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Wednesday |
| Thursday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Thursday |
| Friday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Friday |
| Saturday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Saturday |
| Sunday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Sunday |

Wurundjeri Way / Dudley Street westbound between Footscray Road and Adderley Street

| | Outbound (Northbound) | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|-----------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|---|-----------|
| | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | | |
| Monday | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Monday |
| Tuesday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Tuesday |
| Wednesday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Wednesday |
| Thursday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Thursday |
| Friday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Friday |
| Saturday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Saturday |
| Sunday | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | Sunday |

Legend

| | |
|-------------|---|
| Zero Lanes | 0 |
| One Lanes | 1 |
| Two Lanes | 2 |
| Three Lanes | 3 |
| Four Lanes | 4 |

Schedule 2 – Major Events

- (a) CityLink / West Gate Freeway – Run for the Kids;
- (b) Moonee Valley Racecourse – Cox Plate;
- (c) Flemington Racecourse – Melbourne Cup / Spring Racing Carnival;
- (d) MCG and Etihad Stadium – AFL Finals;
- (e) Melbourne Showgrounds – The Royal Melbourne Show;
- (f) MCG – any events with an expected crowd in excess of 50,000 people;
- (g) Etihad Stadium - any events with an expected crowd in excess of 30,000 people;
- (h) MCG and Etihad Stadium – International Cricket matches;
- (i) Albert Park – Melbourne Grand Prix;
- (j) Melbourne Events and Convention Centre - any major events; and
- (k) Melbourne Park – Australian Open tennis.

Project Co must also be cognisant of any other major events in Melbourne including any high crowd drawing events at:

- (a) the Yarra Park Sports Precinct;
- (b) Albert Park; and
- (c) the Docklands Precinct,

when preparing CTMPs and WTMPs in relation to Key State Roads.

Schedule 3 – Incident Response Services Specification

1.1 Surveillance

Project Co must undertake routine surveillance and traffic control activities including:

- (a) debris and foreign object inspections in respect of the Service Area consistent with existing CityLink practice; and
- (b) logging and reporting of all incidents (other than Planned Events) within the Service Area.

1.2 Response phase

- (a) Project Co must provide services to make safe and clear incidents involving:
 - (i) minor accidents;
 - (ii) breakdowns (mechanical failure, flat tyre, out of fuel);
 - (iii) minor spills;
 - (iv) debris in a hazardous location (including any running lane within the Service Area);
 - (v) prohibited users; and
 - (vi) stray animals (excluding major incidents involving live stock).
- (b) In performing the above services Project Co must provide short term traffic management services as required.
- (c) Project Co may (subject to complying with the Law) elect to have a vehicle towed to a safe location rather than work in a hazardous location.

1.3 Response times

Project Co must perform the Incident Response Services:

- (a) regularly and diligently and in a timely manner in accordance with this Agreement; and
- (b) in accordance with the Response Time.

Part H23 - Port of Melbourne 'usual requirements'

1. Application

- (a) For the purposes of this Part H23, the term "Port Licensed Area" has the meaning given to the term 'Licensed Area' in the WGT Road Licence.
- (b) The requirements of this Part H23 apply only to that part of the Works and the D&C Activities within or applicable to the Port Licensed Area.
- (c) This Part H23 does not limit the requirements of any other State Project Document.

2. Design requirements

Project Co must ensure that:

- (a) all pavements must be designed for vehicles with a gross vehicle mass of 120 tonnes and a traffic volume of 10,000 vehicles per day for design year 2031 with 70% HCV;
- (b) a separate single right turn lane with adequate storage for not less than two B-Triple vehicles is provided to the MacKenzie Road entry ramp; and
- (c) left turn lanes with adequate storage capacity for not less than three B-Triple vehicles are provided to the MacKenzie Road entry ramp.

3. Design reviews

- (a) Project Co must consult with the Port Manager during the design of the Works.
- (b) The Certified Design Documentation for the Works must include the design verification records required under section 2.6(c) of Part F5.

4. Construction standards

- (a) All construction must be carried out to meet the requirements of the VicRoads Standard Specifications for Roadworks and Bridgeworks – Category A testing applies.
- (b) Examination and testing must be in accordance with VicRoads standards.

5. As-Constructed Documents

Prior to Handback, Project Co must provide copies of the following to the Port Manager:

- (a) As-Built Records;
- (b) copies of all IFC Design Documentation;
- (c) Maintenance Manuals;
- (d) construction quality records; and
- (e) manufacturer warranty certificates.

6. Quality Management System Requirements

The Works must be carried out in accordance with a quality system that meets the requirements of AS/NZS ISO 9001.

Part H24 – [Not disclosed]

Part H25 – Detailed Design Documentation

1. Detailed Design Documentation

- (a) Detailed Design Documentation must be submitted to the State and the IREA in accordance with this Part H25.
- (b) Detailed Design Documentation must include:
 - (i) an updated version of the preliminary design reports relating to the Detailed Design Packages that were submitted in accordance with the Western Distributor Commitment Deed which:
 - A. is consistent with the Concept Design and the Detailed Design Packages;
 - B. confirms any changes to the Detailed Design Packages since the initial preliminary design reports were submitted;
 - C. demonstrates how comments provided on the Detailed Design Packages, including all comments provided under clause 12.4 of the Western Distributor Commitment Deed, have been addressed; and
 - (ii) all necessary drawings, reports and specifications to adequately define the detailed design and demonstrate that the relevant elements of the Freeway are wholly contained within the Leased Area.
- (c) The Detailed Design Documentation must be submitted to the IREA, the State and any relevant Facility Owner and those parties must be allowed ten Business Days (or such longer period as contemplated by a Direct Interface Agreement, Rail Projects Agreement, Interstate Infrastructure Lease or the WGT Rail Licence) to provide comments.
- (d) Any comments received from the IREA, the State and any relevant Facility Owner must be considered by Project Co when developing the relevant Certified Design Documentation.

Part I - Agreed Exceptions

Table I.1

| Ref No. | Location | PSR Ref or standard | Requirement |
|---------|---|--|--|
| 1. | West Gate Freeway | Part B, Section 3.2(b) | Where existing drainage along the West Gate Freeway is: <ul style="list-style-type: none"> specified in drawings WDT-AJJ-DRG-200-000-320-CON-601 to WDT-AJJ-DRG-200-000-320-CON-614 of the Concept Design to be retained; and located at a depth of greater than 2 metres, the relevant existing drainage may be retained provided that the pipework is grouted to be fully sealed. |
| 2. | Cherry's Main Drain | Part B, Section 4.1(j) Provision of approach slab | Not applicable. |
| 3. | Francis Street / Hyde Street intersection | Part B, Section 5.2, Table B.3 | Table B.3 to apply to the south to east and east to south movements only at this location. |
| 4. | CityLink southbound to West Gate Freeway westbound entry to the West Gate Freeway | Part B, Section 5.4, Table B.4 | At this location, Table B.4 does not apply provided that sight distances are to be maximised without ramp realignment or widening. The standard to be included should be based on a 2.0s reaction time. |
| 5. | Federation Trail Shared User Path – identified locations between Millers Road and Newport Rail Line | Part B, Section 7(a) AUSTROADS Guide to Road Design, Part 6A Cl.7.7.1. See Table 3 “Horizontal Alignment” | Where the widths of the existing Federation Trail shared use path have been identified as being maintained on drawing WDT-AJJ-DRG-100-000-300-CON-119 of the Concept Design, the relevant shared use path width may be maintained to the extent that: <ol style="list-style-type: none"> the shared use path width as required under the PSR cannot be achieved without: <ol style="list-style-type: none"> amendment of the Land Availability Plans to include additional parcels of land; or additional impacts to the existing 220kV transmission line towers along the West Gate Freeway; and the existing width of the shared use path is greater than or equal to 2.8m. |
| 6. | Cable stay bridge over Footscray Road and the Veloway | Part B, Section 7(e) | As shown on the Concept Design, the shared use path cable stay bridge over Footscray Road and the Veloway pavement will be steel plate or alternative light weight material with an appropriate coating (Safe step 100 or approved equivalent) that provides a suitable ride |

| Ref No. | Location | PSR Ref or standard | Requirement |
|---------|---|---------------------------------|--|
| | | | quality and skid resistance and does not require unscheduled maintenance. |
| 7. | Existing Federation Trail between Old Geelong Road / Kororoit Creek intersection and Millers Road | Part B, Section 7 | The widths and grade line of the existing SUP may be maintained and the SUP may incorporate a flexible pavement. |
| 8. | Cut and cover tunnels | Part C, Section 13.4(c) | Following section applies in place of section 13.4(c): (d) Where there is localised enlargement of the tunnel cross section up to 220 metres long, the minimum critical air velocity requirement will only apply at the adjacent uniform tunnel sections, provided that in such cases Project Co must meet all other requirements of the PSR and approvals including demonstrating that the proposed design solution has no impacts on the safety of the tunnel users during an incident. |
| 9. | Bradmill Site, Precinct 15, Digital Harbour and 637 Melbourne Road | Part B, Section 18.3(a) | The requirements of section 18.3(a) of Part B do not apply to: (a) 355-359, 361-367 and 371-383 Francis Street, Yarraville (Bradmill Site); (b) the land between Blackshaws Road, the West Gate Freeway, Kyle Road and New Street, Altona North excluding the Brooklyn Terminal Station at 70 – 84 Kyle Road, Altona North (Precinct 15); (c) the land bounded by Wurundjeri Way to the north and east, La Trobe Street to the south and Harbour Esplanade to the west (Digital Harbour); and (d) 637 Melbourne Road, Spotswood 3015. |
| 10. | Wurundjeri Way / Dynon Link | Part H1, Section 1.3 Table H1.1 | Width of turn lanes to be as follows: from Wurundjeri Way southbound to Bourke Street westbound turning (2 lanes) lanes to be 3.0 m subject to the turning lanes designed to cater for one B-Double (26m) and one car turning concurrently from the lanes; and from Wurundjeri Way northbound to Bourke Street westbound match existing turning lane width of 2.8 m. |
| 11. | At identified locations | Part H16, Section 1(a)(ii)B | Where constrained, retaining walls at the toe/top of the batter are to be on the boundary at the locations identified on drawings: WDT-AJJ-DRG-100-000-300-CON-0112 to 0119; WDT-AJJ-DRG-100-000-300-CON-0123; and WDT-AJJ-DRG-100-000-300-CON-0151, of the Concept Design. |

| Ref No. | Location | PSR Ref or standard | Requirement |
|---------|---|---|---|
| 12. | <p>Bridge Strengthening Stitching between the proposed structure and existing CityLink (incl Footscray Road exit ramp) bridge where the deck consist of transverse prestress</p> <p>Widening of the existing piers for the existing Footscray Road Bridge at Appleton Dock Road</p> | <p>Reference Document, VicRoads publication, Technical Note BTN 2012/002 from October 2012</p> | <p>Bonded anchors may be used at the identified locations where it is not practical to break back the existing structure and Project Co demonstrating that there are no viable alternative to bonded anchors.</p> <p>The bonded anchors must be designed and constructed in accordance with VicRoads publication, Technical Note BTN 2012/002 from October 2012 and must be designed so as to be capable of achieving a moment connection and be checked at Serviceability Limit State (as defined in AS5100) to ensure a maximum crack width of 0.3mm at the surface of the member.</p> |
| 13. | <p>West Gate Freeway and M80</p> | <p>Reference Document, VicRoads publication: Section 204, Clause 204.07(b)</p> <p>Materials that exhibit swells of 2.5% or greater are not permitted in the zone 400mm below pavement capping</p> | <p>Agreed Exception to Reference Document Section 204, Clause 204.07(b) as follows:</p> <p>Existing material with swell >2.5% is permitted in the zone below pavement capping subject to pavement design and pavement thickness (including capping) 1m or greater in accordance with Technical Note RC500.22.</p> <p>This Agreed Exception is subject to the embankment being protected by:</p> <ul style="list-style-type: none"> (a) replacing the existing drainage system, including backfill in accordance with the PSR; (b) a minimum pavement cover of 1 m over the expansive soils; (c) placement of a capping layer (low permeability material) across the full formation width to protect the expansive subgrade; (d) embankment and carriageway widening (fill construction) will be constructed with conforming Type B materials (low Swell < 2.5%, CBR ≥ 3% as per the PSR). The new Type B materials must extend the full width of widened embankment between the interface with the existing earthworks to the outer batter slope of the embankment (excluding topsoil/cultivated zones required for landscaping). The new Type B materials must have a permeability no greater than 1×10^{-7} m/s; (e) relevant landscape design must consider appropriate plant selection to reduce the expected impact of new plant roots on moisture variation in the embankment; and (f) scarification, moisture conditioning and re-compaction of the exposed stripped surface to maintain the re-compacted layer at a moisture ratio of between 90% and |

| Ref No. | Location | PSR Ref or standard | Requirement |
|---------|---------------------------|---|--|
| | | | <p>110% up until placement of the overlying material.</p> <p>Where a proof roll in accordance with VicRoads publications Section 173 Clause 173.03 cannot be achieved for the re-compacted layer contemplated under paragraph (f) at the specified moisture ratio in paragraph (f), compliance with a proof roll in accordance with VicRoads publications Section 173 Clause 173.03(b) is not required to be achieved, provided that:</p> <p>(g) a proof roll in accordance with VicRoads publications Section 173 Clause 173.03(a) is performed and any identified unstable or overly wet material within the subgrade (including any material that displays yielding, cracking, rutting, instability or permanent deformation) is replaced with moisture conditioned Type B materials or other approved materials; and</p> <p>(h) for the avoidance of doubt, the proof roll for all subsequent layers within the pavement (including the capping layer) must achieve compliance with VicRoads publications Section 173 Clause 173.03 (b).</p> |
| 14. | West Gate Freeway and M80 | Reference Document, VicRoads publication: Section 204, Clause 204.14 Frequency of Testing, Part (a)(i) CBR and Percentage Swell | <p>Agreed Exception to Reference Document Section 204, Clause 204.14 Frequency of Testing, Part (a)(i) CBR and Percentage Swell as follows:</p> <p>The Agreed Exception is applicable to the subgrade CBR testing regime for the West Gate Freeway and M80 pavements with a CBR design of 1.5%.</p> <p>The method and frequency of pre-construction investigations, sampling and laboratory testing to confirm the required CBR must be agreed with the Independent Reviewer and Environmental Auditor, and must account for the potential variability of the existing fill materials.</p> <p>The pre-construction sampling and testing will include at a minimum:</p> <ul style="list-style-type: none"> • soil suction testing and development of representative soil suction profiles; • CBR and CBR swell tests (includes laboratory compaction); • Atterberg limits tests (LL,PL,LS); • moisture content tests; • particle size distribution tests; and • dynamic cone penetrometer tests. <p>Areas with laboratory CBR lower than 1.5% or as otherwise determined unsuitable from the pre-construction testing shall be identified and treatments developed to the satisfaction of</p> |

| Ref No. | Location | PSR Ref or standard | Requirement |
|---------|--|--|--|
| | | | <p>the Independent Reviewer and Environmental Auditor.</p> <p>Following the pre-construction investigations and testing, the acceptance criteria for the post compaction stage shall be developed and agreed with the Independent Reviewer and Environmental Auditor. These acceptance criteria shall at a minimum consider the following:</p> <ul style="list-style-type: none"> • the relationship between CBR and laboratory compaction curves ; • post compaction dynamic cone penetrometer testing requirements; and • other relevant relationships between the field/laboratory testing data and the post compaction CBR requirements. <p>In addition to any agreed acceptance criteria to confirm the design CBR of 1.5% is achieved, post compaction quality control testing must include routine compaction control (density) testing and moisture content testing, at the normal frequency required by the relevant Reference Document, as well as dynamic cone penetrometer testing.</p> |
| 15. | CityLink southbound exit to Footscray Road | Reference Document, Austroads Guide to Road Design Part 4C: Interchanges, clause 7.3 Continuous sight distance through the exit equivalent to seven seconds of travel time | The auxiliary lane is to provide exit sight distances equivalent to five seconds of travel time subject to all other sight distance requirements being met. |
| 16. | Ramp C2 - CityLink exit to West Gate Tunnel southbound | VicRoads Supplement to AUSTROADS Guide to Road Design, Part 6, Section 6.3.14.4 (b) states that "concrete barriers should not be located more than 4 metres from the edge of the trafficked lane as at larger angles of impact, the safety profile becomes less effective and severity of impact increases." | The location of the concrete barrier for Ramp C2 may be a maximum of 5 metres from the edge of the trafficked lane on the inside of the curve, provided that appropriate treatment is provided to mitigate to an acceptable level the risk of the wide shoulder being mistaken for a traffic lane. |
| 17. | Locations specified in the "Requirement" column | Section 18.3(e) of Part B | Off road reservation attenuation treatments are permitted to the properties at the following addresses: [Not disclosed]; |

| Ref No. | Location | PSR Ref or standard | Requirement |
|---------|---|--|--|
| | | | provided that the extent of noise walls as set out in the Concept Design is not reduced. |
| 18. | Ramp D2 / F2 Meter (Dynon Road westbound / Footscray Road westbound) | Table H7.2 of Part H7 and VicRoads Managed Freeways Ramp Signals Handbook | 3 lanes must be provided at the stop line of Ramps D2 and F2. |
| 19. | R6 bridge over R3 and West Gate Freeway Eastbound bridge over Williamstown Road | Section 3.1(d) of Part B | Replacement of existing pier bearings located within the joints of bridges containing halving joints is not required. Replacement of all abutment bearings are required subject to the relevant requirements of the PSR. |
| 20. | Ultimate M80 Design - ramp from Eastbound West Gate Freeway Express Lanes to Northbound M80 Collector Distributor | Reference Document, Austroads Guide to Road Design Part 4C: Interchanges, clause 7.3 Continuous sight distance through the exit equivalent to seven seconds of travel time | The auxiliary lane is to provide exit sight distances equivalent to five seconds of travel time subject to all other sight distance requirements being met. |
| 21. | Asphalt pavements where HV/lane \geq 1,000 hvpd | VicRoads RC 500.22 | Type SI asphalt with a minimum modulus of 5,000 MPa and maximum wheel rut depth of 6mm can be used within 100mm of the dense graded asphalt surface level. |
| 22. | Hyde Street ramps | Table H1.1 | The Ramp H2 lane cross sectional dimensions can begin merging to 3.0m outer shoulder, 3.5m traffic lane and 1.0m inner shoulder at chainage 5C-1060m. |
| 23. | Emergency exits at the Veloway | Section 2(b) of Part H6 | The emergency egresses from the Veloway may be stairs only, and compliance with DDA requirements are not required to these emergency egresses. |
| 24. | Expansion joints and bearings on Western Link | Section of 3.1(d)(ii)A of Part B | The expansion joints for Other Existing Bridges are not required to be replaced where they are located at: <ul style="list-style-type: none"> (a) pier H0 for Ramp F3; (b) pier G0 and G11 for the CityLink to Footscray Road exit ramp (southbound); (c) pier N50 for Western Link (northbound); and (d) pier S53 and S61 for Western Link (southbound). |

| Ref No. | Location | PSR Ref or standard | Requirement |
|---------|---|---|---|
| | | | <p>The bearings for Other Existing Bridges are not required to be replaced where they are located at:</p> <ul style="list-style-type: none"> (e) pier H0, H1 and H2 for Ramp F3; (f) pier G0, G10 and G11 for the CityLink to Footscray Road exit ramp (southbound); (g) pier N50, N51 and N52 for Western Link (northbound); and (h) pier S53, S54, S60 and S61 for Western Link (southbound), <p>provided that, based on a traffic design load of the higher of T44/L44 loading and the 62.5 tonne B-Double vehicle as defined in the relevant Reference Documents, the design loads on those bearings (as a result of the Works on those Other Existing Bridges) are not greater than the design loads on the bearings had those Works on the Other Existing Bridges not been undertaken.</p> <p>The pier numbers referenced above are as depicted on the as-constructed drawings titled "Melbourne City Link Project Western Link".</p> |
| 25. | Locations specified in the 'Requirement' column | Section 2.2(g) of Part H20B Concealment of drainage and conduits | <p>Subject to approval by the State (who must have regard to the advice of the Urban Design Review Panel), services may be placed below the bridge soffit, where it is not reasonable to conceal the services in the structure for the following services in the following locations:</p> <ul style="list-style-type: none"> (a) drainage on MacKenzie Road ramps over the Maribyrnong river; (b) drainage, power and communications on Shared Use Path ramps; (c) Veloway drainage discharge points; and (d) drainage, power and communications on plank bridges as modified or proposed in the Concept Design. |
| 26. | Ramp D1 between Chainage AA-17600 and Dynon Road and Ramp D2 between Dynon Road and Chainage BA 58060 | AUSTROADS Guide to Road Design Part 4A 3.2.2 | Safe Intersection Sight Distance (as defined in AUSTROADS Guide to Road Design Part 4A) provided at 5.0m on the side road from the Conflict Point (as defined in AUSTROADS Guide to Road Design Part 4A). |
| 27. | Wurundjeri Way Extension | AUSTROADS Guide to Road | Safe Intersection Sight Distance (as defined in AUSTROADS Guide to Road Design Part |

| Ref No. | Location | PSR Ref or standard | Requirement |
|---------|--|--|--|
| | Southbound between Chainages PC-980 and PC-1700 | Design Part 4A 3.2.2 | 4A) provided at 5.0m on the side road from the Conflict Point (as defined in AUSTRROADS Guide to Road Design Part 4A). |
| 28. | West Gate Freeway – Westbound. Main Carriageway between chainages DA-1435 and DA-2770 | Part H1, Section 1.3 Table H1.1 | Subject to maintaining 100km/h Posted Speed Limit, the minimum width of the left emergency stopping lane / shoulder on the main westbound carriageway may be no less than the following: DA-2655 to DA2770 transitioning from 3m to 1m (115m) DA-1980 to DA-2655 1m (675m) DA-1435 to DA-1980 transitioning from 1m to 3m (545m) |
| 29. | West Gate Freeway – Westbound. Main Carriageway between chainages DA-1435 and DA-2770 | Part B, Section 17 | To the extent that any Emergency Services requirement requires a shoulder wider than that set out in Agreed Exception 28, that requirement does not need to be provided. |
| 30. | West Gate Freeway – Westbound. Collector Distributor between chainages BB-49060 and BB-50430 | Part H1, Section 1.3 Table H1.1 | Minimum width of traffic lanes on the Collector Distributor must be no less than 3.35 m. Minimum width of left emergency stopping lane / shoulder and right emergency stopping lane / shoulder on the Collector Distributor must be no less than 0.6 m. |
| 31. | West Gate Freeway – Westbound -Collector Distributor between chainages BB-49880 to BB-49980 and between chainages BB-50290 to BB-50410 | Part H16, Section 1(a)(ii)B and C | Where constrained, less than three metres between the toe of fill slope or top of cut slope and the boundary of the Leased Area is permitted, provided that the distance between the toe of the fill slope or top of cut slope and the boundary of the Leased Area is maximised as much as possible within the land available as set out in the Land Availability Plans. |
| 32. | West Gate Freeway – Westbound. Collector Distributor between chainages BB-49400 and BB-50600 | Part H1, Section 1.3 Table H1.1 Note 1 | Subject to emergency stopping bays being not greater than 500m apart, the emergency stopping bays are permitted to be a minimum of 3.6 m wide. |
| 33. | West Gate Freeway | Part H5, Section 1(a) | During the PM peak periods, the requirement to meet the Level of Service for the West |

| Ref No. | Location | PSR Ref or standard | Requirement |
|---------|---|---------------------------|--|
| | Westbound and West Gate Tunnel–Westbound and adjacent intersections to the West Gate Freeway | | Gate Freeway–Westbound and Tunnel–Westbound and adjacent intersections to the West Gate Freeway will be satisfied based on an analysis which incorporates the M80 Interchange Ultimate configuration as set out in Attachment B. |
| 34. | West Gate Freeway – Westbound. Carriageway of the West Gate Freeway east of Williamstown Road | Part H5, Section 1(a) | The operating Level of Service to be achieved must be the highest which is able to be achieved within the lane configuration as set out in the Concept Design. |
| 35. | Dynon Road and Dryburgh Street intersection, western approach | Part H5, Section 1(b)(ii) | Subject to complying with Section 1(b)(i) of Part H5 at the intersection of Dynon Road and Dryburgh Street, the queue length capacity of the left turn onto Dryburgh Street from the western approach may exceed the requirement of Section 1(b)(ii) of Part H5 provided that the queue lengths are minimised as far as reasonably possible based on the layout of this intersection as set out in the Concept Design. |
| 36. | Dynon Road and Dryburgh Street intersection, southern approach | Part H5, Section 1(b)(ii) | Subject to complying with Section 1(b)(i) of Part H5 at the intersection of Dynon Road and Dryburgh Street, the queue length capacity of the left turn onto Dynon Road from the southern approach may exceed the requirement of Section 1(b)(ii) of Part H5 provided that the queue lengths are minimised as far as reasonably possible based on the layout of this intersection as set out in the Concept Design. |
| 37. | CityLink southbound between Racecourse Road Entry Ramp and Footscray Road Exit Ramp | Part H5, Section 1(a) | As a minimum an operating Level of Service E must be achieved on the southbound CityLink section between Racecourse Road and Footscray Road. |
| 38. | Footscray Road, Appleton Dock Road and Ramp P3 intersection | Part H5, Section 1(b)(ii) | Subject to complying with Section 1(b)(i) of Part H5 at the intersection of Footscray Road and Appleton Dock Road, the queue length capacity of the left turn onto Footscray Road from the southern approach may exceed the requirement of Section 1(b)(ii) of Part H5 provided that the queue lengths are minimised as far as reasonably possible based on the layout of this intersection as set out in the Concept Design. |
| 39. | Wurundjeri Way and Dudley Street intersection | Part H5, Section 1(b)(i) | During the PM peak period, the highest possible Level of Service at the intersection of Wurundjeri Way and Dudley Street is to be achieved for the following intersection movements: <ul style="list-style-type: none"> • left turn onto Dudley Street from the southern approach of Wurundjeri Way; • westbound through lane of Dudley Street; and • right turn onto Wurundjeri Way from the western approach of Dudley Street, based on the layout of this intersection as set out in the Concept Design. |

| Ref No. | Location | PSR Ref or standard | Requirement |
|---------|---|---|---|
| 40. | Wurundjeri Way and Dudley Street intersection | Part H5, Section 1(b)(ii) | <ul style="list-style-type: none"> During the AM peak period, at the intersection of Wurundjeri Way and Dudley Street the queue length capacity of the right turn onto Wurundjeri Way for the western approach on Dudley Street may exceed the requirement of Section 1(b)(ii) of Part H5 provided that the queue lengths are minimised as reasonably possible based on the layout of this intersection as set out in the Concept Design. |
| 41. | Footscray Road and Melbourne Market Access 1 intersection | Part H5, Section 1(b)(ii) | Subject to complying with Section 1(b)(i) of Part H5 at the intersection of Footscray Road and Melbourne Market Access 1, the queue length capacity of the right turn into the Melbourne Market from the eastern approach on Footscray Road may exceed the requirement of Section 1(b)(ii) of Part H5 provided that the queue lengths are minimised as far as reasonably possible based on the layout of this intersection as set out in the Concept Design. |
| 42. | Millers Road Exit Ramp Westbound, Lane 2 diverge. | AUSTROADS Part 4C, Section 7.3 Exit Ramp Nose, Figure 7.1 (b) | Sight distance past the physical exit nose must be maximised to the extent possible and must not be less than 40m. |
| 43. | West Gate Freeway - Westbound between: Main Carriageway DA-1435 and DA-2770. Collector Distributor BB-49060 and BB-50430. | VicRoads Standard, Section 701 | Concrete encased slotted drains may be used along the sections of Main Carriageway where the left emergency stopping lane / shoulder width is less than 3.0 m and on the sections of the Collector Distributor where the shoulder width is less than 1.0 m. |
| 44. | West Gate Freeway - Westbound between: Main Carriageway BB-50200 and BB-50500 | VicRoads Standard, Section 733 | Subject to meeting the requirements in AS3000, cover to ground conduits do not need to meet the requirements in VicRoads Standard section 733. |
| 45. | Excepted Locations | Section 10(a)(ii)A of Part B | <p>Settlement at any point in earthworks and pavement for embankment areas (up to a maximum height of 800 mm on the design gradeline) east of the Maribyrnong River in the locations listed below (Excepted Locations) must not exceed 100mm over the 10 years following the Date of West Gate Tunnel Completion:</p> <p>(a) Ramp D1/D2 (Westbound - Chainage 57725 to 57766. Eastbound – Chainage 17381 to 17418); and</p> <p>(b) Ramp F1/F2 (Chainage 565 to 660),</p> <p>provided that:</p> |

| Ref No. | Location | PSR Ref or standard | Requirement |
|---------|---|---|--|
| | | | <p>(c) the maximum grade change within the Excepted Locations must not exceed 0.4% measured over a distance of 5 metres or less; and</p> <p>(d) relevant Design Documentation has been prepared to adequately demonstrate to the satisfaction of the Independent Reviewer and Environmental Auditor, that settlement up to the applicable settlement limit will not compromise the integrity or performance of any relevant drainage system.</p> |
| 46. | Wurundjeri Way Southbound between Bourke Street and Flinders Street | Reference Document, Austroads Guide to Road Design Part 3: 2017 - 7.5.1 Compound Curves | To the extent that geometry constraints arise from the VicRoads approved design or constructed portions of the Melbourne Quarter Development, compound curves may be adopted only to the extent required to generally match existing road geometry. |
| 47. | Wurundjeri Way Southbound between Bourke Street and Flinders Street | Reference Document, Austroads Guide to Road Design Part 3: 2017 - table 7.13 Curve widening per lane. | To the extent that geometry constraints arise from the VicRoads approved design or constructed portions of the Melbourne Quarter Development, as a minimum, lane widening on curves to be provided to match existing lane widths. |
| 48. | Wurundjeri Way Southbound between Bourke Street and Flinders Street | PSR Part H5 - 1. Performance Criteria | Within existing physical constraints and to the extent that geometry constraints arise from the VicRoads approved design or constructed portions of the Melbourne Quarter Development, the length of the Wurundjeri Way south bound left turn lane to Flinders Street east bound to be maximised as far as practicable and to be no less than 95 metres. |
| 49. | Wurundjeri Way Southbound between Bourke Street and Flinders Street | Reference Document, Austroads Guide to Road Design Part 3: 2017 - 5.3 | To the extent that geometry constraints arise from the VicRoads approved design or constructed portions of the Melbourne Quarter Development, stopping sight distance (SSD) may be based on: <ul style="list-style-type: none"> - 60 km/h for cars - 50 km/h for trucks (with no increase in SSD for curves) |

| Ref No. | Location | PSR Ref or standard | Requirement |
|---------|---|---|--|
| 50. | Wurundjeri Way Southbound, proposed egress from Melbourne Quarter Development | Reference Document, Austroads Guide to Road Design Part 4A: 2017 - 3.2.2. | To the extent that geometry constraints arise from the VicRoads approved design or constructed portions of the Melbourne Quarter Development, with respect to safe intersection sight distance (SISD) , the design may adopt minimum 5.0m setback for the proposed exit from Melbourne Quarter onto Wurundjeri Way southbound. |

Part J - Land

1. Land Availability Plans

[Not disclosed]

2. Proposed Leased Area Plans

[not disclosed]

3. Temporary Occupation Schedule

Table J3.1 - Property Schedule Land Availability- Access dates and duration of occupation for
Parcels of land

[Not disclosed]

Part K - Project Co Documents

[Not disclosed]

Attachment A - VicRoads Non-published reference documents

Road and Bridge Works

VicRoads non published Reference Documents

1. ROAD GEOMETRY

1.1 Provision for Maintenance

The design and construction of the Works must:

- (a) Not diminish access to existing assets;
- (b) Provide suitable access to allow for efficient and safe maintenance of project assets and existing assets.

Maintenance access regimes must be agreed with the relevant Facility Owner.

1.2 Geometric Design

The Works must:

- (a) Be deemed to be located in an urban environment;
- (b) Be designed and constructed to be fully contained within the nominated Lease Area;
- (c) Not include compound or broken back curves, unless otherwise agreed.
- (d) Vertical clearances under road furniture such as signs and lights a minimum of 100 mm greater than the bridge clearances applicable for the route.

2. FORMATION

2.1 Batters at Bridge Structures

Where bridges incorporate spill through batters, the batter slope below the abutment must be no steeper than 1.5 (horizontal) to 1.0 (vertical).

3. DRAINAGE

3.1 Subsurface Drainage Pipes

All subsurface drainage pipes must be Category 1 with a perforation size of a maximum width of 1.5 mm and a minimum opening area of 150 mm per m².

3.2 Subsurface Drains

All subsurface drainage beneath trafficable areas must have a no fines concrete backfill filter medium.

3.3 Stormwater Pipes

All cross drainage and longitudinal stormwater drainage pipes located within any fill must be rubber ring jointed.

3.4 Drainage Pipes under Pavement

All road cross drainage pipes and culverts must be designed such that the top of the drain is at least 200 mm below the underside of pavement, except where capping or selected material are required beneath the pavement. The top of drain must be at least 200 mm below the underside of capping or selected material. The diameter of pipes placed under pavements must be not less than 375 mm and the height of box culverts must be not less than 300 mm.

3.5 Free-draining Drainage Systems

All longitudinal, cross drainage and subsurface drainage systems must be free draining to the extent practicable. The incorporation of drainage systems that rely on pumping or siphoning must be minimised.

3.6 Drainage Pit Backfill Material

Drainage pits must be backfilled Type A material and, where applicable, pavement material above subgrade level.

3.7 Subsurface Drainage

Where subsurface drains are proposed to be installed in expansive materials (i.e. materials with a Plasticity Index greater than 25 and/or swell greater than or equal to 2.5%), the following requirements apply:

- (a) subsurface drainage pipes must not be allowed to come into contact with such materials; and
- (b) not less than 100 mm of capping material must be provided below the floor of the subsurface drainage trench. The capping material shall be compacted and graded to design level.

Where existing subsurface drains are intercepted, an adequate outlet must be provided for the drain. Existing subsurface drains that become redundant must be removed to ensure that water is not trapped.

4. PAVEMENTS AND SURFACING

4.1 Concrete Paving of Traffic Islands, Medians, and Incidental Areas

Traffic islands and medians must be paved with concrete for a length of not less than 5 metres from each traffic island nose or median nose. Any section of traffic island or median less than 1.0 metre wide between the back of kerbs, or any incidental area between a footpath and the back of kerb less than 1.0 metre wide, must also be paved with concrete.

Concrete paving within traffic islands, medians and incidental areas must consist of 25 MPa concrete not less than 100 mm thick placed on 75 mm layer of 20 mm Class 4 crushed rock bedding, except for areas within 2 metres of the nose of any traffic island or median, which must instead consist of 25 MPa concrete not less than 150 mm thick placed on 75 mm layer of 20 mm Class 4 crushed rock bedding.

4.2 Concrete Paving adjacent to Traffic Barriers

The following areas adjacent to traffic barriers shall be paved with 100 mm thick layer of 25 MPa concrete placed on a 75 mm thick layer of 20 mm Class 4 crushed rock bedding:

- (a) the full width between any overlapping median barriers where the width between the traffic barriers is less than or equal to 2.5 metres;
- (b) the full width between any traffic barrier and adjacent road furniture where the width between the traffic barrier and the road furniture is less than or equal to 2.5 metres. The minimum length of this concrete paving shall extend a minimum of 1 metre beyond each end of the road furniture and any length where such concrete paving is within 3 metres of other concrete paving, shall be made continuous;
- (c) the full width between any traffic barrier and the edge of the sealed pavement where the width between the traffic barrier to the edge of the sealed pavement is less than or equal to 3.0 metres.

The concrete paved area shall be shaped to conform to Austroads Guide to Road Design and VicRoads Supplements to AGRD and Road Design Notes. Where the concrete paving adjoins the sealed carriageway, the paving shall match the level of the adjacent shoulder.

5. STRUCTURES

5.1 Anti-Graffiti Coating

Anti-graffiti coating must be selected from the following list of approved products:

- Guardian
- Enviroshield 'G'
- Hydron 300
- Vand I prufe 206

5.2 Drawing Requirements

General Arrangement drawings for all structures must include a statement of the loads for which the structure has been designed using standard terminology in accordance with AS 5100. Where structural components incorporate post tensioned elements, the drawings must clearly state whether the design is based on the use of bonded or unbonded tendons.

5.3 Drainage of Voids in Bridge Superstructures

Provision must be made for drainage of voids in structures (e.g. box-girders, super T Beams, T-Roff beams, voided slabs and voids under footway slabs) to prevent pooling of water within the voids.

5.4 Box Girder Superstructures

Provision must be made for access for inspection and maintenance of the voids in box girder structures.

5.5 Pedestrian Barriers

Pedestrian barriers on bridges over roads must incorporate a 75 mm minimum height kickboard or concrete plinth to prevent accidental dislodgement of objects from the bridge. The gap between the bottom of the balustrade and the top of the kickboard or concrete plinth must not exceed 50 mm.

5.6 Provision for Utility Services

Provision must be made for street lighting and/or incident management systems in bridge structures as follows. Where the structure incorporates concrete parapet barriers, 2 No. 90 mm diameter conduits must be provided in each parapet unit. The conduits must be continuous through all units including barrier units on the approach to and departure from the bridge and terminate in a pit 1000 mm deep by 600 mm diameter at each end of the bridge. Where the barrier system extends beyond the bridge, the cable pits must be positioned so as not to hinder the performance of the barrier system. Conduits must be provided on both sides of bridge structures and all conduits shall be provided with draw wire/string. Where street lighting poles and/or incident management columns are positioned on a bridge structure, provision must be made for conduit connections including cable junction boxes between the poles/columns and the street lighting/incident management system conduits.

5.7 Base Slabs for Crown Unit Culverts and Underpasses

The use of precast concrete base slabs (or full precast box units) is not permitted for culverts, pedestrian or stock underpasses.

5.8 Reinforced Soil Structures

Reinforced soil structures must not be used for bridges over rivers, creeks or within flood prone areas. Where used, reinforced soil structures at bridge abutments must be designed so that the bridge abutments are independently supported on piles.

5.9 Retaining Walls

Major retaining walls and/or retaining walls associated with bridges must incorporate a drainage system in order to prevent water running down the face of the walls.

5.10 Major Lighting and Sign Structures

Major sign structures must be of a steel plate fabricated box section design and/or circular or rectangular hollow section. The ends of these sections must be sealed by welded capping plates matching the cross sectional dimensions of the sections. Major lighting structures must be of a steel circular section or similar, which may taper with height.

5.11 Pile Integrity Testing

The minimum frequency of Pile Integrity Testing of CFA piles must be 100%.

5.12 Date Plates

Date plates, showing the VicRoads Structure Number and the year in which the structure was completed or when Practical Completion was reached, whichever is the earlier, must be attached to all new bridges and culverts.

The Contractor must supply and affix two date plates to each bridge structure as follows:

One plate shall be fixed on the inner face of the left hand side endpost, or if there is no endpost on the bridge, to the face of the parapet, at the approach end of each bridge, or the Melbourne end of 2-way bridges. Where no endpost or parapet exists the date plate shall be fixed to the top of kerb or on the outer edge of the deck where no kerb exists, at the approach end of each bridge, or the Melbourne end of 2-way bridges. The second date plate shall be fixed on the abutment at the opposite end of each bridge, located in the centre of the abutment approximately 300 mm below the top of the crosshead.

The Contractor must supply and affix one date plate to each major culvert structure as follows:

One plate shall be fixed at the centre of the outer face of the downstream endwall of each major culvert. Where there is a separate culvert for each carriageway or road, a date plate shall be affixed to each major culvert.

5.13 Concrete Surface Coating

The Contractor must apply two coats of an approved decorative/anticarbonation coating to exposed concrete surfaces as follows:

Post-tensioned box girder bridges and similar type: superstructures, piers, abutments, wingwalls and bridge barriers

T-slab beam bridges and similar type: outer faces of outer beams, exposed areas of decks, piers, abutments and bridge barriers

Pedestrian/bicycle bridges: superstructure, piers, abutments and wingwalls

The colour of the coating must be in accordance with the landscape and architectural requirements, or if none specified, the colour of the coating must be VicRoads grey.

5.14 Anti-Graffiti Coating

Anti-graffiti coating must be applied to all exposed concrete surfaces of bridge structures and other concrete surfaces including but not limited to the full height of piers, outer sides and soffits of bridge superstructures, abutments, wing walls, all exposed faces of retaining walls and all exposed faces of bridge parapets and barriers both on and off the bridge structure.

5.15 Protective Coating of Structural Steelwork

Unless otherwise specified, all structural steelwork shall be hot-dip galvanized in accordance with AS/NZS 4680. Surface preparation for the hot-dip galvanized coating shall be in accordance with AS/NZS 4680.

If the steelwork is unable to be hot-dip galvanised, the Contractor shall propose an alternative treatment for the painted application of a zinc primer. The surface preparation for zinc primers shall be in accordance with AS 1627.4, Class 3, and surface profile height shall be in the range 0.035 to 0.065 mm. Unless otherwise specified, painted coating materials shall comply with the appropriate Australian Paint Approval Scheme (APAS) specification.

Suitable zinc primers, and their use, include:

- inorganic zinc silicate primer (as finish coat);
- organic zinc rich primer coating (prior to top-coating only);
- zinc-pigmented moisture cure urethane primer (prior to top-coating only); and
- zinc metal system (as finish coat or prior to top-coating).

Powder coating shall not be used as a permanent coating for external use.

5.16 Bridge Deck Drainage During Construction

The Contractor shall provide for drainage of the bridge decks at all times during construction so that water does not flow over the edges of the structures onto any carriageway.

6. **SIGNING AND PAVEMENT MARKING**

6.1 Provision for Signage for all Road Users

All signing and pavement markings must provide clear and unambiguous direction and delineation for all users including motorists, cyclists and pedestrians of all roads, shared paths and footpaths.

6.2 Lateral Position of Signs

Where full width gantry structures are provided, each sign must be positioned so that it is centred over the traffic lane to which it applies.

For cantilever mounted signs located on the left side of the road, the centre of the sign must be located to the right of, or directly over, the edge line except that it may be located between the edgeline and a point no more than 3 metres to the left of the edgeline provided that:

- there are no obstructions to visibility of the sign from any approach lane from 320 metres in advance of the sign; and
- there are not more than 3 lanes approaching the sign

6.3 Lighting of Major Signs

All signs on all gantry and cantilever support structures must be lit. The associated provision must include service pits (electrical and communications) adjacent to the outer (verge) footings, 1 x 100 mm communications conduit extending from the pit into the support structure, and 2 x 100 mm electrical conduits extending from the pit into the support structure. All conduits must have bend radii not smaller than 300 mm, must enter the structure through the footing, and galvanised draw wires must be provided from the pit to the top of the structure in all conduits.

6.4 Long Life Pavement Marking

Long life pavement marking must be used for all pavement markings that form part of the permanent works.

6.5 New Pavement Markings

Temporary pavement markings (i.e. required for the works in progress but not forming part of the permanent works) must not be placed on final asphalt surface.

7. **TRAFFIC BARRIERS**

7.1 Concrete Traffic Barriers

Concrete barriers must be embedded a minimum depth of 50 mm into the dense graded asphalt layer immediately beneath the wearing course layer to laterally restrain the barrier. The 50 mm embedment requirement does not include the thickness of wearing course layer.

7.2 Wire Rope Safety Barriers

A concrete maintenance strip must be provided beneath all wire rope safety barrier.

7.3 Guardfence

A concrete maintenance strip must be provided beneath all guardfence.

8. **NOISE ATTENUATION**

8.1 Noise Wall Installation Requirements

If a noise wall crosses an open drain, channel or swale, the design must satisfy the following requirements:

- (a) the acoustic properties of the finished noise wall must satisfy the requirements of VicRoads Traffic Noise Reduction Policy and the design
- (b) the design shall as far as possible avoid placing structural posts in the open drain, channel or swale
- (c) noise wall posts shall have adequate strength to resist the pressure of flowing water
- (d) the noise wall panels shall be of sufficient height to give a minimum freeboard of 300 mm above the predicted 100 year flood level
- (e) post foundations shall be designed for the appropriate site conditions
- (f) structural components shall be sufficiently durable for the degree of exposure in the open drain, channel or swale

Attachment B - VicRoads M80 Interchange Preliminary Design

[Not disclosed]

Attachment C - Additional Project Requirements

Attachment C – Additional Project Requirements

1. General

1.1 Purpose and Interpretation

The requirements of this Attachment C in relation to the Works do not apply to the Returned Works (other than the CityLink Returned Works) and any reference to the Works in this Attachment C is to be read as excluding the Returned Works (other than the CityLink Returned Works).

2. Additional Requirements

2.1 Existing Structural Assets

- (a) Project Co must ensure that the D&C Subcontractor must design and construct any widening, strengthening or upgrade to each Existing Structural Asset as detailed in Part B of the PSR and this section 2.1. In addition to the Works required to repair defects as part of the strengthening and/or modification of the Existing Structural Assets, including those identified as requiring rectification in order to meet the criteria in the relevant durability and fatigue assessments undertaken in accordance section 3.1(a)(iii) of Part B, the following repair/strengthening works must be carried out:
- (i) all bearings and expansion joints at the Millers Road overpass and the Newport Sunshine rail overpass must be replaced. In replacing the bearings permanent jacking points must be provided to enable the future replacement of the new bearings.
 - (ii) new steelwork protective coatings are to be applied to all existing steelwork on the Millers Road overpass and the Newport Sunshine rail overpass in accordance with the VicRoads Standard Specifications for Roadworks and Bridgeworks.

2.2 General Drainage Requirements

Project Co must ensure that the D&C Subcontractor cleans drains and subsurface drains of silt and debris prior to West Gate Tunnel Completion. Responsibility for cleaning extends to all new drainage infrastructure constructed as part of the D&C Activities and 100m of existing drainage downstream of new drainage connection points.

2.3 Sustainability

Project Co must ensure that:

- (a) the D&C Subcontractor develops a sustainability management plan in accordance with the requirements of section 1.1(d)(iii) of Part F1 and must address “The West Gate Tunnel Project Sustainability Policy” dated 30 October 2017 in development of the sustainability strategy for the Project.
- (b) the D&C Subcontractor achieves an Infrastructure Sustainability Council of Australia “Design” rating of ‘excellent’ for the design of the Works and an “As Built” rating score of ‘excellent’ for the construction of the Works. The rating scores must be independently verified in accordance with the IS rating process described in the “IS Rating Scheme” which is administered by the Infrastructure Sustainability Council of Australia.
- (c) the D&C Subcontractor achieves or exceeds the level of the mandatory IS credits tabulated below:

| Credit | Credit Name | Level | Credit and Category Aims |
|--|---|-------|---|
| Cli-1 | Climate change risk assessment | 2 | To assess climate change risks and requirement for climate change adaptation measures. |
| Cli-2 | Adaptation options | 2 | |
| Ene-1 | Energy and carbon monitoring and reduction | 2 | To understand the potential for minimising energy use from non-renewable sources and GHG emissions across the infrastructure lifecycle. |
| Was-1 | Waste management | 1 | To identify the potential for sustainable waste management plans and practices. |
| Was-2 | Diversion from landfill | 2 | |
| Mat-1 | Materials footprint measurement and reduction | 2 | To identify the lifecycle environmental impacts of materials throughout the infrastructure lifecycle. |
| Man-2 | Risk and opportunity management | 2 | To integrate sustainability into management systems and approach. This has been assigned a default materiality score of 2. |
| Dis-1 | Receiving Water Quality | 2 | To identify impacts on local receiving water quality across project/asset's lifecycle. |
| Dis-2 | Noise | 2 | To identify noise impacts across project/asset's lifecycle. |
| Lan-4 | Flooding | 2 | To identify risks from flooding. |
| NOTE: The default credits scores are provided. These may alter as a result of credits being scoped out or reweighted by the IS materiality assessment process. | | | |

- (d) The defined terms in this section 2.3 have the meaning given to those terms in the "IS Technical Manual" published by the Infrastructure Sustainability Council of Australia.

2.4 Road Safety

Project Co must ensure that the D&C Subcontractor must:

- (a) at all times, implement and comply with processes and procedures to ensure that in carrying out the D&C Activities, the D&C Subcontractor comply with "Safe System" principles (as described in the National Road Safety Strategy);
- (b) ensure that all heavy vehicles used in the carrying out of the D&C Activities:
- (i) has side under-run protection;

- (ii) has front, rear and side blind-spots eliminated or minimised (as far as practicably possible) through direct and indirect vision aids, sensors and audible or visual driver alerts;
- (iii) has audible means of warning road users of a left-turn manoeuvre;
- (iv) has prominent signage on the vehicle warning road users of the dangers of manoeuvring past the inside of the vehicle or getting too close to the vehicle; and
- (v) are operated by suitably qualified heavy vehicle drivers which have undertaken the requisite training (including a mix of theoretical, practical and on-the-job training) and continuous development covering the safety of vulnerable road users and on-road hazard awareness.

2.5 3D Model

- (a) Project Co must ensure that the D&C Subcontractor develops and maintains an accurate digital 3D model of the Project design which is regularly updated and accurately reflects the Project's detailed design. Alternatively, the parties acknowledge and agree that:
 - (i) the D&C Subcontractor may utilise a fully built 3D model developed by Project Co; and
 - (ii) the D&C Subcontractor is responsible for the costs associated with producing outputs from the model, including but not limited to 3D renders, 360 degree look arounds, video fly throughs & resident perspectives, in order to effectively engage with the community and respond to community requests and concerns.
- (b) 3D modelling should be used to communicate design and construction impacts and information, at the visitor information centre, community events, meetings, door knocks and online communications and promotion.
- (c) Project Co must ensure that the D&C Subcontractor provides the State with full access to the final 3D model reflecting as built conditions, or in the instance that the D&C Subcontractor elects to use Project Co's preferred supplier, all final detailed designs in a format requested by the supplier at the cost of the D&C Subcontractor upon West Gate Tunnel Completion for ongoing use.

2.6 Tunnel Assets

- (a) Where substations and equipment rooms for the Tunnel are located beneath the Tunnel carriageways they must:
 - (i) Be connected by a maintenance tunnel that allows unimpeded access, between the substations and equipment rooms. The maintenance tunnel must be the same length as the Tunnel carriageways and:
 - A. Have a minimum 3m height and 3m width.
 - B. Include an at-grade access point (accessible without the need for lane closures) at the northern end of the maintenance tunnel.
 - C. Enable an electric maintenance vehicle to enter from outside the Tunnel at the northern end and to travel full length of the maintenance tunnel.

- D. Provide man access points between the maintenance tunnel and the Tunnel carriageways above at a frequency and location(s) to the satisfaction of MFB.
- E. Include ventilation and zonal proximity sensor lighting.

2.7 Freeway Control Centre

- (a) The FCC building must be located in the vicinity of the northern portal of the Tunnel.
- (b) The FCC building must include a traffic control room and meet the requirements of the Road Operations Facilities FPS.
- (c) The FCC building is to be provided with power from the tunnel substation dual ring main.

2.8 Alternate Traffic Control Room

The operations and maintenance building (OMB) at Balston Street must be modified to accommodate the Alternate Traffic Control Room.

2.9 Requirements in the Vicinity of the Northern Tunnel Portal

The following must be provided and located in the vicinity of the northern portal of the Tunnel:

- (a) incident response and maintenance staging areas; and
- (b) security arrangements including but not limited to appropriate security lighting, fencing and CCTV coverage.

2.10 Secondary Incident Response Staging Areas

Project Co must ensure that:

- (a) the D&C Subcontractor provides at all times during the D&C Phase a means of allowing Project Co and its Associates to access the Site for the performance of incident response services in accordance with section 8 of Part H22 (such access to include access to any channelized sections of the West Gate Freeway).
- (b) from the Date of West Gate Tunnel Completion, the D&C Subcontractor provides secondary incident response staging areas as set out in section 2.10(c) for use by Project Co and its Associates at all times during the Term.
- (c) the D&C Subcontractor provides secondary incident response staging areas at the following locations:
 - (i) in the vicinity of the Millers Road diamond interchange;
 - (ii) in the vicinity of the Williamstown Road diamond interchange;
 - (iii) in the vicinity of the Cook Street diamond interchange; and
 - (iv) in the vicinity of the M80 interchange,

and the secondary incident response staging areas must provide the following:

- (v) suitable hardstand area to accommodate the loadings of incident response vehicles (and such hardstand must be fully sealed with either asphalt or concrete to accommodate the required loads);

- (vi) means of safe acceleration and deceleration without the need for traffic management when entering or leaving;
 - (vii) appropriate protection to allow vehicles to be parked in the facility and personnel to operate on foot without the use of traffic management;
 - (viii) parking and turning area for two (2) incident response vehicles including one (1) tow truck (a 3 axle 12.5m rigid truck);
 - (ix) unfettered access to both eastbound and westbound Freeway directions at all times;
 - (x) appropriate crossover, or access to and from the Freeway and the local arterial road network;
 - (xi) safe access through an 'all weather' drive-in and drive-out arrangement, without the need to reverse on the Freeway or arterial road network and without the need for additional traffic management; and
 - (xii) be located within 200m of the relevant interchange.
- (d) the D&C Subcontractor provides at the secondary incident response staging area described in section 2.10(c)(iv), an additional building facility which must:
- (i) be designed as a permanent structure for 24/7 operation, have all requisite services and be compliant to all relevant building codes; and
 - (ii) be located on the eastbound side of the M80 carriageway.
- (e) in respect of the secondary incident response staging area described in section 2.10(c)(iv):
- (i) the requirements of section 2.10(c)(ix) will be deemed to be satisfied if:
 - A. hardstand areas meeting the requirements of section 2.10(c)(v); and
 - B. parking and turning areas meeting the requirements of section 2.10(c)(viii),

are located on both the eastbound and westbound sides of the M80 carriageway and provide unfettered access to the M80 carriageway in both eastbound and westbound directions; and
 - (ii) the requirements of section 2.10(c)(x) do not apply.

2.11 D&C Program

Project Co must provide the State with a copy of each updated D&C Program as submitted by the D&C Subcontractor in accordance with section 2(b)(xxi) of Part LF2 of the PSR (D&C) within 5 Business Days of receiving the updated D&C Program.

Attachment D - Plans for MOFFs - MP05, MP06 and MP08

[not disclosed]

Lease

West Gate Tunnel

[]
State

Transurban WGT Co Pty Ltd (ACN 617 420 023)
Project Co

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Date

Parties [] (State)

Transurban WGT Co Pty Ltd (ACN 617 420 023) of [not disclosed] (**Project Co**)

Background

- A. The background to the Project is set out in the Project Agreement.
- B. As part of the development and implementation of the Project, the State has agreed to grant, and Project Co has agreed to accept, a lease of the Leased Area on the terms and conditions contained in this Lease.
- C. The State has the power to grant this Lease.

Operative provisions

1. Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Lease have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Lease, unless the context otherwise requires:

Agreed Amount has the meaning given in clause 14(a).

Commencement Date means the earlier of West Gate Tunnel Completion and the Date of West Gate Tunnel Completion, or such earlier date as agreed between the parties.

Cost has the meaning given in clause 14(e).

Crown means the Crown in right of the State of Victoria.

Dispute has the meaning given in clause 15.1(a).

Enforcement Amount has the meaning given to that term in the Enforcement Payments Schedule.

Lease means this lease and includes all Schedules, Exhibits, Attachments and Annexures to it.

Leased Area means the area delineated on the plan attached as Annexure A and being limited in height and depth where such limitation is shown on the plan.

NewCo Leased Area has the meaning given to the term 'Leased Area' in the Lease (NewCo).

Permitted Use means:

- (a) the performance of the Project Activities in accordance with this Lease and the other Project Documents;
- (b) the storage and location of any plant, equipment, machinery, facilities and vehicles necessary for the carrying out of the Project Activities or any other activities expressly contemplated by the Project Documents, the IRS Agreement or the CityLink Concession Deed;

- (c) the operation, maintenance, repair and tolling of CityLink in accordance with the CityLink Concession Deed or the IRS Agreement; and
- (d) any other purpose permitted by the Project Documents, the CityLink Concession Deed, the IRS Agreement or otherwise agreed by the State.

Price has the meaning given in clause 14(d).

Project Agreement means the document entitled "Project Agreement West Gate Tunnel" between the State and Project Co dated [# insert date].

Recipient has the meaning given in clause 14(b)(i).

Relevant Period means a period which commences on the Date of Tolling Completion and ends on the last day of the Financial Year in which the Date of Tolling Completion occurs, and each subsequent 12 month period ending on the last day of the relevant Financial Year, except in relation to the last such period which commences on the first day of the Financial Year in which the Project Agreement terminates and ends on the Expiry Date.

Relevant Proportion means, in respect of a Relevant Period, the proportion set out in Schedule 1 applicable to that Relevant Period.

Rent means, in respect of a Relevant Period, the aggregate of:

- (a) \$[not disclosed]; and
- (b) the Relevant Proportion of the amount by which the aggregate Revenue received by Project Co in the Relevant Period exceeds the Base Case Projected Revenue as at the date of Financial Close for the same Relevant Period, if any.

Rent Payment Date has the meaning given in clause 7.1(d).

Representative has the meaning given in clause 15.2.

Reserved Minerals has the meaning given in clause 3.1(a).

Revenue means:

- (a) all tolls, returns and other revenues;
- (b) the aggregate of all charges and fees; and
- (c) to the extent that Project Co is entitled to payment of an Enforcement Amount in accordance with the Enforcement Payments Schedule, the aggregate of all Enforcement Amounts,

received by Project Co in connection with the Project, excluding:

- (d) revenue directly attributable to any amount which is agreed or determined to be owing to the State in accordance with sections 3.9 and 3.10 of Part A of the Change Compensation Principles;
- (e) [not disclosed]% of the revenue which is agreed or determined to be directly attributable to a Compensable Enhancement;
- (f) compensation for the loss or deferral of any CityLink revenue in accordance with the State Project Documents to the extent that it is remitted to the CityLink Parties (including under the West Gate Tunnel – CityLink Umbrella Deed);
- (g) revenue to the extent that it is remitted to the operator of another toll road or tolling retailer in accordance with an interoperability agreement or the Network Tolling Agreement;
- (h) to the extent they are considered revenue:

- (i) any amounts received by Project Co in accordance with clause 29.5 of the Project Agreement or in accordance with the Concession Enhancement Payment Deed;
 - (ii) any amounts received by Project Co from the CityLink Parties which are directly attributable to compensation to the CityLink Parties by the State in accordance with the CityLink Concession Deed except to the extent that such compensation relates to amounts in the nature of revenue that would otherwise have been received by Project Co;
 - (iii) any amounts received by Project Co in accordance with the Additional State Contribution Schedule and any amounts received by Project Co from NewCo; and
 - (iv) any amounts received by Project Co in accordance with the Adjustment Events Schedule (except to the extent such amounts are compensation for loss of revenue);
- (i) revenue directly attributable to insurance receipts, except under business interruption or other insurance to the extent that such receipts represent payments for loss of past or anticipated revenue;
 - (j) amounts directly attributable to the GST component in respect of the revenue for the Relevant Period; and
 - (k) any other amounts agreed by the parties in writing.

Services includes electricity, gas, water, drainage, sewerage and communications services or utilities.

Supplier has the meaning given in clause 14(b).

Term means the term of this Lease commencing on the Commencement Date and ending on the Expiry Date.

1.3 Interpretation

In this Lease:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, a word indicating a gender includes every other gender;
- (c) **(Lease and Schedule references)**: a reference to:
 - (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Lease; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(Lease as amended)**: a reference to this Lease or to any other deed, agreement, document or instrument includes a reference to this Lease or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

- (f) (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) (**"includes"**): "includes" will be read as if followed by the phrase "(without limitation)";
- (j) (**"or"**): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) (**"\$"**): a reference to "\$", AUD or dollar is to Australian currency;
- (m) (**time**): a reference to time is a reference to time in Melbourne, Australia;
- (n) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) (**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;
- (p) (**"may"**): the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Lease which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Lease is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Lease is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) (**remedy or cure**): the use of the word "remedy" or "cure" or any form of such words in this Lease means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistency

If there is any conflict or inconsistency between this Lease and the Project Agreement, the provisions of the Project Agreement will prevail.

1.5 Business Day

If the day on or by which anything is to be done in accordance with this Lease is not a Business Day, that thing must be done no later than the next Business Day.

1.6 Certification

For the purposes of this Lease, a copy of a document will be regarded as duly certified by Project Co if it is certified as a true copy by a director, secretary or general manager of Project Co.

1.7 Provisions limiting or excluding liability

Any provision of this Lease which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

2. Delegation

2.1 Right to delegate

Project Co acknowledges that the State may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to exercise any of its rights under this Lease.

2.2 Notice of delegation

The State will give Project Co notice of:

- (a) **(delegate)**: any delegate so appointed, setting out the delegated rights and including a copy of the relevant instrument of appointment; and
- (b) **(revocation or change)**: any revocation or change or delegation contemplated by clause 2.3.

2.3 Revocation or amendment of delegation

Any delegation in accordance with clause 2.2 may be revoked, changed, delegated, limited or made subject to such conditions as the State determines from time to time.

2.4 No limitation of State obligations

The appointment of a delegate to perform some or all of the rights of the State under this Lease does not limit the rights or obligations of the State under this Lease.

2.5 State's rights and obligations

- (a) **(Acknowledgement)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.12 of the Project Agreement in relation to this Lease.
- (b) **(No Claim)**: Subject to clause 2.5(c), Project Co will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach)**: Clauses 2.5(a) and 2.5(b) do not limit any Liability which the State would have had to Project Co under any State Project Document as a result of a breach by the State of a term of this Lease but for these clauses.
- (d) **(No limitation)**: The appointment of the Project Proponent (or any authority appointed to replace the Project Proponent under clause 2.5(e)) does not limit the rights or obligations of the State under this Lease.

- (e) **(Replacement)**: The State, at any time by notice to Project Co, may appoint another Authority to exercise similar rights and carry out similar obligations to that of the Project Proponent with respect to the Project.

3. Reservations

3.1 Reservations in respect of minerals

- (a) **(Reserved Minerals)**: This Lease is granted subject to the reservation to the Crown in respect of the Leased Area and every part of it of all minerals within the meaning of the *Mineral Resources (Sustainable Development) Act 1990* (Vic) and petroleum within the meaning of the *Petroleum Act 1998* (Vic) **(Reserved Minerals)**.
- (b) **(Exercise of rights by the State for the Term)**: For the Term, the State will not exercise any right in respect of the Reserved Minerals.

3.2 Reservations in respect of adjoining land

Subject to clauses 3.5 and 10, Project Co acknowledges and agrees that the State has reserved the right for the State, its Associates and any other persons authorised by the State to enter upon the Leased Area to construct, maintain, operate, develop and manage all adjoining land to the Leased Area (other than the NewCo Leased Area), including for service connection of adjoining land to Utility Infrastructure located on the Leased Area.

3.3 Reservations in relation to Utility Infrastructure and other assets of the State, the State's Associates, Authorities and Government Parties

Project Co acknowledges and agrees that, subject to the Road Management Act and to clauses 3.5 and 10:

- (a) **(reservation of infrastructure)**: the State has reserved the right of Utility Infrastructure, non-road infrastructure (as defined in the Road Management Act) and any other assets of the State, its Associates, Authorities and Government Parties to remain or be constructed or installed in, on, under, over or through the Leased Area; and
- (b) **(reservation for relevant parties)**: for the purpose of exercising the rights referred to in clause 3.3(a) and for the purpose of operating, repairing or maintaining the infrastructure and assets referred to in clause 3.3(a), the State has reserved the right for the State, its Associates, Authorities and Government Parties to enter upon the Leased Area (with or without vehicles or machinery).

3.4 Reservations in respect of public access

- (a) **(Accessible to the public)**: Project Co acknowledges and agrees that, subject to clause 3.4(b), any other provisions of the State Project Documents and Project Co's rights at Law, the Leased Area must be accessible to, and available for unfettered use by, the public at all times, except for those parts of the Leased Area that are specifically identified as "operational areas" on the plan attached as Annexure A.
- (b) **(No limitation on tolls)**: Clause 3.4(a) does not limit any obligation that any member of the public has to pay a toll for use of the Freeway.

3.5 Conditions in reservations - Provisions of Project Agreement apply

- (a) **(Proximate State Work)**: Subject to clause 3.5(b) and without limiting any other provision of the Project Agreement, the parties acknowledge and agree that the provisions of clause 26.4 of the Project Agreement apply to an exercise of any of the rights referred to in clauses 3.2 to 3.3.

- (b) **(No limitation)**: Clause 3.5(a) does not apply so as to limit or detract from any powers, functions or duties granted to the State or an Authority under the:
 - (i) Road Management Act; or
 - (ii) Relevant Legislation or other equivalent legislation.

4. Lease and restrictions, functions and duties

4.1 Grant of Lease

The State grants to Project Co as tenant a lease of the Leased Area for the Term on the terms and conditions set out in this Lease.

4.2 Project Co's acknowledgment

Project Co acknowledges this Lease and Project Co's rights in respect of the Leased Area are subject to:

- (a) **(Project Agreement)**: the provisions of the Project Agreement;
- (b) **(all interests, rights, Easements and reservations)**: all interests, rights, Easements and reservations affecting the Leased Area;
- (c) **(defects)**: any defects, whether latent or patent, in the Leased Area; and
- (d) **(rights reserved under Project Agreement)**: the rights reserved by the State under the Project Agreement, including the step-in rights contained in clause 37 of the Project Agreement.

5. Negation of representations and warranties

The State makes no representations (express or implied) and gives no warranties (express or implied):

- (a) **(suitability for purposes)**: that the Leased Area or any other land is now or will remain suitable or adequate for all or any of the purposes contemplated by this Lease or in the Project Agreement; and
- (b) **(Project Agreement representations)**: as to the matters specified in clause 47.1 of the Project Agreement,

and all warranties (if any) and representations (if any) implied by Law are, to the extent permitted by Law, expressly negated.

6. Use of the Leased Area

6.1 Permitted use

Project Co must only use the Leased Area for the Permitted Use.

6.2 Compliance with Laws and Approvals

Project Co must comply with all Laws and Approvals from time to time applicable to the Leased Area or the use or occupation of the Leased Area.

6.3 Compliance with notices

Project Co must at its own cost and expense comply with all notices, orders and directions issued or given by an Authority which affect or relate to the Leased Area and the use or occupation of the Leased Area, regardless of whether the notice, order or direction is

addressed to or requires compliance by either or both of the State, Project Co or any other person.

6.4 Notices

A party which receives a notice, order or direction from an Authority which affects or relates to the Leased Area or the use or occupation of the Leased Area must promptly give a copy of that notice, order or direction to the other party.

6.5 No nuisance

- (a) **(Project Co's obligations):** Without limiting Project Co's other obligations in accordance with the State Project Documents, during the Term, Project Co must:
- (i) avoid or ensure minimal:
 - A. interference with the passage of people and vehicles;
 - B. obstruction to any property; and
 - C. disruption to operations carried out in the vicinity of the Leased Area (other than the NewCo Leased Area);
 - (ii) prevent or minimise nuisance including any nuisance caused by Pollution, noise, dust, light emission, vibration or disturbance, air pollution, odour on or adjacent to the Leased Area (other than the NewCo Leased Area); and
 - (iii) ensure the safety of people and property in accordance with Best Industry Practices.
- (b) **(Unreasonable levels of nuisance or interference):** To the extent that the levels of nuisance or interference referred to in clause 6.5(a) are not reasonable or are not in the interests of the safety of persons on the Leased Area or any other areas adjacent to the Leased Area (other than the NewCo Leased Area), Project Co must comply with any reasonable direction of the State or the Independent Reviewer and Environmental Auditor to stop or change the manner of using the Leased Area for the Permitted Use.

7. Rent and outgoings

7.1 Payment of Rent

- (a) **(Rent payable in arrears):** Project Co must pay, on each Rent Payment Date, the Rent in respect of the preceding Relevant Period to the State, or to such other party as the State may from time to time direct, without demand from the State.
- (b) **(Rent not to abate):** The payment of Rent by Project Co will not abate during the Term for any reason.
- (c) **(Notification of Rent):** Project Co must:
- (i) within 30 Business Days after the expiry of a Relevant Period, notify the State as to the amount of Rent for that Relevant Period; and
 - (ii) provide such details and evidence as the State reasonably requires as to the amount of the aggregate Revenue received by Project Co in the Relevant Period (including the reasons why Project Co claims that any amounts received by Project Co in the Relevant Period has or should be excluded from the concept of Revenue).
- (d) **(Payment of Rent):** Project Co must, in respect of a Relevant Period, pay:

- (i) any undisputed amount of Rent notified by Project Co to the State under clause 7.1(c) on or before the date which is 20 Business Days after the date on which Project Co must notify the State under clause 7.1(c);
- (ii) where the State refers all or part of the amount of Rent notified by Project Co to the State under clause 7.1(c) to dispute resolution in accordance with clauses 15 to 16, any amount determined to be payable under clauses 15 to 16 on or before the date which is 20 Business Days after the determination; and
- (iii) if the Relevant Period is the one in which the Project Agreement terminates, any undisputed amount of Rent notified by Project Co to the State under clause 7.1(c) on or before the date which is 30 Business Days after the Expiry Date,

(each a **Rent Payment Date**).

- (e) **(Non-payment of Rent):** The State acknowledges that, if the amount described in paragraph (a) of the definition of Rent is not received in full, or at all, on any Rent Payment Date, such non-payment is not in and of itself a breach in the performance or observance of Project Co's obligations under the State Project Documents.
- (f) **(Debt due and payable):** Without limiting paragraph (e), the parties acknowledge and agree that any Rent that is not received in full, or at all, on any Rent Payment Date will be a debt due and payable from Project Co to the State.

7.2 Charges for Services

- (a) **(Payment of Service charges):** In addition to the Rent, on and from the Commencement Date, subject to clause 7.2(b) Project Co must pay all charges (including service charges) for Services to or from the Leased Area, together with any costs charged or levied by the service provider in respect of the provision or maintenance of the infrastructure which provides or supplies those Services exclusively to the Leased Area.
- (b) **(Payment of Service charges under Construction Licence):** Project Co is not required to pay charges for Services under clause 7.2(a) between the Commencement Date and the Date of West Gate Tunnel Completion to the extent that Project Co has already paid for such charges in accordance with its obligations under the Construction Licence.

7.3 Separate metering

Project Co must install, or arrange for the installation of, meters at Project Co's own cost and expense for the recording or metering of any of the Services or substances provided or supplied to the Leased Area, other than for Services or substances which are also provided or supplied to the NewCo Leased Area and for which NewCo has installed, or arranged for the installation of, meters in accordance with clause 7.3 of the Lease (NewCo).

7.4 Shared Services

- (a) **(Apportionment of cost):** Where:
 - (i) the infrastructure referred to in clause 7.2 provides or supplies Services not only to part of the Leased Area, but also to other land which is owned by, or leased or licensed to, the State or any Authority (other than land the subject of the NewCo Leased Area); and
 - (ii) no separate meter can be installed for recording or metering of any of those Services under clause 7.3,

Project Co must pay or reimburse the State (as the case may be), a proportion of any costs charged or levied by the service provider in respect of the provision or maintenance of that infrastructure, in accordance with clause 7.4(b).

- (b) **(Calculation of apportionment):** The proportion of the costs referred to in clause 7.4(a), for which Project Co will be liable, will be:
 - (i) subject to clause 7.4(b)(ii), in respect of the infrastructure relating to the provision or supply of Services, calculated by reference to the number of outlets for the applicable Service within that part of the Leased Area serviced by that infrastructure, as compared to the total number of outlets for that Service which is serviced by that infrastructure; and
 - (ii) in respect of drainage, calculated by reference to the area of that part of the Leased Area which is serviced by the relevant drain, as compared to the total area of the land which is serviced by that drain.
- (c) **(Certificate of cost):** A certificate from the State:
 - (i) stating the amount Project Co must pay or reimburse the State (as the case may be) under this clause 7.4; and
 - (ii) which includes evidence of how the amount contemplated under clause 7.4(c)(i) is calculated,

is conclusive evidence of the amount owing at the date of the certificate except in the case of manifest error.

7.5 Payment by State

If Project Co defaults in the payment of any of the costs or charges referred to in clauses 7.2 or 7.4, the State may (without limiting any other rights and remedies of the State) pay the costs or charges, and any amount paid by the State will be a debt due and payable from Project Co to the State.

8. Maintenance and works

8.1 Maintenance

Project Co must maintain the Leased Area and the Relevant Infrastructure in accordance with Project Co's obligations under the Project Agreement.

8.2 Works

- (a) **(Under Project Agreement):** Project Co may undertake works on or to the Leased Area to the extent that those works form part of or are associated with the Relevant Infrastructure or the Project Activities or are otherwise required or permitted under the Project Agreement.
- (b) **(Other works):** Except as provided for in clause 8.2(a), Project Co must not undertake works on or to the Leased Area without the State's prior consent.

9. Harm minimisation

Project Co must:

- (a) **(reasonable measures):** take all reasonable measures to avoid obstructing access to, overloading or otherwise interfering with, obstructing or damaging the Utility Infrastructure or non-road infrastructure (as defined in the Road Management Act);

- (b) **(rights or obligations)**: not, otherwise than in accordance with its rights or obligations under the Project Agreement (including where specified or required under the PSR), damage or destroy anything on the Leased Area; and
- (c) **(inflammable, explosive or volatile)**: not without the State's approval, keep or use inflammable, explosive or volatile materials on the Leased Area.

10. Access

10.1 State's right of access

When and so often as the State reasonably requires during the Term, the State, its Associates or any other persons authorised by the State may enter the Leased Area (with or without vehicles and equipment), including to:

- (a) **(reasonable investigations)**: make reasonable investigations as the State, its Associates or those authorised by the State deem necessary for the purpose of ascertaining whether or not there has been any breach of any of the terms, covenants or conditions expressed or implied in this Lease or any other State Project Document;
- (b) **(repairs, alterations and additions)**: carry out any repairs, alterations, additions or other work necessary to comply with the State's obligations under this Lease, at Law or under the exercise by the State of any statutory functions;
- (c) **(rights under clauses 3.2 or 3.3)**: exercise any rights under clauses 3.2 or 3.3, and access any works undertaken under those rights once completed;
- (d) **(other powers and rights)**: exercise any other powers and rights of the State under this Lease or any other State Project Document; or
- (e) **(step-in rights)**: exercise the step-in rights contained in clause 37 of the Project Agreement.

10.2 Exercise of rights

In exercising its rights under clause 10.1, except in the case of an exercise of the rights contained in clauses 26.4 and 37 of the Project Agreement, the State must comply with clause 13.3 of the Project Agreement.

11. Quiet enjoyment

Other than as a result of the exercise by the State, any of its Associates, Government Parties, an Authority or any other person authorised by the State, of any right of the State, any of its Associates, Government Parties, the Authority or that other person which is expressly or impliedly conferred upon it (including the State's rights contained in clauses 13.3 and 37 of the Project Agreement):

- (a) by this Lease;
- (b) under any other State Project Document; or
- (c) otherwise at Law,

Project Co will and may peaceably possess and enjoy the Leased Area for the Term without any interruption or disturbance from the State or any other person or persons lawfully claiming by, from or under the State.

12. Risk

Except as otherwise expressly provided in the State Project Documents, as between the State and Project Co, Project Co accepts all risks (and the cost of such risks) in connection with the use and occupation of the Leased Area.

13. Termination

13.1 Termination of Lease

This Lease will automatically terminate on the Expiry Date but may not otherwise be terminated.

13.2 Consequences of termination

Upon termination of this Lease, the rights and obligations of the parties under this Lease will cease, except for:

- (a) **(accrued rights or obligations)**: any accrued rights or obligations under this Lease; and
- (b) **(continuing rights or obligations)**: any rights or obligations which are expressed (either in this Lease or in any other State Project Document) to continue after termination of this Lease or any other State Project Document.

13.3 Waiver

If this Lease is lawfully terminated in accordance with clause 13.1, Project Co waives any right it might otherwise have to pursue a Claim of restitution of any kind, including a Claim of unjust enrichment or quantum meruit, but this clause 13.3 does not affect Project Co's rights under clause 42 of the Project Agreement.

14. GST

- (a) **(GST exclusive amounts)**: Unless otherwise expressly stated to include GST, any amounts payable for a taxable supply that are referred to in any other provision of this Lease are exclusive of any GST (**Agreed Amount**).
- (b) **(GST payable by Supplier)**: If GST becomes payable on any taxable supply made by a party (**Supplier**) under or in connection with this Lease:
 - (i) unless the Agreed Amount is expressly stated to include GST, an additional amount will be payable by the party which is the recipient of the taxable supply (**Recipient**), equal to the amount of GST payable by the Supplier on that taxable supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (ii) the Supplier will provide a tax invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Lease or no later than the time at which the Agreed Amount for that taxable supply is to be provided in accordance with this Lease. The Recipient is not obliged to pay any amount in accordance with this clause 14(b) unless and until a tax invoice is received by the Recipient in connection with the taxable supply except where the Recipient is required to issue the tax invoice.
- (c) **(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 Lease (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under

clause 14(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:

- (i) the Supplier will issue an adjustment note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (ii) no additional amount will be payable by the Recipient unless and until an adjustment note is received by the Recipient.
- (d) **(Price net of GST):** Any reference in this Lease to price, value, sales, revenue, profit or a similar amount (**Price**), is a reference to the GST exclusive component of that Price, unless the contrary intention is expressed.
- (e) **(Cost net of GST):** Any reference in this Lease to cost, expense, liability or other similar amount (**Cost**) of a party, including in the context of an entitlement to recovery, reimbursement or compensation for any Costs of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (f) **(GST Groups):** For the purposes of this Lease, a reference to GST payable on a taxable supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.
- (g) **(Definitions):** In this clause 14 unless otherwise defined in this Lease, terms used have the meanings given to them in the GST Law.
- (h) **(Non-monetary consideration):** Where two parties in accordance with this Agreement exchange non-monetary consideration:
- (i) notwithstanding clause 14(b), the additional amount payable on any taxable supply by the Recipient to the Supplier shall be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate; and
 - (ii) the parties agree to value the non-monetary consideration on an equal and GST-inclusive basis and swap tax invoices accordingly.

15. Dispute Resolution

15.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute between the parties arising under this Lease (**Dispute**) must be resolved in accordance with this clause 15 and clause 16.
- (b) **(Procedure):** The procedure that is to be followed to resolve a Dispute is as follows:
- (i) firstly, the Dispute must be the subject of negotiation as required by clause 15.2;
 - (ii) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i) the parties may agree that the Dispute be referred to an expert for determination in accordance with clauses 15.4 to 15.8 (inclusive) or to arbitration under clause 16; and

- (iii) thirdly, if:
- A. the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i) and irrespective of whether the parties failed to meet as required by that clause or whether having so met the parties fail to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 15.2(c)(i);
 - B. the Dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment, or such later date as agreed between the parties; or
 - C. the Dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 15.6(a),
- then the Dispute must be referred to arbitration in accordance with clause 16.

15.2 Negotiation

- (a) **(Notification):** If a Dispute arises then a party may give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the State and Project Co **(Representatives)**.
- (b) **(Contents of Notice):** A notice under clause 15.2(a) must:
 - (i) state that it is a notice under this clause 15; and
 - (ii) include or be accompanied by particulars of the matters which are the subject of the Dispute.
- (c) **(Attempt to resolve Dispute):** If a Dispute is referred for resolution by negotiation under clause 15.2(a), then:
 - (i) the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 15.2(a) is received (or such later date as the parties may agree); and
 - (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.

15.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives):** a Dispute which has been referred to the Representatives for negotiation in accordance with clause 15.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i); and
- (b) **(referral to expert):** the parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 15.2(c)(i), that the Dispute be referred to an expert for determination,

then those parts of the Dispute which remain unresolved will be referred to an expert for determination under clauses 15.4 to 15.8. For the avoidance of doubt, a Dispute may only be referred to an expert for determination by agreement of the parties.

15.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts):** Within 7 Business Days after the date on which the parties agree to refer a Dispute to an expert for determination under clause 15.3, the State and Project Co must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 15.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person that appears on both lists under clause 15.4(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 15.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on both lists, the party which gave the notice under clause 15.2(a) must procure:
 - (i) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 15.4(a); or
 - (ii) if there is no governing body for the technical or professional discipline the subject of the relevant Dispute or such governing body advises that it will not nominate an expert, 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 15.4(a).
- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** Neither party will be entitled to challenge the appointment of an expert under this clause 15.4 on the basis that the expert does not satisfy the requirements of clause 15.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Lease will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011 (Vic)*.
- (g) **(Agreement):** Once an expert is appointed, the State and Project Co must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

15.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

15.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the State and Project Co unless, within 10 Business Days of receipt of the determination, a party gives notice to the other party of its dissatisfaction and intention to refer the matter to arbitration under clause 16.

- (b) **(Amendment to determination):** Upon submission by any party, the expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.

15.7 Liability of expert

- (a) **(Liability of expert):** The parties agree:
 - (i) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (ii) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is a party to the Dispute.
- (b) **(Engagement):** The State and Project Co will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

15.8 Costs

The State and Project Co must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

16. Arbitration

16.1 Reference to Arbitration

- (a) **(Dispute):** If:
 - (i) a Dispute:
 - A. which has been referred to the parties' Representatives for negotiation in accordance with clause 15.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i); and
 - B. the parties do not agree to refer the Dispute to an expert for determination; or
 - (ii) in the case of a Dispute which the parties agree to refer to expert determination under clause 15.3:
 - A. a determination is not made within 30 days of the expert's acceptance of the appointment, or such later date as agreed between the parties; or
 - B. a notice of dissatisfaction is given in accordance with clause 15.6,

then the State or Project Co may notify the other that it requires the Dispute to be referred to arbitration.

- (b) **(Referral)**: Upon receipt by the other party of a notice under clause 16.1(a), the Dispute will be referred to arbitration.

16.2 Arbitration

- (a) **(ACICA Rules)**: Arbitration in accordance with this clause 16 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 16.
- (b) **(Seat)**: The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language)**: The language of the arbitration will be English.

16.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the Dispute being referred to arbitration in accordance with clause 16.1(b), the arbitrator or arbitrators will be appointed by the Australian Centre for International Commercial Arbitration.

16.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration)**: The parties agree that:
- (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) any arbitration conducted in accordance with this clause 16 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 16.4(a)(i) and 16.4(a)(ii).
- (b) **(Evidence in writing)**: All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery)**: The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing)**: The oral hearing must be conducted as follows:
- (i) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 16.4(a) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless,

in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;

- (v) not less than 28 days prior to the date fixed for oral hearing each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination;
 - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 16.4(d)(ii);
 - (vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (viii) each party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or, where 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 witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each party may only rely upon one expert witness in connection with any recognised area of specialisation.

16.5 Proportionate liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might, in the absence of this clause 16.5, have applied to any Dispute referred to arbitration in accordance with this clause 16.

16.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (i) a Dispute between the parties to this Lease is referred to arbitration in accordance with this clause 16; and
 - (ii) there is some other Dispute also between the parties to and in accordance with this Lease (whenever occurring),

the arbitrator may, upon application being made to the arbitrator by one or both of the parties at any time before a final award is made in relation to the first-mentioned Dispute, make an order directing that the arbitration be extended so as to include the other Dispute.

- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 16.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

16.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 16.7(b), any award will be final and binding on the parties.
- (b) **(Appeal):** Each party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011 (Vic)* on a question of Law arising in connection with an arbitral award made in accordance with this clause 16.

16.8 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to carry out its obligations in accordance with this Lease.

16.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

16.10 Interlocutory relief

This clause 16 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.

17. Assignment and subletting

17.1 Restrictions on assignment

Other than in accordance with clause 49 of the Project Agreement, Project Co must not:

- (a) **(interest in Lease)**: assign, novate, transfer, mortgage, charge or otherwise deal with its interest in this Lease;
- (b) **(Leased Area)**: grant leases, subleases and licences over parts of the Leased Area; or
- (c) **(rights or obligations)**: assign, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with any of its rights or obligations under this Lease,

without the prior consent of the State.

17.2 Transfer of interest

If Project Co assigns, transfers, disposes of, parts with possession of, creates or allows any interest in, or otherwise deals with its interest in this Lease:

- (a) **(transferee to comply with and be bound by Lease)**: Project Co must, at its own cost, obtain a warranty by deed, from the transferee and any other person nominated by the State, in favour of the State, that the transferee will comply with and be bound by the provisions of this Lease in form and substance approved by the State; and
- (b) **(deed to be executed prior)**: the deed must be executed and delivered to the State before the transfer or other dealing takes effect.

17.3 Access to contractors and others

The State acknowledges that Project Co may grant access to, and use of, the Leased Area to its Associates, including the D&C Subcontractor, OpCo and each of their Subcontractors (and any of their employees, servants, agents and contractors), for the Permitted Use.

18. Notices

All communications (including approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands) in connection with this Lease:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time):

State:

Attention [#]

Address: [#]

Email: [#]

Project Co:

Attention [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid express post to the address, or emailed (in the form agreed by both parties) to the email address of the addressee in accordance with clause 18(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 18(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

19. Miscellaneous

19.1 Governing law and jurisdiction

- (a) **(Governing Law)**: This Lease is governed by, and must be construed according to, the Laws of Victoria, Australia.

- (b) (**Jurisdiction**): Without limiting clauses 15 to 16, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Lease.

19.2 Entire agreement

To the extent permitted by Law, and in relation to their subject matter, this Lease and the other State Project Documents:

- (a) (**entire understanding**): embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) (**prior agreements**): supersede any prior agreement of the parties.

19.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Lease.

19.4 Surviving provisions

- (a) (**Surviving clauses**): All provisions of this Lease which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Lease will survive the rescission, termination or expiration of this Lease, including any provision in connection with:
 - (i) the payment of Rent;
 - (ii) the State's rights to set-off and recover money;
 - (iii) confidentiality or privacy;
 - (iv) Intellectual Property Rights;
 - (v) any obligation to make any records available to the State;
 - (vi) any indemnity or financial security given in accordance with this Lease;
or
 - (vii) any right or obligation arising on termination of this Lease.
- (b) (**Interpretation**): No provision of this Lease which is expressed to survive the termination of this Lease will prevent any other provision of this Lease, as a matter of interpretation, also surviving the termination of this Lease.
- (c) (**Survival of rights and obligations**): No right or obligation of any party will merge on completion of any transaction in accordance with this Lease. All rights and obligations in accordance with this Lease survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Lease.

19.5 Waiver

- (a) (**Writing**): A waiver given by a party in accordance with this Lease is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) (**No waiver**): A failure to, a delay in or the partial exercise or enforcement of a right, power or remedy provided by Law or in accordance with this Lease by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or in accordance with this Lease.

- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Lease operates as a waiver of another breach of that term or of a breach of any other term of this Lease.

19.6 Consents, approvals and directions

- (a) **(State):** A consent or approval required in accordance with this Lease from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Lease expressly provides otherwise.
- (b) **(Project Co):** A consent or approval required under this Lease from Project Co may not be unreasonably withheld or delayed, unless this Lease expressly provides otherwise.

19.7 Amendments

- (a) **(Agreement):** Except as otherwise expressly provided in this Lease, this Lease may only be varied by a deed executed by or on behalf of each party.
- (b) **(Other State Project Documents):** Except as otherwise expressly provided in the State Project Documents, no amendment to any other State Project Document is valid or binding on a party unless made in writing and executed by the State and all other parties to the relevant State Project Document.

19.8 Expenses

Except as otherwise expressly provided in this Lease or the other State Project Documents, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Lease.

19.9 Severance

If, at any time, a provision of this Lease or any other State Project Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Lease or any other relevant State Project Document; or
- (b) that provision under the Law of any other jurisdiction.

19.10 Counterparts

This Lease may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

19.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Lease or to prejudicially affect the exercise by the State of any right, power or remedy under this Lease or otherwise, are expressly waived.

19.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Lease whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

- (b) **(Rights, obligations and liabilities)**: Without limiting clause 19.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Lease and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

19.13 No partnership or joint venture

Except as expressly provided in the State Project Documents, nothing contained or implied in this Lease or any other State Project Document will:

- (a) **(constitution or deeming)**: constitute or be deemed to constitute a party as a partner, joint venturer, agent or legal representative of any other party for any purpose; or
- (b) **(creation)**: create or be deemed to create any partnership, joint venture, agency or trust between the parties or any of them.

19.14 No agency

Except as expressly permitted or contemplated by the State Project Documents, Project Co must not, in connection with the Project or otherwise, directly or indirectly hold out or permit to be held out to any person any statement, act, agreement, matter or thing indicating that the Project is being carried on or managed or supervised by the State nor may Project Co act as or represent itself to be the servant or agent of the State.

19.15 Indemnities

- (a) **(Continuing liability)**: Each indemnity in this Lease is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Lease.
- (b) **(Expense not necessary)**: It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Lease.
- (c) **(Payable on demand)**: A party must pay on demand any amount it must pay under an indemnity in this Lease.
- (d) **(Indemnity held on trust)**: The State and Project Co acknowledge and agree that:
 - (i) each indemnity or promise referred to in this Lease in favour of any of the State's Associates is held on trust by the State for the benefit of any of the State's Associates from the date of this Lease; and
 - (ii) the consent of the State's Associates referred to in clause 19.15(d)(i) will not be required for any amendment to, or waiver of rights under this Lease.

19.16 No representation or reliance

- (a) **(No representation)**: Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Lease, except for representations or inducements expressly set out in this Lease.
- (b) **(No reliance)**: Each party acknowledges and confirms that it does not enter into this Lease 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 Lease.

19.17 Exclusion of express and implied covenants, powers and provisions

- (a) **(Transfer of Land Act 1958 (Vic) not to apply)**: The covenants and powers implied by the *Transfer of Land Act 1958* (Vic) do not apply and will not be implied

in this Lease except to the extent those covenants and powers are included in the covenants and powers contained in this Lease.

- (b) (**Property Law Act 1958 (Vic) not to apply**): The provisions of section 144 of the *Property Law Act 1958 (Vic)* do not apply and will not be implied in this Lease.

Schedule 1 – Relevant Proportion

| | Proportion of excess revenue payable to the State (%) | | | |
|--|--|------------------------|-------------------------|----------------------|
| Increase in revenue over Base Case Projected Revenue as at the date of Financial Close (%) | Relevant Period 1 – 5 | Relevant Period 6 – 10 | Relevant Period 11 – 17 | Relevant Period 18 + |
| [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |

Executed as an agreement.

[Note: State Execution block to be inserted.]

**Executed by Transurban WGT Co Pty Ltd ACN
617 420 023** in accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

West Gate Tunnel
Project Agreement
Lease

Annexure A - Leased Area

Lease (NewCo)

West Gate Tunnel

[]
State

West Gate Tunnel Leasehold Co. Pty Ltd (ACN 622 944 709)

NewCo

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Date

Parties [] (State)

West Gate Tunnel Leasehold Co. Pty Ltd (ACN 622 944 709) of [not disclosed]
(NewCo)

Background

- A. The background to the Project is set out in the Project Agreement.
- B. As part of the development and implementation of the Project, the State has agreed to grant, and NewCo has agreed to accept, a lease of the Leased Area on the terms and conditions contained in this Lease.
- C. The State has the power to grant this Lease.

Operative provisions

1. Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Lease have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Lease, unless the context otherwise requires:

Agreed Amount has the meaning given in clause 14(a).

Commencement Date means the earlier of West Gate Tunnel Completion and the Date of West Gate Tunnel Completion, or such earlier date as agreed between the parties.

Cost has the meaning given in clause 14(e).

Crown means the Crown in right of the State of Victoria.

Dispute has the meaning given in clause 15.1(a).

Lease means this lease and includes all Schedules, Exhibits, Attachments and Annexures to it.

Leased Area means the area delineated on the plan attached as Annexure A and being limited in height and depth where such limitation is shown on the plan.

Permitted Use means:

- (a) the performance of the Project Activities in accordance with this Lease and the other Project Documents;
- (b) the storage and location of any plant, equipment, machinery, facilities and vehicles necessary for the carrying out of the Project Activities or any other activities expressly contemplated by the Project Documents, the IRS Agreement or the CityLink Concession Deed;
- (c) the operation, maintenance, repair and tolling of CityLink in accordance with the CityLink Concession Deed or the IRS Agreement; and

- (d) any other purpose permitted by the Project Documents, the CityLink Concession Deed, the IRS Agreement or otherwise agreed by the State.

Price has the meaning given in clause 14(d).

Project Agreement means the document entitled "Project Agreement West Gate Tunnel" between the State and Project Co dated [# insert date].

Project Co means Transurban WGT Co Pty Ltd (ACN 617 420 023) of [not disclosed].

Project Co Lease means the lease entitled 'Lease' dated on or about the date of this Lease between the State and Project Co.

Project Co Leased Area has the meaning given to the term 'Leased Area' in the Project Co Lease.

Recipient has the meaning given in clause 14(b)(i).

Rent means \$[not disclosed].

Rent Payment Date means [#].

Representative has the meaning given in clause 15.2.

Reserved Minerals has the meaning given in clause 3.1(a).

Services includes electricity, gas, water, drainage, sewerage and communications services or utilities.

Supplier has the meaning given in clause 14(b).

Term means the term of this Lease commencing on the Commencement Date and ending on the Expiry Date.

1.3 Interpretation

In this Lease:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

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

- (c) **(Lease and Schedule references)**: a reference to:

- (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Lease; and
- (ii) a section is a reference to a section of a Schedule;

- (d) **(Lease as amended)**: a reference to this Lease or to any other deed, agreement, document or instrument includes a reference to this Lease or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

- (f) (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) (**"includes"**): "includes" will be read as if followed by the phrase "(without limitation)";
- (j) (**"or"**): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) (**"\$"**): a reference to "\$", AUD or dollar is to Australian currency;
- (m) (**time**): a reference to time is a reference to time in Melbourne, Australia;
- (n) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) (**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;
- (p) (**"may"**): the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Lease which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Lease is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Lease is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) (**remedy or cure**): the use of the word "remedy" or "cure" or any form of such words in this Lease means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistency

If there is any conflict or inconsistency between this Lease and the Project Agreement, the provisions of the Project Agreement will prevail.

1.5 Business Day

If the day on or by which anything is to be done in accordance with this Lease is not a Business Day, that thing must be done no later than the next Business Day.

1.6 Certification

For the purposes of this Lease, a copy of a document will be regarded as duly certified by NewCo if it is certified as a true copy by a director, secretary or general manager of NewCo.

1.7 Provisions limiting or excluding liability

Any provision of this Lease which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.8 Obligations suspended

- (a) **(NewCo's obligations suspended):** The obligations of NewCo under this Lease will be suspended to the extent that, and for so long as, the obligations of Project Co under the Project Agreement or the Project Co Lease are suspended in accordance with the Project Agreement.
- (b) **(NewCo not in breach):** NewCo's failure to carry out any obligations in accordance with this Lease which are suspended under clause 1.8(a) will not be a breach of this Lease during the period of suspension under clause 1.8(a).

2. Delegation

2.1 Right to delegate

NewCo acknowledges that the State may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to exercise any of its rights under this Lease.

2.2 Notice of delegation

The State will give NewCo notice of:

- (a) **(delegate):** any delegate so appointed, setting out the delegated rights and including a copy of the relevant instrument of appointment; and
- (b) **(revocation or change):** any revocation or change or delegation contemplated by clause 2.3.

2.3 Revocation or amendment of delegation

Any delegation in accordance with clause 2.2 may be revoked, changed, delegated, limited or made subject to such conditions as the State determines from time to time.

2.4 No limitation of State obligations

The appointment of a delegate to perform some or all of the rights of the State under this Lease does not limit the rights or obligations of the State under this Lease.

2.5 State's rights and obligations

- (a) **(Acknowledgement):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.12 of the Project Agreement in relation to this Lease.

- (b) **(No Claim)**: Subject to clause 2.5(c), NewCo will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach)**: Clauses 2.5(a) and 2.5(b) do not limit any Liability which the State would have had to Project Co under any State Project Document as a result of a breach by the State of a term of this Lease but for these clauses.
- (d) **(No limitation)**: The appointment of the Project Proponent (or any authority appointed to replace the Project Proponent under clause 2.5(e)) does not limit the rights or obligations of the State under this Lease.
- (e) **(Replacement)**: The State, at any time by notice to NewCo, may appoint another Authority to exercise similar rights and carry out similar obligations to that of the Project Proponent with respect to the Project.

3. Reservations

3.1 Reservations in respect of minerals

- (a) **(Reserved Minerals)**: This Lease is granted subject to the reservation to the Crown in respect of the Leased Area and every part of it of all minerals within the meaning of the *Mineral Resources (Sustainable Development) Act 1990 (Vic)* and petroleum within the meaning of the *Petroleum Act 1998 (Vic)* (**Reserved Minerals**).
- (b) **(Exercise of rights by the State for the Term)**: For the Term, the State will not exercise any right in respect of the Reserved Minerals.

3.2 Reservations in respect of adjoining land

Subject to clauses 3.5 and 10, NewCo acknowledges and agrees that the State has reserved the right for the State, its Associates and any other persons authorised by the State to enter upon the Leased Area to construct, maintain, operate, develop and manage all adjoining land to the Leased Area (other than the Project Co Leased Area), including for service connection of adjoining land to Utility Infrastructure located on the Leased Area.

3.3 Reservations in relation to Utility Infrastructure and other assets of the State, the State's Associates, Authorities and Government Parties

NewCo acknowledges and agrees that, subject to the Road Management Act and to clauses 3.5 and 10:

- (a) **(reservation of infrastructure)**: the State has reserved the right of Utility Infrastructure, non-road infrastructure (as defined in the Road Management Act) and any other assets of the State, its Associates, Authorities and Government Parties to remain or be constructed or installed in, on, under, over or through the Leased Area; and
- (b) **(reservation for relevant parties)**: for the purpose of exercising the rights referred to in clause 3.3(a) and for the purpose of operating, repairing or maintaining the infrastructure and assets referred to in clause 3.3(a), the State has reserved the right for the State, its Associates, Authorities and Government Parties to enter upon the Leased Area (with or without vehicles or machinery).

3.4 Reservations in respect of public access

- (a) **(Accessible to the public)**: NewCo acknowledges and agrees that subject to clause 3.4(b), any other provisions of the State Project Documents and NewCo's and Project Co's rights at Law, the Leased Area must be accessible to, and available for unfettered use by, the public at all times, except for those parts of the

Leased Area that are specifically identified as “operational areas” on the plan attached as Annexure A.

- (b) **(No limitation on tolls)**: Clause 3.4(a) does not limit any obligation that any member of the public has to pay a toll for use of the Freeway.

3.5 Conditions in reservations - Provisions of Project Agreement apply

- (a) **(Proximate State Work)**: Subject to clause 3.5(b) and without limiting any other provision of the Project Agreement, the parties acknowledge and agree that the provisions of clause 26.4 of the Project Agreement apply to an exercise of any of the rights referred to in clauses 3.2 to 3.3.
- (b) **(No limitation)**: Clause 3.5(a) does not apply so as to limit or detract from any powers, functions or duties granted to the State or an Authority under the:
 - (i) Road Management Act; or
 - (ii) Relevant Legislation or other equivalent legislation.

4. Lease and restrictions, functions and duties

4.1 Grant of Lease

The State grants to NewCo as tenant a lease of the Leased Area for the Term on the terms and conditions set out in this Lease.

4.2 NewCo’s acknowledgment

NewCo acknowledges this Lease and NewCo’s rights in respect of the Leased Area are subject to:

- (a) **(Project Agreement)**: the provisions of the Project Agreement;
- (b) **(all interests, rights, Easements and reservations)**: all interests, rights, Easements and reservations affecting the Leased Area;
- (c) **(defects)**: any defects, whether latent or patent, in the Leased Area; and
- (d) **(rights reserved under Project Agreement)**: the rights reserved by the State under the Project Agreement, including the step-in rights contained in clause 37 of the Project Agreement.

5. Negation of representations and warranties

The State makes no representations (express or implied) and gives no warranties (express or implied):

- (a) **(suitability for purposes)**: that the Leased Area or any other land is now or will remain suitable or adequate for all or any of the purposes contemplated by this Lease or in the Project Agreement; and
- (b) **(Project Agreement representations)**: as to the matters specified in clause 47.1 of the Project Agreement,

and all warranties (if any) and representations (if any) implied by Law are, to the extent permitted by Law, expressly negated.

6. Use of the Leased Area

6.1 Permitted use

NewCo must only use the Leased Area for the Permitted Use.

6.2 Compliance with Laws and Approvals

NewCo must comply with all Laws and Approvals from time to time applicable to the Leased Area or the use or occupation of the Leased Area.

6.3 Compliance with notices

NewCo must at its own cost and expense comply with all notices, orders and directions issued or given by an Authority which affect or relate to the Leased Area and the use or occupation of the Leased Area, regardless of whether the notice, order or direction is addressed to or requires compliance by all or any of the State, Project Co, NewCo or any other person.

6.4 Notices

A party which receives a notice, order or direction from an Authority which affects or relates to the Leased Area or the use or occupation of the Leased Area must promptly give a copy of that notice, order or direction to the other party.

6.5 No nuisance

- (a) **(NewCo's obligations):** During the Term, NewCo must, and must procure that Project Co:
- (i) avoids or ensures minimal:
 - A. interference with the passage of people and vehicles;
 - B. obstruction to any property; and
 - C. disruption to operations carried out in the vicinity of the Leased Area (other than the Project Co Leased Area);
 - (ii) prevents or minimises nuisance including any nuisance caused by Pollution, noise, dust, light emission, vibration or disturbance, air pollution, odour on or adjacent to the Leased Area (other than the Project Co Leased Area); and
 - (iii) ensures the safety of people and property in accordance with Best Industry Practices.
- (b) **(Unreasonable levels of nuisance or interference):** To the extent that the levels of nuisance or interference referred to in clause 6.5(a) are not reasonable or are not in the interests of the safety of persons on the Leased Area or any other areas adjacent to the Leased Area (other than the Project Co Leased Area), NewCo must comply, and must procure that Project Co complies, with any reasonable direction of the State or the Independent Reviewer and Environmental Auditor to stop or change the manner of using the Leased Area for the Permitted Use.

7. Rent and outgoings

7.1 Payment of Rent

- (a) **(Rent payable in arrears):** NewCo must pay, on each Rent Payment Date, the Rent to the State, or to such other party as the State may from time to time direct, without demand from the State.

- (b) **(Rent not to abate):** The payment of Rent by NewCo will not abate during the Term for any reason.
- (c) **(Non-payment of Rent):** The State acknowledges that, if the Rent is not received in full, or at all, on any Rent Payment Date, such non-payment is not in and of itself a breach in the performance or observance of NewCo's obligations under the State Project Documents.
- (d) **(Debt due and payable):** Without limiting paragraph (c), the parties acknowledge and agree that any Rent that is not received in full, or at all, on any Rent Payment Date will be a debt due and payable from NewCo to the State.

7.2 Charges for Services

- (a) **(Payment of Service charges):** In addition to the Rent, on and from the Commencement Date, subject to clause 7.2(b) NewCo must pay all charges (including service charges) for Services to or from the Leased Area, together with any costs charged or levied by the service provider in respect of the provision or maintenance of the infrastructure, which provides or supplies those Services exclusively to the Leased Area.
- (b) **(Payment of Service charges under Construction Licence):** NewCo is not required to pay charges for Services under clause 7.2(a) between the Commencement Date and the Date of West Gate Tunnel Completion to the extent that Project Co has already paid for such charges in accordance with Project Co's obligations under the Construction Licence.

7.3 Separate metering

NewCo must install, or arrange for the installation of, meters at NewCo's own cost and expense for the recording or metering of any of the Services or substances provided or supplied to the Leased Area.

7.4 Shared Services

- (a) **(Apportionment of cost):** Where:
 - (i) the infrastructure referred to in clause 7.2 provides or supplies Services not only to part of the Leased Area, but also to other land which is owned by, or leased or licensed to, the State or any Authority (other than land the subject of the Project Co Leased Area); and
 - (ii) no separate meter can be installed for recording or metering of any of those Services under clause 7.3,

NewCo must pay or reimburse the State (as the case may be), a proportion of any costs charged or levied by the service provider in respect of the provision or maintenance of that infrastructure, in accordance with clause 7.4(b).

- (b) **(Calculation of apportionment):** The proportion of the costs referred to in clause 7.4(a), for which NewCo will be liable, will be:
 - (i) subject to clause 7.4(b)(ii), in respect of the infrastructure relating to the provision or supply of Services, calculated by reference to the number of outlets for the applicable Service within that part of the Leased Area serviced by that infrastructure, as compared to the total number of outlets for that Service which is serviced by that infrastructure; and
 - (ii) in respect of drainage, calculated by reference to the area of that part of the Leased Area which is serviced by the relevant drain, as compared to the total area of the land which is serviced by that drain.
- (c) **(Certificate of cost):** A certificate from the State:

- (i) stating the amount NewCo must pay or reimburse the State (as the case may be) under this clause 7.4; and
- (ii) which includes evidence of how the amount contemplated under clause 7.4(c)(i) is calculated,

is conclusive evidence of the amount owing at the date of the certificate except in the case of manifest error.

7.5 Payment by State

If NewCo defaults in the payment of any of the costs or charges referred to in clauses 7.2 or 7.4, the State may (without limiting any other rights and remedies of the State) pay the costs or charges, and any amount paid by the State will be a debt due and payable from NewCo to the State.

8. Maintenance and works

8.1 Maintenance

NewCo must maintain or procure that Project Co maintains the Leased Area and the Relevant Infrastructure in accordance with Project Co's obligations under the Project Agreement.

8.2 Works

- (a) **(Under Project Agreement):** The parties acknowledge and agree that NewCo or Project Co may undertake works on or to the Leased Area to the extent that those works form part of or are associated with the Relevant Infrastructure or the Project Activities or are otherwise required or permitted under the Project Agreement.
- (b) **(Other works):** Except as provided for in clause 8.2(a), NewCo must not, and must procure that Project Co does not, undertake works on or to the Leased Area without the State's prior consent.

9. Harm minimisation

NewCo must, and must procure that Project Co:

- (a) **(reasonable measures):** takes all reasonable measures to avoid obstructing access to, overloading or otherwise interfering with, obstructing or damaging the Utility Infrastructure or non-road infrastructure (as defined in the Road Management Act);
- (b) **(rights or obligations):** does not, otherwise than in accordance with Project Co's rights or obligations under the Project Agreement (including where specified or required under the PSR), damage or destroy anything on the Leased Area; and
- (c) **(inflammable, explosive or volatile):** does not without the State's approval, keep or use inflammable, explosive or volatile materials on the Leased Area.

10. Access

10.1 State's right of access

When and so often as the State reasonably requires during the Term, the State, its Associates or any other persons authorised by the State may enter the Leased Area (with or without vehicles and equipment), including to:

- (a) **(reasonable investigations)**: make reasonable investigations as the State, its Associates or those authorised by the State deem necessary for the purpose of ascertaining whether or not there has been any breach of any of the terms, covenants or conditions expressed or implied in this Lease or any other State Project Document;
- (b) **(repairs, alterations and additions)**: carry out any repairs, alterations, additions or other work necessary to comply with the State's obligations under this Lease, at Law or under the exercise by the State of any statutory functions;
- (c) **(rights under clauses 3.2 or 3.3)**: exercise any rights under clauses 3.2 or 3.3, and access any works undertaken under those rights once completed;
- (d) **(other powers and rights)**: exercise any other powers and rights of the State under this Lease or any other State Project Document; or
- (e) **(step-in rights)**: exercise the step-in rights contained in clause 37 of the Project Agreement.

10.2 Exercise of rights

In exercising its rights under clause 10.1, except in the case of an exercise of the rights contained in clauses 26.4 and 37 of the Project Agreement, the State must comply with clause 13.3 of the Project Agreement.

11. Quiet enjoyment

Other than as a result of the exercise by the State, any of its Associates, Government Parties, an Authority or any other person authorised by the State, of any right of the State, any of its Associates, Government Parties, the Authority or that other person which is expressly or impliedly conferred upon it (including the State's rights contained in clauses 13.3 and 37 of the Project Agreement):

- (a) by this Lease;
- (b) under any other State Project Document; or
- (c) otherwise at Law,

NewCo will and may peaceably possess and enjoy the Leased Area for the Term without any interruption or disturbance from the State or any other person or persons lawfully claiming by, from or under the State.

12. Risk

Except as otherwise expressly provided in the State Project Documents, as between the State and NewCo, NewCo accepts all risks (and the cost of such risks) in connection with the use and occupation of the Leased Area.

13. Termination

13.1 Termination of Lease

This Lease will automatically terminate on the Expiry Date but may not otherwise be terminated.

13.2 Consequences of termination

Upon termination of this Lease, the rights and obligations of the parties under this Lease will cease, except for:

- (a) **(accrued rights or obligations)**: any accrued rights or obligations under this Lease; and
- (b) **(continuing rights or obligations)**: any rights or obligations which are expressed (either in this Lease or in any other State Project Document) to continue after termination of this Lease or any other State Project Document.

13.3 Waiver

If this Lease is lawfully terminated in accordance with clause 13.1, NewCo waives any right it might otherwise have to pursue a Claim of restitution of any kind, including a Claim of unjust enrichment or quantum meruit, but this clause 13.3 does not affect Project Co's rights under clause 42 of the Project Agreement.

14. GST

- (a) **(GST exclusive amounts)**: Unless otherwise expressly stated to include GST, any amounts payable for a taxable supply that are referred to in any other provision of this Lease are exclusive of any GST (**Agreed Amount**).
- (b) **(GST payable by Supplier)**: If GST becomes payable on any taxable supply made by a party (**Supplier**) under or in connection with this Lease:
 - (i) unless the Agreed Amount is expressly stated to include GST, an additional amount will be payable by the party which is the recipient of the taxable supply (**Recipient**), equal to the amount of GST payable by the Supplier on that taxable supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (ii) the Supplier will provide a tax invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Lease or no later than the time at which the Agreed Amount for that taxable supply is to be provided in accordance with this Lease. The Recipient is not obliged to pay any amount in accordance with this clause 14(b) unless and until a tax invoice is received by the Recipient in connection with the taxable supply except where the Recipient is required to issue the tax invoice.
- (c) **(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 Lease (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 14(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:
 - (i) the Supplier will issue an adjustment note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (ii) no additional amount will be payable by the Recipient unless and until an adjustment note is received by the Recipient.
- (d) **(Price net of GST)**: Any reference in this Lease to price, value, sales, revenue, profit or a similar amount (**Price**), is a reference to the GST exclusive component of that Price, unless the contrary intention is expressed.
- (e) **(Cost net of GST)**: Any reference in this Lease to cost, expense, liability or other similar amount (**Cost**) of a party, including in the context of an entitlement to recovery, reimbursement or compensation for any Costs of a party, is a reference to

that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.

- (f) **(GST Groups):** For the purposes of this Lease, a reference to GST payable on a taxable supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.
- (g) **(Definitions):** In this clause 14 unless otherwise defined in this Lease, terms used have the meanings given to them in the GST Law.
- (h) **(Non-monetary consideration):** Where two parties in accordance with this Agreement exchange non-monetary consideration:
 - (i) notwithstanding clause 14(b), the additional amount payable on any taxable supply by the Recipient to the Supplier shall be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate; and
 - (ii) the parties agree to value the non-monetary consideration on an equal and GST-inclusive basis and swap tax invoices accordingly.

15. Dispute Resolution

15.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute between the parties arising under this Lease (**Dispute**) must be resolved in accordance with this clause 15 and clause 16.
- (b) **(Procedure):** The procedure that is to be followed to resolve a Dispute is as follows:
 - (i) firstly, the Dispute must be the subject of negotiation as required by clause 15.2;
 - (ii) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i) the parties may agree that the Dispute be referred to an expert for determination in accordance with clauses 15.4 to 15.8 (inclusive) or to arbitration under clause 16; and
 - (iii) thirdly, if:
 - A. the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i) and irrespective of whether the parties failed to meet as required by that clause or whether having so met the parties fail to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 15.2(c)(i);
 - B. the Dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment, or such later date as agreed between the parties; or
 - C. the Dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 15.6(a),

then the Dispute must be referred to arbitration in accordance with clause 16.

15.2 Negotiation

- (a) **(Notification):** If a Dispute arises then a party may give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the State and NewCo **(Representatives)**.
- (b) **(Contents of Notice):** A notice under clause 15.2(a) must:
 - (i) state that it is a notice under this clause 15; and
 - (ii) include or be accompanied by particulars of the matters which are the subject of the Dispute.
- (c) **(Attempt to resolve Dispute):** If a Dispute is referred for resolution by negotiation under clause 15.2(a), then:
 - (i) the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 15.2(a) is received (or such later date as the parties may agree); and
 - (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.

15.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives):** a Dispute which has been referred to the Representatives for negotiation in accordance with clause 15.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i); and
- (b) **(referral to expert):** the parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 15.2(c)(i), that the Dispute be referred to an expert for determination,

then those parts of the Dispute which remain unresolved will be referred to an expert for determination under clauses 15.4 to 15.8. For the avoidance of doubt, a Dispute may only be referred to an expert for determination by agreement of the parties.

15.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts):** Within 7 Business Days after the date on which the parties agree to refer a Dispute to an expert for determination under clause 15.3, the State and NewCo must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 15.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person that appears on both lists under clause 15.4(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 15.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on both lists, the party which gave the notice under clause 15.2(a) must procure:

- (i) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 15.4(a); or
 - (ii) if there is no governing body for the technical or professional discipline the subject of the relevant Dispute or such governing body advises that it will not nominate an expert, 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 15.4(a).
- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** Neither party will be entitled to challenge the appointment of an expert under this clause 15.4 on the basis that the expert does not satisfy the requirements of clause 15.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Lease will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011 (Vic)*.
- (g) **(Agreement):** Once an expert is appointed, the State and NewCo must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

15.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

15.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the State and NewCo unless, within 10 Business Days of receipt of the determination, a party gives notice to the other party of its dissatisfaction and intention to refer the matter to arbitration under clause 16.
- (b) **(Amendment to determination):** Upon submission by any party, the expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.

15.7 Liability of expert

- (a) **(Liability of expert):** The parties agree:
 - (i) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (ii) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the

expert, in which case a Claim may be made against him or her by any person who is a party to the Dispute.

- (b) **(Engagement):** The State and NewCo will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

15.8 Costs

The State and NewCo must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

16. Arbitration

16.1 Reference to Arbitration

- (a) **(Dispute):** If:
 - (i) a Dispute:
 - A. which has been referred to the parties' Representatives for negotiation in accordance with clause 15.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i); and
 - B. the parties do not agree to refer the Dispute to an expert for determination; or
 - (ii) in the case of a Dispute which the parties agree to refer to expert determination under clause 15.3:
 - A. a determination is not made within 30 days of the expert's acceptance of the appointment, or such later date as agreed between the parties; or
 - B. a notice of dissatisfaction is given in accordance with clause 15.6,

then the State or NewCo may notify the other that it requires the Dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by the other party of a notice under clause 16.1(a), the Dispute will be referred to arbitration.

16.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 16 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 16.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

16.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the

Dispute being referred to arbitration in accordance with clause 16.1(b), the arbitrator or arbitrators will be appointed by the Australian Centre for International Commercial Arbitration.

16.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The parties agree that:
 - (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) any arbitration conducted in accordance with this clause 16 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 16.4(a)(i) and 16.4(a)(ii).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
 - (i) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 16.4(a) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for oral hearing each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination;
 - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 16.4(d)(ii);
 - (vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (viii) each party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or, where 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 witness' written evidence.

- (e) **(Experts):** Unless otherwise ordered each party may only rely upon one expert witness in connection with any recognised area of specialisation.

16.5 Proportionate liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might, in the absence of this clause 16.5, have applied to any Dispute referred to arbitration in accordance with this clause 16.

16.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
 - (i) a Dispute between the parties to this Lease is referred to arbitration in accordance with this clause 16; and
 - (ii) there is some other Dispute also between the parties to and in accordance with this Lease (whenever occurring),

the arbitrator may, upon application being made to the arbitrator by one or both of the parties at any time before a final award is made in relation to the first-mentioned Dispute, make an order directing that the arbitration be extended so as to include the other Dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 16.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

16.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 16.7(b), any award will be final and binding on the parties.
- (b) **(Appeal):** Each party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of Law arising in connection with an arbitral award made in accordance with this clause 16.

16.8 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to carry out its obligations in accordance with this Lease.

16.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

16.10 Interlocutory relief

This clause 16 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.

17. Assignment and subletting

17.1 Restrictions on assignment

- (a) **(Restrictions):** NewCo must not:
 - (i) **(interest in Lease):** assign, novate, transfer, mortgage, charge or otherwise deal with its interest in this Lease;

- (ii) **(Leased Area):** grant leases, subleases and licences over parts of the Leased Area; or
- (iii) **(rights or obligations):** assign, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with any of its rights or obligations under this Lease,

without the prior consent of the State.

- (b) **(NewCo Sub-Lease):** The State consents to NewCo granting a sub-lease to Project Co over the Leased Area, substantially in the form of the NewCo Sub-Lease.

17.2 Transfer of interest

If NewCo assigns, transfers, disposes of, parts with possession of, creates or allows any interest in, or otherwise deals with its interest in this Lease, other than in respect of the NewCo Sub-Lease:

- (a) **(transferee to comply with and be bound by Lease):** NewCo must, at its own cost, obtain a warranty by deed, from the transferee and any other person nominated by the State, in favour of the State, that the transferee will comply with and be bound by the provisions of this Lease in form and substance approved by the State; and
- (b) **(deed to be executed prior):** the deed must be executed and delivered to the State before the transfer or other dealing takes effect.

17.3 Access to contractors and others

The State acknowledges that NewCo may grant access to, and use of, the Leased Area to its Associates, including to Project Co and its Associates and to the D&C Subcontractor, OpCo and each of their Subcontractors (and any of their employees, servants, agents and contractors), for the Permitted Use.

18. Notices

All communications (including approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands) in connection with this Lease:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as set out below (or as otherwise notified by that party to each other party from time to time):

State:

Attention [#]

Address: [#]

Email: [#]

NewCo:

Attention [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid express post to the address, or emailed (in the form agreed by both parties) to the email address of the addressee in accordance with clause 18(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 18(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

19. Miscellaneous

19.1 Governing law and jurisdiction

- (a) **(Governing Law)**: This Lease is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction)**: Without limiting clauses 15 to 16, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Lease.

19.2 Entire agreement

To the extent permitted by Law, and in relation to their subject matter, this Lease and the other State Project Documents to which NewCo is a party:

- (a) **(entire understanding)**: embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersede any prior agreement of the parties.

19.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Lease.

19.4 Surviving provisions

- (a) **(Surviving clauses):** All provisions of this Lease which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Lease will survive the rescission, termination or expiration of this Lease, including any provision in connection with:
 - (i) the payment of Rent;
 - (ii) the State's rights to set-off and recover money;
 - (iii) confidentiality or privacy;
 - (iv) Intellectual Property Rights;
 - (v) any obligation to make any records available to the State;
 - (vi) any indemnity or financial security given in accordance with this Lease;
or
 - (vii) any right or obligation arising on termination of this Lease.
- (b) **(Interpretation):** No provision of this Lease which is expressed to survive the termination of this Lease will prevent any other provision of this Lease, as a matter of interpretation, also surviving the termination of this Lease.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction in accordance with this Lease. All rights and obligations in accordance with this Lease survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Lease.

19.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Lease is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right, power or remedy provided by Law or in accordance with this Lease by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or in accordance with this Lease.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Lease operates as a waiver of another breach of that term or of a breach of any other term of this Lease.

19.6 Consents, approvals and directions

- (a) **(State):** A consent or approval required in accordance with this Lease from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Lease expressly provides otherwise.
- (b) **(NewCo):** A consent or approval required under this Lease from NewCo may not be unreasonably withheld or delayed, unless this Lease expressly provides otherwise.

19.7 Amendments

- (a) **(Agreement):** Except as otherwise expressly provided in this Lease, this Lease may only be varied by a deed executed by or on behalf of each party.
- (b) **(Other State Project Documents):** Except as otherwise expressly provided in the State Project Documents, no amendment to any other State Project Document is valid or binding on a party unless made in writing and executed by the State and all other parties to the relevant State Project Document.

19.8 Expenses

Except as otherwise expressly provided in this Lease or the other State Project Documents, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Lease.

19.9 Severance

If, at any time, a provision of this Lease or any other State Project Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Lease or any other relevant State Project Document; or
- (b) that provision under the Law of any other jurisdiction.

19.10 Counterparts

This Lease may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

19.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Lease or to prejudicially affect the exercise by the State of any right, power or remedy under this Lease or otherwise, are expressly waived.

19.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Lease whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 19.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Lease and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

19.13 No partnership or joint venture

Except as expressly provided in the State Project Documents, nothing contained or implied in this Lease or any other State Project Document will:

- (a) **(constitution or deeming):** constitute or be deemed to constitute a party as a partner, joint venturer, agent or legal representative of any other party for any purpose; or

- (b) (**creation**): create or be deemed to create any partnership, joint venture, agency or trust between the parties or any of them.

19.14 No agency

Except as expressly permitted or contemplated by the State Project Documents, NewCo must not, in connection with the Project or otherwise, directly or indirectly hold out or permit to be held out to any person any statement, act, agreement, matter or thing indicating that the Project is being carried on or managed or supervised by the State nor may NewCo act as or represent itself to be the servant or agent of the State.

19.15 Indemnities

- (a) (**Continuing liability**): Each indemnity in this Lease is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Lease.
- (b) (**Expense not necessary**): It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Lease.
- (c) (**Payable on demand**): A party must pay on demand any amount it must pay under an indemnity in this Lease.
- (d) (**Indemnity held on trust**): The State and NewCo acknowledge and agree that:
 - (i) each indemnity or promise referred to in this Lease in favour of any of the State's Associates is held on trust by the State for the benefit of any of the State's Associates from the date of this Lease; and
 - (ii) the consent of the State's Associates referred to in clause 19.15(d)(i) will not be required for any amendment to, or waiver of rights under this Lease.

19.16 No representation or reliance

- (a) (**No representation**): Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Lease, except for representations or inducements expressly set out in this Lease.
- (b) (**No reliance**): Each party acknowledges and confirms that it does not enter into this Lease 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 Lease.

19.17 Exclusion of express and implied covenants, powers and provisions

- (a) (**Transfer of Land Act 1958 (Vic) not to apply**): The covenants and powers implied by the *Transfer of Land Act 1958 (Vic)* do not apply and will not be implied in this Lease except to the extent those covenants and powers are included in the covenants and powers contained in this Lease.
- (b) (**Property Law Act 1958 (Vic) not to apply**): The provisions of section 144 of the *Property Law Act 1958 (Vic)* do not apply and will not be implied in this Lease.

Executed as an agreement.

[Note: State Execution block to be inserted.]

**Executed by West Gate Tunnel Leasehold Co.
Pty Ltd ACN 622 944 709** in accordance with
section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

West Gate Tunnel
Project Agreement
Lease (NewCo)

Annexure A - Leased Area

Construction Licence

West Gate Tunnel

**Secretary to the Department of Economic Development, Jobs,
Transport and Resources, body corporate, for and on behalf of the
Crown in right of the State of Victoria**

Project Proponent

Transurban WGT Co Pty Ltd (ACN 617 420 023)

Project Co

West Gate Tunnel Leasehold Co. Pty Ltd (ACN 622 944 709)

NewCo

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Construction Licence dated

Parties Secretary to the Department of Economic Development, Jobs, Transport and Resources, body corporate, for and on behalf of the Crown in right of the State of Victoria (**Project Proponent**)

Transurban WGT Co Pty Ltd (ACN 617 420 023) of [not disclosed] (**Project Co**)

West Gate Tunnel Leasehold Co. Pty Ltd (ACN 622 944 709) of [not disclosed] (**NewCo**)

Background

- A. The background to the Project is set out in the Project Agreement.
- B. The Project Proponent has agreed to grant, and Project Co and NewCo have each agreed to accept, a licence in respect of the Licensed Construction Areas on the terms and conditions contained in this Construction Licence for the development of the Project or part of the Project in accordance with the Project Agreement.
- C. The Project Proponent has the power to grant this Construction Licence, including under section 173 of the Relevant Legislation.

Operative provisions

1. Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Construction Licence have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Construction Licence, unless the context otherwise requires:

Agreed Amount has the meaning given in clause 10(a).

Amended LCA Plan has the meaning given in clause 4.1(b)(i).

Construction Licence means this construction licence and includes all schedules, exhibits, attachments and annexures to it.

Cost has the meaning given in clause 10(e).

Dispute has the meaning given in clause 11.1(a).

LCA Plan has the meaning given in clause 4.1(a) and includes any Amended LCA Plan.

Licence Commencement Date means, in respect of a parcel of land comprising the Licensed Construction Areas, the later of:

- (a) Financial Close; and
- (b) the date on which that parcel of land comprising the Licensed Construction Areas is required to be made available to Project Co and NewCo in accordance with the

date specified in the Land Availability Plans (as adjusted (if at all) in accordance with clause 6.3(h) of the Project Agreement).

NewCo Licence Fee means \$[not disclosed].

Permitted Use means:

- (a) the performance of the Project Activities for the development of the Project or part of the Project in accordance with the Project Agreement and this Construction Licence;
- (b) the storage and location of any equipment, vehicles and machinery necessary for the carrying out of the Project Activities, unless otherwise specified by the Project Proponent; and
- (c) any other purpose agreed by the Project Proponent to facilitate development of the Project.

Project Agreement means the document entitled "Project Agreement West Gate Tunnel" between the State and Project Co dated on or about the date of this Construction Licence.

Project Co Licence Fee means \$[not disclosed].

Recipient has the meaning given in clause 10(b)(i).

Representative has the meaning given in clause 11.2(a).

Revenue has the meaning given in clause 10(d).

Services includes electricity, gas, water, drainage, sewerage and communications utilities.

State Parties means the Project Proponent and the State and **State Party** means either of them.

Supplier has the meaning given in clause 10(b).

Temporary Works Areas means those parts of the Licensed Construction Areas marked blue hatched and green hatched on the LCA Plan.

Term means the term of this Construction Licence as described in clause 6.

1.3 Interpretation

In this Construction Licence:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(Construction Licence and Schedule references)**: a reference to:
 - (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Construction Licence; and

- (ii) a section is a reference to a section of a Schedule;
- (d) **(Construction Licence as amended)**: a reference to this Construction Licence or to any other deed, agreement, document or instrument includes a reference to this Construction Licence or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
- (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(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;
- (p) **("may")**: the term "may", when used in the context of a power, right or remedy exercisable by a State Party, means that the State Party can exercise that power, right or remedy in its absolute and unfettered discretion and the State Party has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Construction Licence which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Construction Licence is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Construction Licence is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;

- (r) **(remedy or cure)**: the use of the word "remedy" or "cure" or any form of such words in this Construction Licence means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistency

If there is any conflict or inconsistency between this Construction Licence and the Project Agreement, the provisions of the Project Agreement will prevail.

1.5 Business Day

If the day on or by which anything is to be done in accordance with this Construction Licence is not a Business Day, that thing must be done no later than the next Business Day.

1.6 Certification

For the purposes of this Construction Licence, a copy of a document will be regarded as duly certified by Project Co or NewCo if it is certified as a true copy by a director, secretary or general manager of Project Co or NewCo (as applicable).

1.7 Provisions limiting or excluding liability

Any provision of this Construction Licence which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

2. Delegation

2.1 Right to delegate

Project Co and NewCo acknowledge that the Project Proponent may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to exercise any of its rights under this Construction Licence.

2.2 Notice of delegation

The Project Proponent will give Project Co and NewCo notice of:

- (a) **(delegate)**: any delegate so appointed, setting out the delegated rights and including a copy of the relevant instrument of appointment; and
- (b) **(revocation or change)**: any revocation or change of any delegation contemplated by clause 2.3.

2.3 Revocation or amendment of delegation

Any such delegation may be revoked, changed, delegated, limited or made subject to such conditions as the Project Proponent determines from time to time.

2.4 No limitation of obligations

The appointment of a delegate to perform some or all of the rights of the Project Proponent under this Construction Licence does not limit the rights or obligations of the Project Proponent under this Construction Licence.

2.5 State and Project Proponent's rights and obligations

- (a) **(Acknowledgement):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.12 of the Project Agreement in relation to this Construction Licence.
- (b) **(No Claim):** Subject to clause 2.5(c), neither Project Co nor NewCo will be entitled to make any Claim against the State or the Project Proponent for any Liability relating to any exercise or failure of the State or the Project Proponent to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 2.5(a) and 2.5(b) do not limit any Liability which the State or the Project Proponent would have to Project Co or NewCo under any State Project Document as a result of a breach by the Project Proponent or the State of a term of this Construction Licence but for these clauses.
- (d) **(No limitation):** The appointment of the Project Proponent (or any authority appointed to replace the Project Proponent under clause 2.5(e)) does not limit the rights or obligations of the State under this Construction Licence.
- (e) **(Replacement):** The State, at any time by notice to Project Co and NewCo, may appoint another Authority to exercise similar rights and undertake similar obligations to that of the Project Proponent with respect to the Project.

2.6 Development of part of Approved Project

This Construction Licence is being entered into by the Project Proponent for the development by Project Co and New Co of the Project or part of the Project in accordance with the terms of the Project Agreement.

3. Representations and warranties

- (a) **(Project Proponent's representations and warranties):** The Project Proponent represents and warrants for the benefit of Project Co and NewCo that:
 - (i) it has the power to execute, deliver and perform its obligations under this Construction Licence and all necessary action has been taken to authorise that execution, delivery and performance;
 - (ii) this Construction Licence constitutes a valid and legally binding obligation on it in accordance with its terms; and
 - (iii) the execution, delivery and performance of this Construction Licence does not violate any Law to which the Project Proponent is subject.
- (b) **(No representations from the Project Proponent):** Subject to clause 3(a), the Project Proponent makes no representations (express or implied) and gives no warranties (express or implied):
 - (i) that the Licensed Construction Areas or any other land is now or will remain suitable or adequate for all or any of the purposes contemplated by this Construction Licence or in the Project Agreement; and

- (ii) as to the matters specified in clause 47.1 of the Project Agreement,
and all warranties (if any) and representations (if any) implied by Law are, to the extent permitted by Law, expressly negated.

4. Grant of Construction Licence

4.1 Licensed Construction Areas

- (a) **(Licensed Construction Areas at the relevant Licence Commencement Date):** At the relevant Licence Commencement Date, the Licensed Construction Areas will, for the purposes of this Construction Licence, be comprised of the relevant parcels of land identified in the plan set out in Annexure A (**LCA Plan**).
- (b) **(Amendment of the Licensed Construction Areas):** If, at any time during the Term, the parties to this Construction Licence wish to vary, for the purposes of this Construction Licence, the land which comprises the Licensed Construction Areas, or if the land identified in the Land Availability Plans is varied in accordance with clause 6.3 of the Project Agreement, then:
 - (i) the Project Proponent must prepare and provide Project Co and NewCo with an amended version of the LCA Plan (**Amended LCA Plan**), which identifies any amendments to the Licensed Construction Areas; and
 - (ii) all parties must sign the Amended LCA Plan as an acknowledgement of their agreement to the variation of the Licensed Construction Areas,
and from the date on which the Amended LCA Plan has been signed by all parties:
 - (iii) the Amended LCA Plan will be deemed to have replaced the LCA Plan; and
 - (iv) the Licensed Construction Areas will, for the purposes of this Construction Licence, be deemed to be the areas shown on the Amended LCA Plan.

4.2 Licence over the Licensed Construction Areas

- (a) **(Grant of Construction Licence by the Project Proponent):** The Project Proponent grants to each of Project Co and NewCo for the Term a non-exclusive licence to access and use the Licensed Construction Areas for the Permitted Use on the terms of this Construction Licence and the Project Agreement.
- (b) **(Project Co and NewCo may permit access to Associates):** The Project Proponent acknowledges and agrees that Project Co and NewCo may permit their Associates to access and use the Licensed Construction Areas for the Permitted Use on similar terms to this Construction Licence.
- (c) **(Project Co and NewCo only to remain on Licensed Construction Areas for minimum period):** Project Co and NewCo must only remain on the Licensed Construction Areas for the minimum period(s) as is reasonably necessary for the Permitted Use.

4.3 Nature of interest

- (a) **(Contractual Construction Licence):** The rights conferred on Project Co and NewCo by this Construction Licence rest in contract only and do not confer a proprietary interest on Project Co, NewCo or any of their Associates.

- (b) **(Restrictions on Construction Licence):** Without limiting the generality of clause 4.3(a):
- (i) ownership and control of the Licensed Construction Areas remains vested in the relevant owner of the land at all times;
 - (ii) the Construction Licence does not grant Project Co, NewCo or any of their Associates ownership, control or legal entitlement to exclusive possession of the Licensed Construction Areas nor does it extend to Project Co, NewCo or any of their Associates an entitlement to rents or profits in respect of the Licensed Construction Areas;
 - (iii) Project Co, NewCo and any of their Associates can access and use the Licensed Construction Areas only for the Permitted Use; and
 - (iv) Project Co, NewCo and their Associates may not construct any permanent works on the Temporary Works Areas.

5. Payments

5.1 Construction Licence

- (a) **(Project Co Licence Fee):** Project Co must pay the Project Co Licence Fee to the Project Proponent, if demanded by the Project Proponent.
- (b) **(NewCo Licence Fee):** NewCo must pay the NewCo Licence Fee to the Project Proponent, if demanded by the Project Proponent.

5.2 Services

In addition to the Project Co Licence Fee, on and from the relevant Licence Commencement Date, Project Co must pay all costs and charges in relation to any Services provided to or from the relevant parcels of land comprising the Licensed Construction Areas for the Permitted Use, including the costs and charges associated with metering those Services.

5.3 Payment by the Project Proponent

If Project Co defaults in the payment of any of the costs or charges referred to in clause 5.2, the Project Proponent may (without limiting any other rights and remedies of the Project Proponent) pay the costs or charges, and any amount paid by the Project Proponent will be a debt due and payable from Project Co to the Project Proponent or the State.

6. Term of Construction Licence

- (a) **(Effective):** In respect of a parcel of land comprising the Licensed Construction Areas, subject to clauses 6(b), 6(c) and 6(d), this Construction Licence takes effect on the relevant Licence Commencement Date and continues until the earlier of:
- (i) where the relevant parcel is within the Temporary Works Area, the date of termination for that parcel shown in the LCA Plan;
 - (ii) the termination of the Project Agreement;
 - (iii) the Date of West Gate Tunnel Completion; and
 - (iv) any other date as is agreed by the parties.

- (b) **(Later expiry date):** In respect of any part of the Licensed Construction Areas not forming part of the Leased Area, the Project Proponent may, on or before the Date of West Gate Tunnel Completion, specify a later expiry date than the Date of West Gate Tunnel Completion, as necessary to enable Project Co to continue to carry out the Project Activities in respect of that land after the Date of West Gate Tunnel Completion.
- (c) **(Extension of licence):** Where the Project Proponent gives a notice under clause 6(b), this Construction Licence will continue in respect of the Licensed Construction Areas not forming part of the Leased Area specified in the Project Proponent's notice under clause 6(b), until the extended date specified in the Project Proponent's notice under clause 6(b).
- (d) **(Returned Facilities):** To the extent that this Construction Licence applies to the area required for each Returned Facility, the Construction Licence expires in respect of such area on the Handback of the relevant Returned Facility.

7. Approval to demolish structures, etc.

Except where specified or required under the PSR, Project Co must submit to the Project Proponent for approval (with such approval not to be unreasonably withheld by the Project Proponent), prior to submitting to the responsible authority under any relevant planning scheme (if required), any proposal to demolish any structure or building in, on, under or over the Licensed Construction Areas.

8. Harm minimisation

Project Co must:

- (a) **(use of Construction Areas):** in using or occupying the Construction Areas; and
- (b) **(necessary for D&C Activities):** except to the extent necessary to undertake the Project Activities and otherwise to comply with its obligations under the Project Agreement (including where specified or required under the PSR),

cause as little harm and inconvenience and do as little damage as reasonably possible to the Construction Areas (and any adjacent area) and any improvement or foliage on the Construction Areas or any adjacent area (including any Utility Infrastructure or non-road infrastructure (as defined in the Road Management Act)).

9. Removal of materials and make good

Without limiting its obligations under clause 6.5 of the Project Agreement:

- (a) **(during Term):** during the Term, as soon as practicable after completion of any Project Activities on any part of the Licensed Construction Areas; and
- (b) **(before end of Term):** prior to the end of the Term,

Project Co must:

- (c) **(removal):** remove all plant, equipment, machinery, facilities and vehicles (except to the extent they form part of the Relevant Infrastructure or are required for the O&M Activities);
- (d) **(clean and safe condition):** ensure that the relevant part of the Licensed Construction Areas is left in a clean and safe condition;

- (e) **(removal of waste)**: ensure that all waste, rubbish, debris and redundant materials are removed promptly from the relevant part of the Licensed Construction Areas in accordance with Best D&C Practices;
- (f) **(public use)**: without limiting clause 9(d), ensure that any relevant part of the Licensed Construction Areas which will become open to the public is safe for public use and occupation; and
- (g) **(damage)**: except to the extent contemplated by the Project Agreement or as necessary to comply with its obligations under the Project Agreement (including where specified or required under the PSR), make good all damage caused by Project Co and NewCo's use and occupation of the Licensed Construction Areas.

10. GST

- (a) **(GST exclusive amounts)**: Unless otherwise expressly stated to include GST, any amounts payable for a taxable supply that are referred to in any other provision of this Construction Licence are exclusive of any GST (**Agreed Amount**).
- (b) **(GST payable by Supplier)**: If GST becomes payable on any taxable supply made by a party (**Supplier**) under or in connection with this Construction Licence:
 - (i) unless the Agreed Amount is expressly stated to include GST, an additional amount will be payable by the party which is the recipient of the taxable supply (**Recipient**), equal to the amount of GST payable by the Supplier on that taxable supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (ii) the Supplier will provide a tax invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Construction Licence or no later than the time at which the Agreed Amount for that taxable supply is to be provided in accordance with this Construction Licence. The Recipient is not obliged to pay any amount in accordance with this clause 10(b) unless and until a tax invoice is received by the Recipient in connection with the taxable supply except where the Recipient is required to issue the tax invoice.
- (c) **(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 Construction Licence (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 10(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:
 - (i) the Supplier will issue an adjustment note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (ii) no additional amount will be payable by the Recipient unless and until an adjustment note is received by the Recipient.
- (d) **(Revenue net of GST)**: Any reference in this Construction Licence to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.

- (e) **(Cost net of GST):** Any reference in this Construction Licence to cost, expense, liability or other similar amount (**Cost**) of a party, including in the context of an entitlement to recovery, reimbursement or compensation for any Costs of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (f) **(GST Groups):** For the purposes of this Construction Licence, a reference to GST payable on a taxable supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.
- (g) **(Definitions):** In this clause 10, unless otherwise defined in this Construction Licence, terms used have the meanings given to them in the GST Law.
- (h) **(Non-monetary consideration):** Where two parties in accordance with this Construction Licence exchange non-monetary consideration:
 - (i) notwithstanding clause 10(b), the additional amount payable on any taxable supply by the Recipient to the Supplier shall be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate; and
 - (ii) the parties agree to value the non-monetary consideration on an equal and GST-inclusive basis and swap tax invoices accordingly.

11. Dispute Resolution

11.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute between the parties arising under this Construction Licence (**Dispute**) must be resolved in accordance with this clause 11 and clause 12.
- (b) **(Procedure):** The procedure that is to be followed to resolve a Dispute is as follows:
 - (i) firstly, the Dispute must be the subject of negotiation as required by clause 11.2;
 - (ii) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 11.2(c)(i) the parties may agree that the Dispute be referred to an expert for determination in accordance with clauses 11.4 to 11.8 (inclusive) or to arbitration under clause 12; and
 - (iii) thirdly, if:
 - A. the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 11.2(c)(i) and irrespective of whether the parties failed to meet as required by that clause or whether having so met the parties fail to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 11.2(c)(i);

- B. the Dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - C. the Dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 11.6(a),
- then the Dispute must be referred to arbitration in accordance with clause 12.

11.2 Negotiation

- (a) **(Notification)**: If a Dispute arises then a party may give notice to each other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Project Proponent, Project Co and NewCo **(Representatives)**.
- (b) **(Contents of Notice)**: A notice under clause 11.2(a) must:
 - (i) state that it is a notice under this clause 11.2; and
 - (ii) include or be accompanied by particulars of the matters which are the subject of the Dispute.
- (c) **(Attempt to resolve Dispute)**: If a Dispute is referred for resolution by negotiation under clause 11.2(a), then:
 - (i) the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 11.2(a) is received (or such later date as the parties may agree); and
 - (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.

11.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives)**: a Dispute which has been referred to the Representatives for negotiation in accordance with clause 11.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 11.2(c)(i); and
- (b) **(referral to expert)**: the parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 11.2(c)(i), that the Dispute be referred to an expert for determination,

then those parts of the Dispute which remain unresolved will be referred to an expert for determination under clauses 11.4 to 11.8. For the avoidance of doubt, a Dispute may only be referred to an expert for determination by agreement of the parties.

11.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within 7 Business Days after the date on which the parties agree to refer a Dispute to an expert for determination under clause 11.3, the Project Proponent, Project Co and NewCo must exchange lists of

3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 11.4(d), from whom the expert is to be chosen.

- (b) **(Appointment of person who appears on both lists):** Any person that appears on both lists under clause 11.4(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 11.3(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on both lists, the party which gave the notice under clause 11.2(a) must procure:
 - (i) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 11.4(a); or
 - (ii) if there is no governing body for the technical or professional discipline the subject of the relevant Dispute or such governing body advises that it will not nominate an expert, 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 11.4(a).
- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** Neither party will be entitled to challenge the appointment of an expert under this clause 11.4 on the basis that the expert does not satisfy the requirements of clause 11.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Construction Licence will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement):** Once an expert is appointed, the Project Proponent, Project Co and NewCo must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

11.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

11.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Project Proponent, Project Co and NewCo unless, within 10 Business Days of receipt of the determination, a party gives notice to each other party of its dissatisfaction and intention to refer the matter to arbitration under clause 12.
- (b) **(Amendment to determination):** Upon submission by any party, the expert may amend the determination to correct:
 - (i) a clerical mistake;

- (ii) an error from an accidental slip or omission;
- (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
- (iv) a defect in form.

11.7 Liability of expert

- (a) **(Liability of expert):** The parties agree:
 - (i) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (ii) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the Dispute.
- (b) **(Engagement):** The Project Proponent, Project Co and NewCo will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

11.8 Costs

The Project Proponent, Project Co and NewCo must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

12. Arbitration

12.1 Reference to Arbitration

- (a) **(Dispute):** If:
 - (i) a Dispute:
 - A. which has been referred to the parties' Representatives for negotiation in accordance with clause 11.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 11.2(c)(i); and
 - B. the parties do not agree to refer the Dispute to an expert for determination; or
 - (ii) in the case of a Dispute which the parties agree to refer to expert determination under clause 11.3:
 - C. a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - D. a notice of dissatisfaction is given in accordance with clause 11.6,

then the Project Proponent, Project Co or NewCo may notify each other that it requires the Dispute to be referred to arbitration.

- (b) **(Referral):** Upon receipt by each other party of a notice under clause 12.1(a), the Dispute will be referred to arbitration.

12.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 12 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 12.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

12.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the Dispute being referred to arbitration in accordance with clause 12.1(b), the arbitrator or arbitrators will be appointed by the Australian Centre for International Commercial Arbitration.

12.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The parties agree that:
 - (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) any arbitration conducted in accordance with clause 12 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 12.4(a)(i) and 12.4(a)(ii).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
 - (i) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 12.4(a) when determining the duration of the oral hearing;

- (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for oral hearing each party must give notice of those witnesses (both factual and expert) of each other party that it wishes to attend the hearing for cross examination;
 - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 12.4(d)(ii);
 - (vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (viii) each party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or, where 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 witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each party may only rely upon one expert witness in connection with any recognised area of specialisation.

12.5 Proportionate liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might, in the absence of this clause 12.5, have applied to any Dispute referred to arbitration in accordance with this clause 12.

12.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (i) a Dispute between the parties to this Construction Licence is referred to arbitration in accordance with this clause 12; and
 - (ii) there is some other Dispute also between the parties to and in accordance with this Construction Licence (whenever occurring),

the arbitrator may, upon application being made to the arbitrator by one or both of the parties at any time before a final award is made in relation to the first-mentioned Dispute, make an order directing that the arbitration be extended so as to include the other Dispute.

- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 12.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

12.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 12.7(b), any award will be final and binding on the parties.
- (b) **(Appeal):** Each party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of Law arising in connection with an arbitral award made in accordance with this clause 12.

12.8 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to carry out its obligations in accordance with this Construction Licence.

12.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

12.10 Interlocutory relief

This clause 12 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.

13. Notices

All communications (including approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands) under or in connection with this Construction Licence:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

Project Proponent:

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

Project Co:

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

NewCo:

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

- (c) **(signed):** must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;

- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid express post to the address or emailed (in the form agreed by both parties) to the email address of the addressee, in accordance with clause 13(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 13(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

14. Miscellaneous

14.1 Governing Law and jurisdiction

- (a) **(Governing Law)**: This Construction Licence is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction)**: Without limiting clauses 11 to 12, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Construction Licence.

14.2 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this Construction Licence and, other than as between Project Co and NewCo, the other State Project Documents:

- (a) **(entire understanding)**: embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersede any prior agreement of the parties.

14.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this Construction Licence.

14.4 Surviving provisions

- (a) **(Surviving clauses):** All provisions of this Construction Licence which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Construction Licence will survive the rescission, termination or expiration of this Construction Licence.
- (b) **(Interpretation):** No provision of this Construction Licence which is expressed to survive the termination of this Construction Licence will prevent any other provision of this Construction Licence, as a matter of interpretation, also surviving the termination of this Construction Licence.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction in accordance with this Construction Licence. All rights and obligations in accordance with this Construction Licence survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Construction Licence.

14.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Construction Licence is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right, power or remedy provided by Law or in accordance with this Construction Licence by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or in accordance with this Construction Licence.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Construction Licence operates as a waiver of another breach of that term or of a breach of any other term of this Construction Licence.

14.6 Consents, approvals and directions

- (a) **(Project Proponent):** A consent or approval required in accordance with this Construction Licence from the Project Proponent may be given or withheld, or may be given subject to any conditions, as the Project Proponent (in its absolute discretion) think fit, unless this Construction Licence expressly provides otherwise.
- (b) **(Project Co and NewCo):** A consent or approval required under this Construction Licence from Project Co or NewCo may not be unreasonably withheld, unless this Construction Licence expressly provides otherwise.

14.7 Amendments

Except as otherwise expressly provided in this Construction Licence, this Construction Licence may only be varied by a deed executed by or on behalf of each party.

14.8 Expenses

Except as otherwise expressly provided in this Construction Licence or the Project Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Construction Licence.

14.9 Severance

If, at any time, a provision of this Construction Licence or any other State Project Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Construction Licence or any other relevant State Project Document; or
- (b) that provision under the Law of any other jurisdiction.

14.10 Counterparts

This Construction Licence may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

14.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than a State Party any obligation under this Construction Licence, or to prejudicially affect the exercise by a State Party of any right, power or remedy under this Construction Licence or otherwise, are expressly waived.

14.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Construction Licence whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 14.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Construction Licence and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

14.13 No partnership or joint venture

Except as expressly provided in this Construction Licence, nothing contained or implied in this Construction Licence or any other State Project Document will:

- (a) **(constitution or deeming):** constitute or be deemed to constitute a party as a partner, joint venturer, agent or legal representative of any other party for any purpose; or
- (b) **(creation):** create or be deemed to create any partnership, joint venture, agency or trust between the parties or any of them.

14.14 No agency

Except as expressly permitted or contemplated by this Construction Licence, Project Co and NewCo must not, in connection with the Project or otherwise, directly or indirectly hold out or permit to be held out to any person any statement, act, agreement, matter or thing indicating that the Project is being carried on or managed or supervised by the Project Proponent nor may Project Co or NewCo act as or represent itself to be the servant or agent of the Project Proponent.

14.15 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Construction Licence. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

14.16 No representation or reliance

- (a) **(No representation):** Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Construction Licence, except for representations or inducements expressly set out in this Construction Licence.
- (b) **(No reliance):** Each party acknowledges and confirms that it does not enter into this Construction Licence in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Construction Licence.

14.17 Obligations suspended

- (a) **(NewCo's obligations suspended):** The obligations of NewCo under this Construction Licence will be suspended to the extent that, and for so long as, the obligations of Project Co under this Construction Licence are suspended in accordance with the Project Agreement.
- (b) **(NewCo not in breach):** NewCo's failure to carry out any obligations in accordance with this Construction Licence which are suspended under clause 14.17(a) will not be a breach of this Construction Licence during the period of suspension under clause 14.17(a).

Annexure A - LCA Plan

Executed as an agreement.

Executed by Richard Bolt, Secretary to the Department of Economic Development, Jobs, Transport and Resources, body corporate, for and on behalf of the Crown in right of the State of Victoria:

Signature of witness

Secretary to the Department of Economic Development, Jobs, Transport and Resources

Full name of witness

**Executed by Transurban WGT Co Pty Ltd
ACN 617 420 023** in accordance with
section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

**Executed by West Gate Tunnel Leasehold Co.
Pty Ltd ACN 622 944 709** in accordance with
section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Maintenance Licence

West Gate Tunnel

[]

Project Proponent

Transurban WGT Co Pty Ltd (ACN 617 420 023)

Project Co

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Maintenance Licence dated

Parties [] (Project Proponent)

Transurban WGT Co Pty Ltd (ACN 617 420 023) (Project Co)

Background

- A. The background to the Project is set out in the Project Agreement.
- B. As part of the development and implementation of the Project, the Project Proponent has agreed to grant, and Project Co has agreed to accept, a licence in respect of the Licensed Maintenance Areas on the terms and conditions contained in this Maintenance Licence.
- C. The Project Proponent has the power to grant this Maintenance Licence under section 173 of the Relevant Legislation.

Operative provisions

1. Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Maintenance Licence have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Maintenance Licence, unless the context otherwise requires:

Agreed Amount has the meaning given in clause 9(a).

Amended Licensed Maintenance Area Plan has the meaning given in clause 4.1(b)(i).

Cost has the meaning given in clause 9(e).

Dispute has the meaning given in clause 10.1(a).

Licence Commencement Date means the Date of West Gate Tunnel Completion.

Licence Fee means \$[not disclosed].

Licensed Maintenance Area Plan has the meaning given in clause 4.1(a) and includes any Amended Licensed Maintenance Area Plan.

Maintenance Licence means this maintenance licence and includes all Schedules, Exhibits, Attachments and Annexures to it.

Permitted Use has the meaning given in Schedule 1.

Project Agreement means the document entitled "Project Agreement West Gate Tunnel" between the State and Project Co dated [#insert date].

Recipient has the meaning given in clause 9(b)(i).

Representative has the meaning given in clause 10.2(a).

Revenue has the meaning given in clause 9(d).

Services includes electricity, gas, water, drainage, sewerage and communications services or utilities.

State Parties means the Project Proponent and the State and **State Party** means either of them.

Supplier has the meaning given in clause 9(b).

Term has the meaning given in clause 6.

1.3 Interpretation

In this Maintenance Licence:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Maintenance Licence and Schedule references)**: a reference to:
- (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Maintenance Licence; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(Maintenance Licence as amended)**: a reference to this Maintenance Licence or to any other deed, agreement, document or instrument includes a reference to this Maintenance Licence or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
- (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

- (l) ("**\$**"): a reference to "\$", AUD or dollar is to Australian currency;
- (m) ("**time**"): a reference to time is a reference to time in Melbourne, Australia;
- (n) ("**rights**"): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) ("**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;
- (p) ("**may**"): the term "may", when used in the context of a power, right or remedy exercisable by a State Party, means that the State Party can exercise that power, right or remedy in its absolute and unfettered discretion and the State Party has no obligation to do so;
- (q) ("**construction**"): where there is a reference to an Authority, institute or association or other body referred to in this Maintenance Licence which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Maintenance Licence is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Maintenance Licence is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) ("**remedy or cure**"): the use of the word "remedy" or "cure" or any form of such words in this Maintenance Licence means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) ("**contra proferentem rule not to apply**"): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistency

If there is any conflict or inconsistency between this Maintenance Licence and the Project Agreement, the provisions of the Project Agreement will prevail.

1.5 Business Day

If the day on or by which anything is to be done in accordance with this Maintenance Licence is not a Business Day, that thing must be done no later than the next Business Day.

1.6 Certification

For the purposes of this Maintenance Licence, a copy of a document will be regarded as duly certified by Project Co if it is certified as a true copy by a director, secretary or general manager of Project Co.

1.7 Provisions limiting or excluding liability

Any provision of this Maintenance Licence which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

2. Delegation

2.1 Right to delegate

Project Co acknowledges that the Project Proponent may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to exercise any of its rights under this Maintenance Licence.

2.2 Notice of delegation

The Project Proponent will give Project Co notice of:

- (a) **(delegate)**: any delegate so appointed, setting out the delegated rights and including a copy of the relevant instrument of appointment; and
- (b) **(revocation or change)**: any revocation or change of any delegation contemplated by clause 2.3.

2.3 Revocation or amendment of delegation

Any such delegation may be revoked, changed, delegated, limited or made subject to such conditions as the Project Proponent determines from time to time.

2.4 No limitation of obligations

The appointment of a delegate to perform some or all of the rights of the Project Proponent under this Maintenance Licence does not limit the rights or obligations of the Project Proponent under this Maintenance Licence.

2.5 State and Project Proponent's rights and obligations

- (a) **(Acknowledgement)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.12 of the Project Agreement in relation to this Maintenance Licence.
- (b) **(No Claim)**: Subject to clause 2.5(c), Project Co will not be entitled to make any Claim against the State or the Project Proponent for any Liability relating to any exercise or failure of the State or the Project Proponent to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach)**: Clauses 2.5(a) and 2.5(b) do not limit any Liability which the State or the Project Proponent would have to Project Co under any State Project Document as a result of a breach by the Project Proponent or the State of a term of this Maintenance Licence but for these clauses.
- (d) **(No limitation)**: The appointment of the Project Proponent (or any authority appointed to replace the Project Proponent under clause 2.5(e)) does not limit the rights or obligations of the State under this Maintenance Licence.
- (e) **(Replacement)**: The State, at any time by notice to Project Co, may appoint another Authority to exercise similar rights and undertake similar obligations to that of the Project Proponent with respect to the Project.

3. Representations and warranties

- (a) **(Project Proponent's representations and warranties)**: The Project Proponent represents and warrants for the benefit of Project Co that:

- (i) it has the power to execute, deliver and perform its obligations under this Maintenance Licence and all necessary action has been taken to authorise that execution, delivery and performance;
 - (ii) this Maintenance Licence constitutes a valid and legally binding obligation on it in accordance with its terms; and
 - (iii) the execution, delivery and performance of this Maintenance Licence does not violate any Law to which the Project Proponent is subject.
- (b) **(No representations from the Project Proponent):** Subject to clause 3(a), the Project Proponent makes no representations (express or implied) and gives no warranties (express or implied):
- (i) that the Licensed Maintenance Areas or any other land is now or will remain suitable or adequate for all or any of the purposes contemplated by this Maintenance Licence or in the Project Agreement; and
 - (ii) as to the matters specified in clause 47.1 of the Project Agreement,
- and all warranties (if any) and representations (if any) implied by Law are, to the extent permitted by Law, expressly negated.

4. Grant of Maintenance Licence

4.1 Licensed Maintenance Areas

- (a) **(Licensed Maintenance Areas at the Licence Commencement Date):** At the Licence Commencement Date, the Licensed Maintenance Areas will, for the purposes of this Maintenance Licence, be comprised of the land identified in the plan set out in Annexure A (**Licensed Maintenance Area Plan**).
- (b) **(Amendment of the Licensed Maintenance Areas):** If, at any time during the Term, the parties to this Maintenance Licence wish to vary, for the purposes of this Maintenance Licence, the land which comprises the Licensed Maintenance Areas, then:
- (i) the Project Proponent must prepare and provide Project Co with an amended version of the Licensed Maintenance Area Plan (**Amended Licensed Maintenance Area Plan**), which identifies any amendments to the Licensed Maintenance Areas; and
 - (ii) both parties must sign the Amended Licensed Maintenance Area Plan as an acknowledgement of their agreement to the variation of the Licensed Maintenance Areas,
- and from the date on which the Amended Licensed Maintenance Area Plan has been signed by both parties:
- (iii) the Amended Licensed Maintenance Area Plan will be deemed to have replaced the Licensed Maintenance Area Plan; and
 - (iv) the Licensed Maintenance Areas will, for the purposes of this Maintenance Licence, be deemed to be the areas shown on the Amended Licensed Maintenance Area Plan.

4.2 Licence over the Licensed Maintenance Areas

- (a) **(Grant of Maintenance Licence by the Project Proponent):** The Project Proponent grants to Project Co for the Term a non-exclusive licence to access and

use the Licensed Maintenance Areas for the Permitted Use on the terms of this Maintenance Licence and the other State Project Documents.

- (b) **(Project Co may permit access to Associates):** The Project Proponent acknowledges and agrees that Project Co may permit its Associates to access and use the Licensed Maintenance Areas for the Permitted Use on similar terms to this Maintenance Licence.
- (c) **(Project Co only to remain on Licensed Maintenance Areas for minimum period):** Project Co must only remain on the Licensed Maintenance Areas for the minimum period(s) as is reasonably necessary for the Permitted Use.

4.3 Nature of interest

- (a) **(Contractual Maintenance Licence):** The rights conferred on Project Co by this Maintenance Licence rest in contract only and do not confer a proprietary interest on Project Co or any of its Associates.
- (b) **(Restrictions on Maintenance Licence):** Without limiting the generality of clause 4.3(a):
 - (i) ownership and control of the Licensed Maintenance Areas remains vested in the relevant owner of the land at all times;
 - (ii) this Maintenance Licence does not grant Project Co or any of its Associates ownership, control or legal entitlement to exclusive possession of the Licensed Maintenance Areas nor does it extend to Project Co or any of its Associates an entitlement to rents or profits in respect of the Licensed Maintenance Areas;
 - (iii) Project Co and any of its Associates can access and use the Licensed Maintenance Areas only for the Permitted Use; and
 - (iv) Project Co acknowledges and agrees that, subject to any other provisions of the State Project Documents or Project Co's rights at Law, the Licensed Maintenance Areas must be accessible to, and available for unfettered use by, the public at all times, other than:
 - A. where such access or use would unnecessarily interfere with a Permitted Use; or
 - B. in respect of those parts of the Licensed Maintenance Areas that are specifically identified as "operational areas" on the Maintenance Area Plans.

5. Payments

5.1 Maintenance Licence

Project Co must pay the Licence Fee to the Project Proponent, if demanded by the Project Proponent.

5.2 Services

In addition to the Licence Fee, on and from the Licence Commencement Date, Project Co must pay all costs and charges in relation to its consumption of any Services provided to or from the Licensed Maintenance Areas for the Permitted Use.

5.3 Payment by the Project Proponent

If Project Co defaults in the payment of any of the costs or charges referred to in clause 5.2, the Project Proponent may (without limiting any other rights and remedies of the Project Proponent) pay the costs or charges, and any amount paid by the Project Proponent will be a debt due and payable from Project Co to the Project Proponent or the State.

6. Term of Maintenance Licence

This Maintenance Licence takes effect on the Licence Commencement Date and continues until the earlier of:

- (a) **(completion)**: the termination of the Project Agreement; and
 - (b) **(other date)**: any other date agreed by the parties,
- (Term)**.

7. Harm minimisation

Project Co must:

- (a) **(use of Licensed Maintenance Areas)**: in using or occupying the Licensed Maintenance Areas; and
- (b) **(necessary for O&M Activities)**: except to the extent necessary to undertake the O&M Activities and OpCo's Activities in the WGT Service Area (each as defined in the IRS Agreement) in accordance with the IRS Agreement and otherwise to comply with its obligations under the State Project Documents (including where specified or required under the PSR),

cause as little harm and inconvenience and do as little damage as reasonably possible to the Licensed Maintenance Areas (and any adjacent area) and any improvement or foliage on the Licensed Maintenance Areas or any adjacent area (including any Utility Infrastructure or non-road infrastructure (as defined in the Road Management Act)).

8. Removal of materials and make good

Without limiting its obligations under clause 6.5 of the Project Agreement, Project Co must, on or as soon as practicable after, cessation of occupation from time to time or completion of:

- (a) the O&M Activities that relate to the Licensed Maintenance Areas; and
- (b) OpCo's Activities in the WGT Service Area (each as defined in the IRS Agreement) in accordance with the IRS Agreement,

and in any event, prior to the end of the Term:

- (c) **(removal)**: remove all plant, equipment, machinery, facilities and vehicles (except to the extent they form part of the Maintained Off-Freeway Facilities or, during the Term, are permitted to remain on the Licensed Maintenance Areas pursuant to a Permitted Use);
- (d) **(clean and safe condition)**: ensure that the Licensed Maintenance Areas are left in a clean and safe condition;
- (e) **(removal of waste)**: ensure that all waste, rubbish, debris and redundant materials are removed promptly from the Licensed Maintenance Areas in accordance with Best O&M Practices;

- (f) **(public use):** without limiting clause 8(d), ensure that the Licensed Maintenance Areas open to the public are safe for public use and occupation; and
- (g) **(damage):** except to the extent contemplated by the State Project Documents or as necessary to undertake the O&M Activities or OpCo's Activities in the WGT Service Area (each as defined in the IRS Agreement) in accordance with the IRS Agreement and otherwise to comply with its obligations under the State Project Documents (including where specified or required under the PSR), make good all damage caused by Project Co's use and occupation of the Licensed Maintenance Areas.

9. GST

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated to include GST, any amounts payable for a taxable supply that are referred to in any other provision of this Maintenance Licence are exclusive of any GST (**Agreed Amount**).
- (b) **(GST payable by Supplier):** If GST becomes payable on any taxable supply made by a party (**Supplier**) under or in connection with this Maintenance Licence:
 - (i) unless the Agreed Amount is expressly stated to include GST, an additional amount will be payable by the party which is the recipient of the taxable supply (**Recipient**), equal to the amount of GST payable by the Supplier on that taxable supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (ii) the Supplier will provide a tax invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Maintenance Licence or no later than the time at which the Agreed Amount for that taxable supply is to be provided in accordance with this Maintenance Licence. The Recipient is not obliged to pay any amount in accordance with this clause 9(b) unless and until a tax invoice is received by the Recipient in connection with the taxable supply except where the Recipient is required to issue the tax invoice.
- (c) **(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 Maintenance Licence (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 9(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:
 - (i) the Supplier will issue an adjustment note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (ii) no additional amount will be payable by the Recipient unless and until an adjustment note is received by the Recipient.
- (d) **(Revenue net of GST):** Any reference in this Maintenance Licence to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (e) **(Cost net of GST):** Any reference in this Maintenance Licence to cost, expense, liability or other similar amount (**Cost**) of a party, including in the context of an entitlement to recovery, reimbursement or compensation for any Costs of a party, is

a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.

- (f) **(GST Groups):** For the purposes of this Maintenance Licence, a reference to GST payable on a taxable supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.
- (g) **(Definitions):** In this clause 9, unless otherwise defined in this Maintenance Licence, terms used have the meanings given to them in the GST Law.
- (h) **(Non-monetary consideration):** Where two parties in accordance with this Maintenance Licence exchange non-monetary consideration:
 - (i) notwithstanding clause 9(b), the additional amount payable on any taxable supply by the Recipient to the Supplier shall be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate; and
 - (ii) the parties agree to value the non-monetary consideration on an equal and GST-inclusive basis and swap tax invoices accordingly.

10. Dispute Resolution

10.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute between the parties arising under this Maintenance Licence (**Dispute**) must be resolved in accordance with this clause 10 and clause 11.
- (b) **(Procedure):** The procedure that is to be followed to resolve a Dispute is as follows:
 - (i) firstly, the Dispute must be the subject of negotiation as required by clause 10.2;
 - (ii) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 10.2(c)(i) the parties may agree that the Dispute be referred to an expert for determination in accordance with clauses 10.4 to 10.8 (inclusive) or to arbitration under clause 11; and
 - (iii) thirdly, if:
 - A. the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 10.2(c)(i) and irrespective of whether the parties failed to meet as required by that clause or whether having so met the parties fail to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 10.2(c)(i);
 - B. the Dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment, or such later date as agreed between the parties; or

- C. the Dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 10.6(a),
- then the Dispute must be referred to arbitration in accordance with clause 11.

10.2 Negotiation

- (a) **(Notification)**: If a Dispute arises then a party may give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Project Proponent and Project Co **(Representatives)**.
- (b) **(Contents of Notice)**: A notice under clause 10.2(a) must:
- (i) state that it is a notice under this clause 10.2; and
 - (ii) include or be accompanied by particulars of the matters which are the subject of the Dispute.
- (c) **(Attempt to resolve Dispute)**: If a Dispute is referred for resolution by negotiation under clause 10.2(a), then:
- (i) the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 10.2(a) is received (or such later date as the parties may agree); and
 - (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.

10.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives)**: a Dispute which has been referred to the Representatives for negotiation in accordance with clause 10.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 10.2(c)(i); and
- (b) **(referral to expert)**: the parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 10.2(c)(i), that the Dispute be referred to an expert for determination,

then those parts of the Dispute which remain unresolved will be referred to an expert for determination under clauses 10.4 to 10.8. For the avoidance of doubt, a Dispute may only be referred to an expert for determination by agreement of the parties.

10.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within 7 Business Days after the date on which the parties agree to refer a Dispute to an expert for determination under clause 10.3, the Project Proponent and Project Co must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 10.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person that appears on both lists under clause 10.4(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the person given the

highest order of priority by the party that gave the notice under clause 10.2(a) will be appointed.

- (c) **(Appointment if no person appears on both lists):** If no person appears on both lists, the party which gave the notice under clause 10.2(a) must procure:
- (i) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 10.4(a); or
 - (ii) if there is no governing body for the technical or professional discipline the subject of the relevant Dispute or such governing body advises that it will not nominate an expert, 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 10.4(a).
- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** Neither party will be entitled to challenge the appointment of an expert under this clause 10.4 on the basis that the expert does not satisfy the requirements of clause 10.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Maintenance Licence will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011 (Vic)*.
- (g) **(Agreement):** Once an expert is appointed, the Project Proponent and Project Co must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

10.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

10.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Project Proponent and Project Co unless, within 10 Business Days of receipt of the determination, a party gives notice to the other party of its dissatisfaction and intention to refer the matter to arbitration under clause 11.
- (b) **(Amendment to determination):** Upon submission by any party, the expert may amend the determination to correct:
- (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.

10.7 Liability of expert

- (a) **(Liability of expert):** The parties agree:
 - (i) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (ii) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the Dispute.
- (b) **(Engagement):** The Project Proponent and Project Co will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

10.8 Costs

The Project Proponent and Project Co must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

11. Arbitration

11.1 Reference to Arbitration

- (a) **(Dispute):** If:
 - (i) a Dispute:
 - A. which has been referred to the parties' Representatives for negotiation in accordance with clause 10.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 10.2(c)(i); and
 - B. the parties do not agree to refer the Dispute to an expert for determination; or
 - (ii) in the case of a Dispute which the parties agree to refer to expert determination under clause 10.3:
 - C. a determination is not made within 30 days of the expert's acceptance of the appointment, or such later date as agreed between the parties; or
 - D. a notice of dissatisfaction is given in accordance with clause 10.6,

then the Project Proponent or Project Co may notify the other that it requires the Dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by the other party of a notice under clause 11.1(a), the Dispute will be referred to arbitration.

11.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 11 will be conducted in accordance with the arbitration rules of the Australian Centre for International

Commercial Arbitration (known as the ACICA Rules) and as otherwise set out in this clause 11.

- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

11.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the Dispute being referred to arbitration in accordance with clause 11.1(b), the arbitrator or arbitrators will be appointed by the Australian Centre for International Commercial Arbitration.

11.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The parties agree that:
 - (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) any arbitration conducted in accordance with clause 11 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 11.4(a)(i) and 11.4(a)(ii).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
 - (i) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 11.4(a) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for oral hearing each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination;

- (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 11.4(d)(ii);
 - (vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (viii) each party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or, where 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 witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each party may only rely upon one expert witness in connection with any recognised area of specialisation.

11.5 Proportionate liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might, in the absence of this clause 11.5, have applied to any Dispute referred to arbitration in accordance with this clause 11.

11.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (i) a Dispute between the parties to this Maintenance Licence is referred to arbitration in accordance with this clause 11; and
 - (ii) there is some other Dispute also between the parties to and in accordance with this Maintenance Licence (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or both of the parties at any time before a final award is made in relation to the first-mentioned Dispute, make an order directing that the arbitration be extended so as to include the other Dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 11.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

11.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 11.7(b), any award will be final and binding on the parties.
- (b) **(Appeal):** Each party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of Law arising in connection with an arbitral award made in accordance with this clause 11.

11.8 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to carry out its obligations in accordance with this Maintenance Licence.

11.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

11.10 Interlocutory relief

This clause 11 does not prevent a 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.

12. Notices

All communications (including approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands) under or in connection with this Maintenance Licence:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

Project Proponent:

Attention: [#]
Address: [#]
Email: [#]

Project Co:

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid express post to the address or emailed (in the form agreed by both parties) to the email address of the addressee, in accordance with clause 12(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 12(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;

- B. the time that the communication enters an information system which is under the control of the addressee; or
- C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

13. Miscellaneous

13.1 Governing Law and jurisdiction

- (a) **(Governing Law)**: This Maintenance Licence is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction)**: Without limiting clauses 10 to 11, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Maintenance Licence.

13.2 Entire agreement

To the extent permitted by Law, and in relation to their subject matter, this Maintenance Licence and the other State Project Documents:

- (a) **(entire understanding)**: embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersede any prior agreement of the parties.

13.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Maintenance Licence.

13.4 Surviving provisions

- (a) **(Surviving clauses)**: All provisions of this Maintenance Licence which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Maintenance Licence will survive the rescission, termination or expiration of this Maintenance Licence.
- (b) **(Interpretation)**: No provision of this Maintenance Licence which is expressed to survive the termination of this Maintenance Licence will prevent any other provision of this Maintenance Licence, as a matter of interpretation, also surviving the termination of this Maintenance Licence.
- (c) **(Survival of rights and obligations)**: No right or obligation of any party will merge on completion of any transaction in accordance with this Maintenance Licence. All rights and obligations in accordance with this Maintenance Licence survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Maintenance Licence.

13.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Maintenance Licence is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Maintenance Licence by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Maintenance Licence.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Maintenance Licence operates as a waiver of another breach of that term or of a breach of any other term of this Maintenance Licence.

13.6 Consents, approvals and directions

- (a) **(Project Proponent):** A consent or approval required in accordance with this Maintenance Licence from the Project Proponent may be given or withheld, or may be given subject to any conditions, as the Project Proponent think fit, unless this Maintenance Licence expressly provides otherwise.
- (b) **(Project Co):** A consent or approval required under this Maintenance Licence from Project Co may not be unreasonably withheld or delayed, unless this Maintenance Licence expressly provides otherwise.

13.7 Amendments

Except as otherwise expressly provided in this Maintenance Licence, this Maintenance Licence may only be varied by a deed executed by or on behalf of each party.

13.8 Expenses

Except as otherwise expressly provided in this Maintenance Licence or the Project Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Maintenance Licence.

13.9 Severance

If, at any time, a provision of this Maintenance Licence or any other State Project Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Maintenance Licence or any other relevant State Project Document; or
- (b) that provision under the Law of any other jurisdiction.

13.10 Counterparts

This Maintenance Licence may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

13.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than a State Party any obligation under this Maintenance

Licence, or to prejudicially affect the exercise by a State Party of any right, power or remedy under this Maintenance Licence or otherwise, are expressly waived.

13.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Maintenance Licence whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 13.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Maintenance Licence and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

13.13 No partnership or joint venture

Except as expressly provided in the State Project Documents, nothing contained or implied in this Maintenance Licence or any other State Project Document will:

- (a) **(constitution or deeming):** constitute or be deemed to constitute a party as a partner, joint venturer, agent or legal representative of any other party for any purpose; or
- (b) **(creation):** create or be deemed to create any partnership, joint venture, agency or trust between the parties or any of them.

13.14 No agency

Except as expressly permitted or contemplated by the State Project Documents, Project Co must not, in connection with the Project or otherwise, directly or indirectly hold out or permit to be held out to any person any statement, act, agreement, matter or thing indicating that the Project is being carried on or managed or supervised by the Project Proponent nor may Project Co act as or represent itself to be the servant or agent of the Project Proponent.

13.15 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Maintenance Licence. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

13.16 No representation or reliance

- (a) **(No representation):** Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Maintenance Licence, except for representations or inducements expressly set out in this Maintenance Licence.
- (b) **(No reliance):** Each party acknowledges and confirms that it does not enter into this Maintenance Licence in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Maintenance Licence.

Schedule 1 - Permitted Use

| Item | Licensed Maintenance Area | Permitted Use |
|------|---|--|
| 1. | All Licensed Maintenance Areas (except to the extent set out in items 2 to 4) | <p>(a) to perform the O&M Activities that relate to the Maintained Off-Freeway Facilities which are within the Licensed Maintenance Areas;</p> <p>(b) the storage and location of any equipment, vehicles and machinery necessary for:</p> <ul style="list-style-type: none"> (i) the carrying out of the O&M Activities that relate to the Maintained Off-Freeway Facilities; (ii) the carrying out of the O&M Activities that relate to the West Gate Tunnel; and (iii) the carrying out of OpCo's Activities in the WGT Service Area (as defined in the IRS Agreement) in accordance with IRS Agreement, <p>unless otherwise specified by the Project Proponent;</p> <p>(c) any defect rectification work or other work that is required to be undertaken by Project Co under the State Project Documents; and</p> <p>(d) any other purpose agreed by the Project Proponent.</p> |
| 2. | Shared user paths as shown on the Licensed Maintenance Area Plan | <p>(a) as per item 1, except for paragraph (b) of item 1; and</p> <p>(b) to perform the relevant activities set out in the Code of Maintenance Standards.</p> |
| 3. | Landscaped areas as shown on the Licensed Maintenance Area Plan | <p>(a) as per item 1, except for paragraph (b) of item 1; and</p> <p>(b) to perform the relevant activities set out in the Code of Maintenance Standards.</p> |
| 4. | Drainage system along Fogarty Avenue | <p>(a) as per item 1, except for paragraph (b) of item 1; and</p> <p>(b) to perform the relevant activities set out in the Code of Maintenance Standards.</p> |

Annexure A - Licensed Maintenance Area Plan

Executed as an agreement.

[Note: State Execution block to be inserted.]

**Executed by Transurban WGT Co Pty Ltd ACN
617 420 023** in accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

West Gate Tunnel Project
Independent Reviewer and Environmental Auditor Deed of Appointment

Independent Reviewer and Environmental Auditor Deed of Appointment

West Gate Tunnel Project

Luke Donnellan MP, Minister for Roads and Road Safety of the State of
Victoria for and on behalf of the Crown in right of the State of Victoria
State

Transurban WD Co Pty. Limited (ACN 617 420 023)
Project Co

Arcadis Australia Pacific Pty Limited (ABN 76 104 485 289)
Independent Reviewer and Environmental Auditor

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Independent Reviewer and Environmental Auditor Deed of Appointment made on

Parties

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

Transurban WD Co Pty. Limited (ACN 617 420 023) (**Project Co**)

Arcadis Australia Pacific Pty Limited (ABN 76 104 485 289) (**Independent Reviewer and Environmental Auditor**)

Background

- A. The background to the Project is set out in the Project Agreement.
- B. The Independent Reviewer and Environmental Auditor is experienced generally in construction and project management and, in particular, in:
- (a) the review and checking of design documentation; and
 - (b) design and construction in respect of roads and tunnels,
- and offers its expertise in those fields.
- C. The State Project Documents contemplate that the Independent Reviewer and Environmental Auditor will discharge certain functions, including those set out in the Services Schedule.
- D. The Independent Reviewer and Environmental Auditor will perform its obligations in accordance with the terms and conditions of this Deed.

Operative provisions

1. Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Deed, unless the context otherwise requires:

Agreed Amount has the meaning given in clause 16(a).

Agreed Project Agreement means the version of the Project Agreement contained on the USB as physically attached at Annexure A to the WD Commitment Deed.

Agreed PSR means the version of the PSR contained on the USB as physically attached at Annexure A to the WD Commitment Deed.

Agreed State Project Documents means the documents for the Project which have been agreed between the State and Project Co, including the Agreed Project Agreement and the Agreed PSR, contained on the USB as physically attached at Annexure A to the WD Commitment Deed.

Commencement Date has the meaning given in clause 2.1.

Contract Particulars means the particulars set out in Schedule 1.

Cost has the meaning given in clause 16(e).

D&C Commitment Deed means the document entitled "Western Distributor D&C Commitment Deed" between the State, Project Co and the D&C Subcontractor of 2 April 2017.

D&C Phase Services means, from Financial Close:

- (a) all of the functions conferred on the Independent Reviewer and Environmental Auditor under this Deed (including the Services Schedule) and the State Project Documents, as varied in accordance with clause 12;
- (b) all other things or tasks which the Independent Reviewer and Environmental Auditor must do to comply with its obligations under this Deed or the State Project Documents; and
- (c) without limiting paragraph (a), all other things and tasks not described in this Deed or the State Project Documents if those things and tasks should have been reasonably anticipated by an experienced, highly skilled and professional provider of similar services as being necessary for the performance of those things or tasks or which are otherwise capable of inference from this Deed or the State Project Documents.

Deed means this deed and includes all schedules, exhibits, attachments and annexures to it.

Dispute has the meaning given in clause 17.2.

Disputing Parties has the meaning given in clause 17.2.

Downstream Sub-IREA Contracts means:

- (a) the D&C Subcontract;
- (b) the Sub-IREA Deed of Appointment;
- (c) the D&C Commitment Deed; and
- (d) the other contracts (if any) set out in the Contract Particulars.

Downstream Sub-IREA Functions mean the functions, powers and obligations of the Sub-Independent Reviewer and Environmental Auditor under the Downstream Sub-IREA Contracts.

Downstream Parties means:

- (a) the D&C Subcontractor; and
- (b) the other parties (if any) set out in the Contract Particulars.

Expiry Date means the date which is the earlier of:

- (a) the end of the Term; and
- (b) termination of this Deed in accordance with clause 13 or otherwise at Law.

Fee means the sum of the Initial Fee and the Monthly Fees as adjusted from time to time in accordance with clause 12 and the Payment Schedule.

Hold Point has the meaning given in the PSR.

Independent Reviewer and Environmental Auditor Material means all documentation, information (including databases and drafts), models and other material in which Intellectual Property Rights are capable of subsisting prepared, used or provided by or on behalf of the Independent Reviewer and Environmental Auditor in carrying out the Services.

Independent Reviewer and Environmental Auditor's Representative means the person named in the Contract Particulars or any other person appointed in accordance with clause 6.11(e) or by the Independent Reviewer and Environmental Auditor with the approval of the Project Parties from time to time to replace that person.

Initial Fee means the lump sum amount payable to the Independent Reviewer and Environmental Auditor for the performance of the Services during the Initial Period as set out in the Payment Schedule.

Initial Monitoring Plan means the document set out in Schedule 4.

Initial Period is the period commencing on the date of this Deed and ending on 30 September 2017.

Key Person or **Key People** means the persons identified as such in the Contract Particulars.

Monitoring Plan means a monitoring plan provided by the Independent Reviewer and Environmental Auditor in accordance with clause 4, as amended and updated in accordance with clause 4.

Monthly Fee means the amount payable to the Independent Reviewer and Environmental Auditor for the performance of the Services in respect of a month after the Initial Period in accordance with the Payment Schedule.

Payment Schedule means Schedule 3.

Preferred Respondent Phase means the period commencing on the date of this Deed and ending on Financial Close.

Preferred Respondent Phase Services means, to the extent required to be undertaken during the Preferred Respondent Phase:

- (a) all of the functions conferred on the Independent Reviewer and Environmental Auditor under this Deed (including the Services Schedule), the WD Commitment Deed and the Agreed State Project Documents, as varied in accordance with clause 12;
- (b) all other things or tasks which the Independent Reviewer and Environmental Auditor must do to comply with its obligations under this Deed, the WD Commitment Deed or the Agreed State Project Documents; and
- (c) without limiting paragraph (a), all other things and tasks not described in this Deed, the WD Commitment Deed or the Agreed State Project Documents if those things and tasks should have been reasonably anticipated by an experienced, highly skilled and professional provider of similar services as being necessary for the performance of those things or tasks or which are otherwise capable of inference from this Deed, the WD Commitment Deed or the Agreed State Project Documents.

Project Agreement means the agreement to design, construct, operate, maintain and toll the Project, to be entered into between the State and Project Co.

Project Parties means the State and Project Co.

Project Parties' Representatives means, in respect of each of the State and Project Co, the person named in the Contract Particulars or any other person appointed by the relevant Project Party from time to time to replace that person.

Quarter means:

- (a) the period from the end of the Initial Period until the first Quarterly Date occurring after the end of the Initial Period;
- (b) each 3 month period commencing on a Quarterly Date; and
- (c) the period from the last Quarterly Date during the Term until the Expiry Date.

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

Quarterly Fee Estimate means the estimated Fees payable to the Independent Reviewer and Environmental Auditor for the performance of the Services for the relevant Quarter as adjusted from time to time in accordance with clause 12.1(b) and the Payment Schedule.

Recipient has the meaning given in clause 16(b)(i).

Resource Adjustment is an adjustment in the level of resources which are required from the Independent Reviewer and Environmental Auditor to perform the Services.

Resource Adjustment Order is the document issued by the Project Parties in accordance with section 11.5 of the Payment Schedule.

Revenue has the meaning given in clause 16(d).

Schedule of Rates means the schedule of rates and prices set out in section 9 of the Payment Schedule as adjusted from time to time in accordance with clause 12.1 and the Payment Schedule.

Services means:

- (a) during the Preferred Respondent Phase, the Preferred Respondent Phase Services; and
- (b) from Financial Close, the D&C Phase Services.

Services Schedule means Schedule 2.

Sub-Independent Reviewer and Environmental Auditor has the meaning given in the D&C Subcontract.

Sub-IREA Deed of Appointment means the document entitled "Sub-IREA Deed of Appointment - West Gate Tunnel Project" between Project Co, the Sub-Independent Reviewer and Environmental Auditor and the D&C Subcontractor, dated on or about the date of this Deed.

Sub-IREA Side Deed means the document entitled "Sub-Independent Reviewer and Environmental Auditor Side Deed –West Gate Tunnel Project" between the State, Project Co

and the Sub-Independent Reviewer and Environmental Auditor, dated on or about the date of this Deed.

Substitute Reviewer has the meaning given in clause 12.2(a).

Supplier has the meaning given in clause 16(b).

Term means the period from the Commencement Date to the date one month after the expiry of the D&C Phase or such later date as agreed by the parties.

Transition Out Period means the period of 24 months prior to the end of the Term.

Transition Out Plan means a plan prepared by the Independent Reviewer and Environmental Auditor to meet its obligations in accordance with clause 14 which is in a form reasonably agreed to by the Project Parties.

Upstream IREA Contracts means:

- (a) this Deed;
- (b) the Project Agreement;
- (c) the WD Commitment Deed; and
- (d) the other contracts (if any) set out in the Contract Particulars.

Upstream IREA Functions means the functions, powers and obligations of the Independent Reviewer and Environmental Auditor under the Upstream IREA Contracts.

WD Commitment Deed means the document entitled "WD Commitment Deed" between the State, Project Co and Transurban Limited (ABN 96 098 143 410) of 2 April 2017.

West Gate Tunnel means:

- (a) the Freeway; and
- (b) all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements on or in the Leased Area,

to be called the West Gate Tunnel or such other name as agreed by the State but excluding all Temporary Works and Returned Works, previously known as the Western Distributor.

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
 - (i) a party, clause or Schedule is a reference to a party, clause or Schedule of or to this Deed; and

- (ii) a section is a reference to a section of a Schedule;
- (d) **(deed as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
- (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: without limiting clause 1.5 or 1.6, 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;
- (p) **("may")**: the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;

- (r) **(remedy)**: the use of the words "remedy", "cure" or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done no later than the next Business Day.

1.5 Joint and several Liability of Independent Reviewer and Environmental Auditor

If the Independent Reviewer and Environmental Auditor comprises more than one person:

- (a) **(joint and several)**: the obligations of those persons are joint and several; and
- (b) **(proceedings)**: each Project Party may proceed against any or all of them for any failure of the Independent Reviewer and Environmental Auditor to comply with any obligation in accordance with this Deed or otherwise.

1.6 Several Liability of the Project Parties

If a provision of this Deed binds the Project Parties, that provision binds each of the Project Parties severally and not jointly and severally.

1.7 Relationship of the parties

- (a) **(No partnership or joint venture)**: The relationship between and among the Project Parties to this Deed will not be that of partners or joint venturers and nothing therein contained will be deemed to constitute a partnership or joint venture among them and no party will have authority or power to act unilaterally as agent for the other.
- (b) **(Independent contractor)**: It is understood that the Independent Reviewer and Environmental Auditor is acting as an independent contractor for the Project Parties and therefore the Independent Reviewer and Environmental Auditor is not authorised to enter into any binding obligations on behalf of the Project Parties.
- (c) **(No relationship)**: Unless otherwise expressly provided, this Deed does not:
 - (i) create a partnership, joint venture or fiduciary relationship between the parties to this Deed; or
 - (ii) impose any duty of good faith on the State.

1.8 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

1.9 Provisions limiting or excluding Liability, rights or obligations

- (a) **(Rights and obligations):** A right of the Project Parties or an obligation of the Independent Reviewer and Environmental Auditor under this Deed will not limit or exclude any other right of the Project Parties or obligation of the Independent Reviewer and Environmental Auditor under this Deed unless expressly stated.
- (b) **(Liability):** Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.10 State's rights and obligations

- (a) **(Acknowledgement):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.12 of the Project Agreement in relation to this Deed.
- (b) **(No Claim):** Subject to clause 1.10(c), Project Co and the Independent Reviewer and Environmental Auditor will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 1.10(a) and 1.10(b) do not limit any Liability which the State would have had to Project Co or the Independent Reviewer and Environmental Auditor under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

2. Commencement

2.1 Commencement

The rights and obligations of the parties under this Deed commence on the date of execution of this Deed by all parties to this Deed (**Commencement Date**).

2.2 Failure to achieve Financial Close

- (a) **(Failure to achieve Financial Close):** If the Project Parties do not achieve Financial Close by the relevant Condition Precedent Deadline, then the Project Parties may, at their option, terminate this Deed by notice to the Independent Reviewer and Environmental Auditor.
- (b) **(Independent Reviewer and Environmental Auditor's rights on termination):** Where this Deed is terminated in accordance with this clause 2.2 due to a failure to achieve Financial Close by the Condition Precedent Deadline, then, notwithstanding clause 13.7:
 - (i) the Independent Reviewer and Environmental Auditor will only be entitled to be paid:
 - A. the proportion of the Fee for the Preferred Respondent Phase Services performed up to the date of termination in accordance with the Payment Schedule; and
 - B. such amount in respect of unavoidable Liabilities which have been approved by the Project Parties prior to the Independent Reviewer and Environmental Auditor incurring such liabilities, except to the extent the Independent Reviewer and Environmental Auditor fails to mitigate such Liabilities; and

- (ii) the Independent Reviewer and Environmental Auditor will not otherwise be entitled to bring any Claim against the Project Parties arising in connection with:
 - A. the failure to achieve Financial Close;
 - B. the termination of this Deed; or
 - C. the Project, the Agreed State Project Documents, the State Project Documents, the WD Commitment Deed, the Upstream IREA Contracts, the Downstream Sub-IREA Contracts or the Sub-IREA Side Deed.

3. General obligations of the Independent Reviewer and Environmental Auditor

3.1 Appointment

- (a) **(Appointment):** Each of the Project Parties appoints the Independent Reviewer and Environmental Auditor under this Deed to perform the Services for the benefit of each of the Project Parties.
- (b) **(Acceptance of appointment):** The Independent Reviewer and Environmental Auditor confirms its acceptance of the appointment.

3.2 Services

The Independent Reviewer and Environmental Auditor must carry out the Services in accordance with this Deed and the Project Agreement for the Term, including:

- (a) **(Preferred Respondent Phase Services):** the Preferred Respondent Phase Services during the Preferred Respondent Phase; and
- (b) **(D&C Phase Services):** the D&C Phase Services from Financial Close.

3.3 Preferred Respondent Phase Services

During the Preferred Respondent Phase, references in this Deed to:

- (a) **(Project Agreement):** "Project Agreement" are to be read as references to "Agreed Project Agreement";
- (b) **(PSR):** "PSR" are to be read as references to "Agreed PSR";
- (c) **(State Project Documents):** "State Project Documents" are to be read as references to "Agreed State Project Documents" and to include the WD Commitment Deed; and
- (d) **(Project Parties):** "Project Parties" are to be read as references to "the State" and "Project Co" (together).

3.4 Effect of Services Schedule

The Project Parties and the Independent Reviewer and Environmental Auditor acknowledge that the Services Schedule:

- (a) **(indicative):** is indicative only;

- (b) **(not complete)**: is not intended to be a complete description of the Services;
- (c) **(no limitation)**: does not limit or otherwise affect the Services or the performance of the Services; and
- (d) **(interpretation)**: cannot be used as the aid to interpretation of the Services.

4. Monitoring Plan

- (a) **(Provision and amendment of Monitoring Plan)**: The Independent Reviewer and Environmental Auditor:
 - (i) must prepare and update the Monitoring Plan in accordance with clauses 4(a)(ii) and 4(a)(iii);
 - (ii) must prepare and submit to the Project Parties within 25 Business Days of the date of this Deed, the Monitoring Plan, which must, as a minimum:
 - A. address the requirements set out in Part A of Schedule 4; and
 - B. be consistent with and not limit or reduce the requirements or obligations of the Independent Reviewer and Environmental Auditor as set out for the Initial Monitoring Plan set out in Part B of Schedule 4;
 - (iii) subject to clause 4(e), throughout the performance of the Services, must develop, continually review and, if necessary, amend the Monitoring Plan:
 - A. within 25 Business Days of Financial Close, including to reflect any differences between:
 - 1) the Agreed PSR and the PSR;
 - 2) the Agreed Project Agreement and the Project Agreement; and
 - 3) the Agreed State Project Documents and the State Project Documents;
 - B. to reflect any Resource Adjustment;
 - C. to take into account events which will, or may reasonably be expected to, affect the manner in which the Independent Reviewer and Environmental Auditor carries out the Services, including:
 - 1) Modifications under the State Project Documents;
 - 2) changes in Law;
 - 3) Approvals (including the conditions of Approvals);
 - 4) the commencement of new phases or stages of design, construction or maintenance (during the D&C Phase) in accordance with the State Project Documents;

- 5) to take into account the manner in which Project Co is undertaking the Works and the D&C Activities, including any Defects or non-compliances with the State Project Documents; and
 - 6) any breach or potential breach of the warranty in clause 4(b);
 - D. for the purposes of continually improving the standards and quality of the Services; and
 - E. as otherwise agreed with the Project Parties;
 - (iv) must promptly submit the amended Monitoring Plan to the Project Parties; and
 - (v) acknowledges that the Initial Monitoring Plan sets out certain minimum requirements in respect of the Monitoring Plan and any Monitoring Plan provided in accordance with this clause 4 must not in any way limit or reduce the requirements or obligations of the Independent Reviewer and Environmental Auditor set out in the Initial Monitoring Plan, except where it is necessary to do so to comply with the State Project Documents.
- (b) **(Warranty):** The Independent Reviewer and Environmental Auditor warrants that the carrying out of the Services in accordance with the Monitoring Plan will enable the Independent Reviewer and Environmental Auditor to comply with its obligations under this Deed.
- (c) **(Acknowledgements):** The Independent Reviewer and Environmental Auditor acknowledges that the Monitoring Plan:
- (i) does not limit the Independent Reviewer and Environmental Auditor's obligations under this Deed; and
 - (ii) will require amendment resulting from a change to the Services in accordance with clause 12.
- (d) **(Review of updated plan):** Either Project Party may:
- (i) review each amended Monitoring Plan provided to the Project Parties in accordance with this clause 4; and
 - (ii) if the amended Monitoring Plan does not comply with this Deed or the State Project Documents, notify the other Project Party and the Independent Reviewer and Environmental Auditor of that non-compliance within 15 Business Days of the submission of the relevant amended Monitoring Plan to the Project Parties.
- (e) **(Amended plan):** If the Independent Reviewer and Environmental Auditor receives a notice in accordance with clause 4(d)(ii), the Independent Reviewer and Environmental Auditor must promptly submit an amended relevant Monitoring Plan to the Project Parties.
- (f) **(Compliance with Monitoring Plan):** Except where otherwise provided in this Deed or the State Project Documents, the Independent Reviewer and Environmental Auditor must comply with and not depart from the Monitoring Plan unless it is necessary to do so to ensure compliance with this Deed or the State Project Documents.

- (g) **(No duty to review):** The Project Parties owe no duty to the Independent Reviewer and Environmental Auditor to review any Monitoring Plan or any amended Monitoring Plan for errors, omissions or compliance with this Deed or the State Project Documents. No comment on or approval, agreement or review of the Monitoring Plan by a Project Party will constitute a direction for the purposes of clause 6.6 or otherwise.

5. Various functions of the Independent Reviewer and Environmental Auditor

- (a) **(Application of this clause):** This clause 5 only applies if the Independent Reviewer and Environmental Auditor carrying out the Upstream IREA Functions is the same entity undertaking the Downstream Sub-IREA Functions.
- (b) **(Upstream IREA Functions paramount):** Subject to clause 23.2(b) of the D&C Subcontract, the Project Parties and the Independent Reviewer and Environmental Auditor acknowledge and agree that the Upstream IREA Functions represent the paramount role of the Independent Reviewer and Environmental Auditor, with the intent that:
- (i) if there is any ambiguity, conflict, discrepancy or inconsistency between any Upstream IREA Function and any Downstream Sub-IREA Function, the Upstream IREA Function will prevail as between the parties to this Deed;
 - (ii) neither the existence nor terms of a Downstream Sub-IREA Function nor the exercise, failure to exercise or manner of exercise of a Downstream Sub-IREA Function will be a precedent for, limit or otherwise affect the exercise of, or be construed in any way as an aid to interpretation of, an Upstream IREA Function; and
 - (iii) neither:
 - A. the receipt by the Independent Reviewer and Environmental Auditor of any notice, claim, plan, program, report, manual, model or any other document or information nor the giving of any notice, the making of any comment or any other act or omission by the Independent Reviewer and Environmental Auditor arising in connection with a Downstream Sub-IREA Function; nor
 - B. the existence or performance of any function by, any consultation with, or provision of any notice, report, certificate, comment or any other document or information to, the Independent Reviewer and Environmental Auditor by any other reviewer, certifier, engineer, adviser or other consultant engaged by any party other than the State,will:
 - C. give rise to any obligation on the part of the Independent Reviewer and Environmental Auditor to exercise (or exercise in a particular manner) any Upstream IREA Function;
 - D. relieve Project Co from the giving of any notice, claim, plan, program, report, manual, model or any other document or information or the doing of any other thing in respect of an Upstream IREA Function in order to give rise to any obligation

on the part of the Independent Reviewer and Environmental Auditor to exercise that Upstream IREA Function; or

- E. be a precedent for, limit or otherwise affect the exercise of, or be construed in any way as an aid to interpretation of, an Upstream IREA Function.

- (c) **(Approval and consent):** The Project Parties and the Independent Reviewer and Environmental Auditor acknowledge and agree that:
- (i) the Independent Reviewer and Environmental Auditor may not exercise any function or enter into any arrangement arising in connection with the Project other than in accordance with this Deed (including in accordance with clause 8.4), unless approved by the State and Project Co and on such terms approved by the State and Project Co; and
 - (ii) no Downstream Sub-IREA Function may be varied, altered or amended without the State's consent where such variation, alteration or amendment would limit, or otherwise affect the exercise of, or be construed in any way as an aid to interpretation of, an Upstream IREA Function.
- (d) **(Fee payable solely for Services):** The Project Parties and the Independent Reviewer and Environmental Auditor acknowledge and agree that the Fee payable in accordance with this Deed will be payable solely for, and will relate solely to, performance of the Services. The Fee will not, for the avoidance of doubt, be payable for or relate to any Downstream Sub-IREA Functions, which will be separately payable in accordance with the Sub-IREA Deed of Appointment.
- (e) **(Delegation of risks, liabilities, obligations and responsibilities):** Any express or implied delegation of risks, liabilities, obligations or responsibilities by Project Co and its Associates, whether in the Sub-IREA Deed of Appointment, the Sub-IREA Side Deed, any other Downstream Sub-IREA Contract or otherwise, does not constitute approval of such delegation by the State or in any way limit or derogate from the scope of Project Co's obligations in accordance with the State Project Documents or this Deed or affect in any way the obligations of the Independent Reviewer and Environmental Auditor in accordance with the State Project Documents or this Deed. References to risks, liabilities, obligations or responsibilities assumed or accepted or acknowledgements given by any such entity or Associate in relation to any such delegation will be construed as assumed or accepted or given (as applicable) by Project Co in accordance with the State Project Documents.
- (f) **(No effect on Upstream IREA Functions):** Subject to clause 23.2(b) of the D&C Subcontract, reference in the Sub-IREA Deed of Appointment, the Sub-IREA Side Deed or any Downstream Sub-IREA Contract to the performance of a function by the Independent Reviewer and Environmental Auditor under the Sub-IREA Side Deed or any Downstream Sub-IREA Contract, or the provision to or receipt by the Independent Reviewer and Environmental Auditor of a document, certificate or notice from any Downstream Party (in its capacity as Independent Reviewer and Environmental Auditor), does not in any way affect the functions of the Independent Reviewer and Environmental Auditor under the State Project Documents or this Deed.

6. Performance by Independent Reviewer and Environmental Auditor

6.1 Standard of care

The Independent Reviewer and Environmental Auditor must exercise the standard of skill, care and diligence in the performance of the Services that would be expected of a highly skilled and professional provider of the Services experienced in providing services similar to the Services for projects similar to the Project.

6.2 Duty to act honestly, reasonably, professionally and independently

The Independent Reviewer and Environmental Auditor must, in performing the Services act:

- (a) **(honestly, reasonably and professionally)**: honestly, reasonably and professionally; and
- (b) **(independently)**: independently of the Project Parties and their respective Associates.

6.3 Time requirements

The Independent Reviewer and Environmental Auditor must perform the Services:

- (a) **(time limits)**: within the time limits specified in this Deed and the State Project Documents; and
- (b) **(no time limit)**: where no time limit is specified, within a reasonable time.

6.4 Conflict of interest

- (a) **(Warranty)**: The Independent Reviewer and Environmental Auditor warrants that:
 - (i) as at the date of this Deed, no conflict of interest arises out of its engagement by the Project Parties under this Deed; and
 - (ii) if, during the term of this Deed, it becomes aware of the existence or possibility of a conflict of interest, it will:
 - A. immediately notify the Project Parties of that conflict of interest or possible conflict of interest; and
 - B. take such steps to avoid or mitigate the conflict of interest or possible conflict of interest as the Project Parties may reasonably require.
- (b) **(Prior approval)**: The Independent Reviewer and Environmental Auditor must not exercise any function nor enter into any arrangement arising out of in respect of or in connection with the Project other than in accordance with this Deed and the Sub-IREA Deed of Appointment unless approved by the Project Parties and on such terms as are approved by the Project Parties.
- (c) **(Consent)**: The Project Parties consent to the Independent Reviewer and Environmental Auditor being appointed as the Sub-Independent Reviewer and Environmental Auditor under the Sub-IREA Deed of Appointment (in respect of the Project) and entering into the Sub-IREA Side Deed in its capacity as Sub-Independent Reviewer and Environmental Auditor.

6.5 Communications with Project Parties

The Independent Reviewer and Environmental Auditor must ensure that a copy of each written communication between the Independent Reviewer and Environmental Auditor and a Project Party which relates to the Project or this Deed is promptly given to the other Project Party.

6.6 No authority to give directions or waive requirements

The Independent Reviewer and Environmental Auditor has no authority to:

- (a) **(directions)**: give directions to the Project Parties other than as may (if at all) be expressly set out in this Deed or the State Project Documents;
- (b) **(waive or vary)**: waive or vary any requirements of the State Project Documents;
or
- (c) **(discharge or release)**: discharge or release a party from any of its obligations under the State Project Documents.

6.7 Acknowledgement of reliance

The Independent Reviewer and Environmental Auditor acknowledges that each Project Party:

- (a) **(reliance)**: is entitled to, and will, rely on:
 - (i) the skill and expertise of the Independent Reviewer and Environmental Auditor in the performance of the Services; and
 - (ii) any certificate signed or given by the Independent Reviewer and Environmental Auditor under the State Project Documents; and
- (b) **(Liability)**: may suffer Liability if the Independent Reviewer and Environmental Auditor does not perform the Services in accordance with the requirements of this Deed.

6.8 Knowledge of Project Parties' requirements

The Independent Reviewer and Environmental Auditor warrants that:

- (a) **(informed itself of State Project Documents relating to Services)**: it has informed itself of the requirements of the State Project Documents and the Upstream IREA Functions in so far as they relate to the Services;
- (b) **(informed itself of other requirements)**: without limiting clause 6.8(a), it has informed itself of all time limits and other requirements for any function which the Independent Reviewer and Environmental Auditor must perform in accordance with the State Project Documents and the Upstream IREA Contracts;
- (c) **(nature of work)**: it has informed itself of the nature of the work necessary for the performance of the Services and (to the maximum extent possible) the means of access to and facilities within the Site, including any restrictions on any such access; and
- (d) **(sufficiency of the Fee)**: it has satisfied itself as to the sufficiency of the Fee having regard to the costs which it will incur in complying with its obligations in accordance with this Deed.

6.9 Co-ordination and co-operation

The Independent Reviewer and Environmental Auditor must, in performing the Services:

- (a) **(co-operation)**: co-operate with the Project Parties and their respective Associates;
- (a) **(co-ordinate)**: co-ordinate the Services with the work to be performed by the Project Parties, and their respective Associates; and
- (b) **(avoid unreasonable interference)**: avoid any unreasonable interference, disruption or delay to the work to be performed by the Project Parties, and their respective Associates.

6.10 Personnel

The Independent Reviewer and Environmental Auditor must provide sufficient numbers of experienced and competent personnel to perform its obligations in accordance with this Deed within the timeframes specified in this Deed and in the State Project Documents.

6.11 Key People

Without limiting its obligations in accordance with clause 6.10, the Independent Reviewer and Environmental Auditor must:

- (a) **(Key People perform functions)**: ensure that each Key Person performs the functions specified in the Contract Particulars and, unless reasonably directed otherwise by the Project Parties, ensure that they are committed and available to the Project as required to fulfil the requirements of this Deed and the State Project Documents;
- (b) **(removal of Key People)**: subject to clause 6.11(c), not remove any Key Person without the prior consent of the Project Parties (which must not be unreasonably withheld or delayed);
- (c) **(best endeavours)**: use its best endeavours to ensure that no Key Person resigns or otherwise becomes unavailable to perform their functions as required by clause 6.11(a);
- (d) **(unavailability of Key People)**: if any Key Person resigns or otherwise becomes or may become unavailable to perform their functions as required by clause 6.11(a) (whether temporarily or permanently), notify the Project Parties including advising the Project Parties of the way in which the Independent Reviewer and Environmental Auditor proposes to address the unavailability of any such Key Person, including ensuring that a person of at least equivalent skills and experience is available to perform the relevant functions;
- (e) **(replacement of Key People)**: if:
 - (i) the Project Parties notify the Independent Reviewer and Environmental Auditor that they are of the view that a Key Person does not have the necessary skills, experience or expertise, is not performing the Services to the requisite standard or is not suitable for the role identified:
 - A. the Independent Reviewer and Environmental Auditor must:
 - 1) replace such Key Person with another person, as approved by the Project Parties, of appropriate

- skills, experience and expertise and the ability to perform the Services to the requisite standard; and
- 2) in seeking the approval of the Project Parties, provide evidence that the replacement Key Person has the appropriate skills, experience and expertise and the ability to perform the Services to the requisite standard, and is available to perform the Services; and
- B. the Project Parties may seek (and the Independent Reviewer and Environmental Auditor must provide) any additional information about the replacement Key Person and may impose any conditions upon the appointment of such Key Person; and
- (ii) any Key Person becomes permanently unavailable to perform their functions under clause 6.11(a), subject to the approval of the Project Parties, replace them as soon as practicable with a person of at least equivalent skill and experience; and
- (f) **(availability of Key People)**: ensure that each Key Person is available for consultation as any Project Party may reasonably require from time to time.

6.12 Independent Reviewer and Environmental Auditor's Representative

The Independent Reviewer and Environmental Auditor:

- (a) **(Independent Reviewer and Environmental Auditor's Representative)**: has nominated the Independent Reviewer and Environmental Auditor's Representative as the person to act as its representative for the Services;
- (b) **(nominate another person)**: may, from time to time nominate another person to act as the Independent Reviewer and Environmental Auditor's Representative, subject to the Project Parties' approval (in their sole and absolute discretion and with no obligation to do so), in which case that person will be the relevant representative in lieu of the person named in the Contract Particulars; and
- (c) **(authority to bind Independent Reviewer and Environmental Auditor)**: confirms that the Independent Reviewer and Environmental Auditor's Representative has the power and authority to bind the Independent Reviewer and Environmental Auditor.

6.13 Subcontracting

The Independent Reviewer and Environmental Auditor:

- (a) **(no subcontracting)**: may not subcontract the performance of any of its Services without the prior consent of each Project Party; and
- (b) **(responsible for performance)**: remains responsible for the performance of the Services in accordance with this Deed, notwithstanding any such subcontracting.

7. Role of the Project Parties

7.1 No interference or influence

- (a) **(No interference or influence):** A Project Party must not interfere with, or attempt to influence, the Independent Reviewer and Environmental Auditor in the performance of any of the Services. A communication allowed by this Deed or the Project Agreement will not, however, of itself constitute a breach of this clause 7.1(a).
- (b) **(Project Parties may provide comments):** Clause 7.1(a) will not prevent a Project Party from providing written comments to the Independent Reviewer and Environmental Auditor in respect of any aspect of the Project Activities.

7.2 Provision of information

Project Co must, as soon as practicable, ensure that the Independent Reviewer and Environmental Auditor is provided with all information, assistance, documentation, models and particulars as the Independent Reviewer and Environmental Auditor reasonably requests:

- (a) **(Services):** relating to the Services;
- (b) **(State Project Documents):** required under the State Project Documents; and
- (c) **(performance of Services):** to enable it to perform the Services effectively and otherwise in accordance with the State Project Documents, and this Deed.

7.3 Access to records and systems

Without limiting the obligations of Project Co under the State Project Documents or clause 7.2, Project Co must provide the Independent Reviewer and Environmental Auditor with such information and documentation (including all Design Documentation) and access to Project Co's books, records and systems as the Independent Reviewer and Environmental Auditor may reasonably require to enable it to perform the Services effectively and otherwise in accordance with this Deed and the State Project Documents. Nothing in this clause 7.3 will be construed as a waiver of legal professional privilege.

7.4 Access to premises

Project Co must ensure that the Independent Reviewer and Environmental Auditor is given such access to any place where any part of the Project Activities is being carried out (including transport within the Construction Site and access to the premises of its Associates) and all necessary assistance as is required to enable the Independent Reviewer and Environmental Auditor to perform the Services effectively and in accordance with the requirements of this Deed and the State Project Documents.

7.5 Right to enter, inspect and test

- (a) **(Right of entry):** Subject to clause 7.5(b) and except to the extent that Project Co does not have access as a result of a breach by the State of the Project Agreement, the Independent Reviewer and Environmental Auditor (or any person authorised by the Independent Reviewer and Environmental Auditor) may during Business Hours or upon giving reasonable notice to Project Co (except in the case of an emergency when no notice is required) enter the Site or the offices of Project Co to:
 - (i) inspect, observe or test any part of the Relevant Infrastructure or the carrying out of the Project Activities (whether or not such inspections,

- observations or tests are otherwise required in accordance with this Deed);
- (ii) exercise any right or carry out any obligation which the Independent Reviewer and Environmental Auditor has in accordance with any State Project Document; or
 - (iii) take such other action as the Independent Reviewer and Environmental Auditor considers necessary to exercise its rights in accordance with this Deed and to discharge its duties, powers and obligations.
- (b) **(Conditions of access):** When entering the Site or the offices of Project Co in accordance with clause 7.5(a) or otherwise, the Independent Reviewer and Environmental Auditor must and must ensure any authorised person:
- (i) complies with the Site Access and Interface Protocols and any generally applicable safety and security requirements of Project Co;
 - (ii) does not unnecessarily interfere with the carrying out of the Project Activities; and
 - (iii) does not damage the Relevant Infrastructure, the Site or the offices of Project Co.
- (c) **(Project Co to assist):** If requested by the Independent Reviewer and Environmental Auditor, Project Co must assist the Independent Reviewer and Environmental Auditor in connection with any inspection or testing in accordance with this clause 7.5, including:
- (i) providing access to such part of the Relevant Infrastructure and all Project Co Materials as may be required by the Independent Reviewer and Environmental Auditor;
 - (ii) preparing samples of materials used in connection with the Relevant Infrastructure as required by the Independent Reviewer and Environmental Auditor; and
 - (iii) forwarding the samples prepared in accordance with clause 7.5(c)(ii) to the Independent Reviewer and Environmental Auditor or such other place or person notified by the Independent Reviewer and Environmental Auditor.

7.6 Meetings

The Project Parties must:

- (a) **(design meetings):** allow the Independent Reviewer and Environmental Auditor to attend design meetings; and
- (b) **(other meetings):** attend such meetings with the Independent Reviewer and Environmental Auditor as the Independent Reviewer and Environmental Auditor may reasonably request to enable it to perform the Services effectively and otherwise in accordance with this Deed.

7.7 Co-operation

Project Co must and must ensure that each Downstream Party and Project Co's Associates co-operate with the Independent Reviewer and Environmental Auditor during the carrying out of the Services.

7.8 Project Parties not liable

On no account will a Project Party be liable to the other Project Party or its Associates for any act or omission by the Independent Reviewer and Environmental Auditor whether or not in accordance with or purportedly in accordance with a provision of this Deed, the State Project Documents or otherwise.

8. Reporting and meetings

8.1 Progress reports

The Independent Reviewer and Environmental Auditor must submit a written report to each Project Party:

- (a) **(before meeting of Project Control Group):** no later than 2 Business Days before each meeting of the Project Control Group in accordance with clause 9.3 of the Project Agreement;
- (b) **(Project Parties requires):** in such form as the Project Parties may reasonably require; and
- (c) **(details):** containing details of:
 - (i) Project Co's compliance (and details of any non-compliances) with the State Project Documents;
 - (ii) the results of the review of Design Documentation in accordance with clause 17.2 of the Project Agreement;
 - (iii) the results of the review of the D&C Program in accordance with clause 15 of the Project Agreement;
 - (iv) the results of review of construction of the Works during the performance of the D&C Activities in accordance with clause 23.2 of the Project Agreement;
 - (v) any Project Plans and O&M Manuals, notices and other information and documentation and the results of any review of those documents or that information received from Project Co in accordance with the State Project Documents;
 - (vi) the results of any review of compliance by Project Co with its obligations in relation to safety management and performance or environmental monitoring and protection in carrying out the Project Activities;
 - (vii) the results of any review of the operation of the quality system developed and implemented by Project Co and any review and assessment of the quality of the Project Activities in accordance with the State Project Documents;
 - (viii) any matters or departures notified in accordance with clause 22 of the Project Agreement;

- (ix) any notices given by a Project Party or the Proof Engineer to the Independent Reviewer and Environmental Auditor and any notices issued by the Independent Reviewer and Environmental Auditor;
- (x) any certificates of completion for Western Distributor Completion, Tolling Completion or Close-Out or for Handback of any Returned Works issued or requested by Project Co or the State in relation to any of the Works;
- (xi) progress of Project Co to Western Distributor Completion, Tolling Completion or Close-Out (as applicable) including the status of any Defects and the rectification of any Defects;
- (xii) any Non-Conformances which are Agreed Exceptions under clause 22.3 of the Project Agreement;
- (xiii) the forecast cost of the Services (including for the current and following Quarter), taking into account current expenditure, resourcing and future forecasts;
- (xiv) notification of reports requested by one Project Party in accordance with clause 8.4; and
- (xv) such other matters in respect of the Services as the Project Parties (acting jointly) may reasonably request from time to time.

8.2 Project Control Group

- (a) **(Establishment):** The Project Control Group will be established in accordance with clause 9.3 of the Project Agreement.
- (b) **(Independent Reviewer and Environmental Auditor's obligations):** The Independent Reviewer and Environmental Auditor must:
 - (i) attend each meeting of the Project Control Group, if requested by the State or Project Co; and
 - (ii) present and explain each progress report prepared in accordance with clause 8.1 at the relevant meeting.

8.3 Meetings with Project Parties

The Independent Reviewer and Environmental Auditor must attend, and ensure that all relevant Key People attend, meetings with the Project Parties monthly during the Term or as otherwise agreed by the parties, to discuss the progress of the Services.

8.4 Reports requested by one Project Party

- (a) **(Request by one Project Party):** A Project Party may request the Independent Reviewer and Environmental Auditor to prepare an additional report which is not otherwise required by the State Project Documents.
- (b) **(Independent Reviewer and Environmental Auditor to prepare report):** The Independent Reviewer and Environmental Auditor must prepare the additional report as requested in accordance with clause 8.4(a), except where the Independent Reviewer and Environmental Auditor is:
 - (i) of the reasonable opinion that it would be inappropriate to prepare such a report in light of the performance and nature of the Services; or

- (ii) not reasonably capable of preparing such a report.
- (c) **(Cost of reports):** The cost of additional reports prepared in accordance with this clause 8.4 will be paid to the Independent Reviewer and Environmental Auditor in accordance with the Payment Schedule.

8.5 Questions relating to a report

- (a) **(Project Parties may submit questions):** Without limiting clauses 7.1(b) or 8.2(b)(ii), a Project Party may submit questions or queries to the Independent Reviewer and Environmental Auditor in relation to a report issued in accordance with clause 8.1.
- (b) **(Independent Reviewer and Environmental Auditor to respond):** Subject to clause 6.5, the Independent Reviewer and Environmental Auditor must, within a reasonable period having regard to the nature of the question or query, respond in writing to questions and queries submitted by a Project Party in accordance with this clause 8.5.

9. Quality

9.1 Quality assurance system

The Independent Reviewer and Environmental Auditor must plan, develop and implement a quality assurance system which:

- (a) **(standards):** meets the requirements of the relevant AS/NZS ISO Standards as and when they are published; and
- (b) **(Monitoring Plan):** is consistent with the Monitoring Plan.

9.2 Audit

- (a) **(Independent Reviewer and Environmental Auditor must allow audits):** The Independent Reviewer and Environmental Auditor must:
 - (i) allow any audit of its quality assurance system in accordance with this Deed by a Project Party or a third party appointed by the Project Parties, at the request of a Project Party and at the cost of that Project Party; and
 - (ii) fully co-operate with that third party in respect of the carrying out of the quality assurance audit.
- (b) **(Access to premises and information):** Without limiting clause 7.3, 7.4, 7.5 or 9.2(a), the Independent Reviewer and Environmental Auditor must, at all times:
 - (i) give to the Project Parties or the third party appointed by the Project Parties (as the case may be) access to premises occupied by the Independent Reviewer and Environmental Auditor where the Services are being undertaken; and
 - (ii) permit the Project Parties or the third party appointed by the Project Parties to inspect applicable information relevant to the quality assurance audit.

9.3 Quality assurance not to relieve Independent Reviewer and Environmental Auditor

The Independent Reviewer and Environmental Auditor will not be relieved of any responsibilities or obligations in accordance with this Deed as a result of:

- (a) **(compliance)**: compliance with the requirements of this clause 9; or
- (b) **(all such steps)**: any acts or omissions of the Project Parties with respect to the requirements of this clause 9, including:
 - (i) any review of, comments upon, or notice in respect of, the quality assurance system or any Monitoring Plan; and
 - (ii) any audit in accordance with clause 9.2.

9.4 Non-complying services

The Independent Reviewer and Environmental Auditor must at its cost:

- (a) **(re-perform Services)**: unless directed otherwise by the Project Parties, re-perform all Services which have not been performed in accordance with this Deed; and
- (b) **(all such steps)**: take all such steps as may be reasonably necessary to:
 - (i) mitigate the effect on the Project Parties of the failure to perform the Services in accordance with this Deed; and
 - (ii) put the Project Parties (as closely as possible) in the positions in which they would have been had the Independent Reviewer and Environmental Auditor performed the Services in accordance with this Deed, including all such steps as may be reasonably directed by the Project Parties.

10. Liability, insurance and indemnity

10.1 Limitation of Liability

Subject to clause 10.2, the Independent Reviewer and Environmental Auditor's and Sub-Independent Reviewer and Environmental Auditor's total Liability under all Claims which the Project Parties might have (whether jointly or severally) against the Independent Reviewer and Environmental Auditor and which the Downstream Parties might have (whether jointly or severally) against the Sub-Independent Reviewer and Environmental Auditor:

- (a) **(this Deed, Sub-IREA Deed of Appointment and Sub-IREA Side Deed)**: arising in connection with this Deed, the Sub-IREA Deed of Appointment or the Sub-IREA Side Deed;
- (b) **(Services or Project)**: arising in connection with the Services, the Project, the Upstream IREA Functions or the Downstream Sub-IREA Functions; or
- (c) **(Law)**: otherwise at Law or in equity including:
 - (i) any statute (insofar as it is possible to exclude such Liability); or
 - (ii) in tort for negligence under any warranty, any indemnity or otherwise, including negligent misrepresentation,

in respect of any fact, matter or thing under, arising in connection with the Services, the Project, any Project Document, any Upstream IREA Function or any Downstream Sub-IREA Function will be limited in aggregate to the greater of:

- (d) **(specified amount)**: the amount specified in Item 7 of the Contract Particulars; and
- (e) **(up to indemnity limit)**: to the extent that the Liability is:
 - (i) the subject of an indemnity under any policy of insurance required to be held and maintained by the Independent Reviewer and Environmental Auditor under this Deed; or
 - (ii) would have been the subject of such indemnity in accordance with the terms of a policy of insurance required to be effected and maintained by this Deed if the Independent Reviewer and Environmental Auditor had:
 - A. effected and maintained the relevant insurance as required by this Deed;
 - B. complied with the relevant insurance;
 - C. submitted a claim under the relevant insurance where there was a legitimate entitlement to do so; and
 - D. taken reasonable steps to pursue the claim,

the amount of the minimum limit of indemnity required by this Deed under that policy of insurance.

10.2 Exclusions

The limitation of Liability in clause 10.1 does not apply to any Claims arising in connection with any of the following on the part of the Independent Reviewer and Environmental Auditor or Sub-Independent Reviewer and Environmental Auditor or anyone for whom the Independent Reviewer and Environmental Auditor or the Sub-Independent Reviewer and Environmental Auditor is responsible:

- (a) **(fraud)**: fraud;
- (b) **(wilful misconduct)**: wilful misconduct, being any conduct, act or omission done or to be done by the Independent Reviewer and Environmental Auditor, the Sub-Independent Reviewer and Environmental Auditor or any officer, agent, adviser, consultant, contractor, subcontractor or employee of the Independent Reviewer and Environmental Auditor or the Sub-Independent Reviewer and Environmental Auditor which results from conscious, intentional or reckless disregard of any provision of this Deed or the Sub-IREA Deed of Appointment or the rights or welfare of those who are or may be affected by that conduct, act or omission;
- (c) **(gross negligence)**: gross negligence, being any negligent act or omission involving a serious disregard to an obvious and material risk and which the Independent Reviewer and Environmental Auditor or the Sub-Independent Reviewer and Environmental Auditor knew, or ought reasonably to have been aware, would result in substantial losses being incurred by a Project Party or a Downstream Party; or
- (d) **(abandonment)**: abandonment of all or any material part of the Services or the Services (as defined in the Sub-IREA Deed of Appointment).

10.3 Insurances

- (a) **(Insurances):** The Independent Reviewer and Environmental Auditor must hold and maintain from the Commencement Date:
- (i) **(public liability insurance):** public liability insurance:
- A. endorsed to include the Project Parties as additional insureds in respect of any Liability the Project Parties may incur arising in connection with the acts or omissions of the Independent Reviewer and Environmental Auditor;
- B. covering, without limitation, the Independent Reviewer and Environmental Auditor's Liability in accordance with clause 10.8 to the extent such Liability arises from:
- 1) injury to, illness or death of persons; or
- 2) loss of or damage to or of, or loss of use of (whether total or partial), any real or personal property;
- C. with a limit of indemnity of not less than the amount specified in the Contract Particulars; and
- D. with a deductible of not more than the amount specified in the Contract Particulars;
- (ii) **(professional indemnity insurance):** professional indemnity insurance which:
- A. has a limit of indemnity of not less than the amount specified in the Contract Particulars for any single claim in respect of legal Liability (including, without limitation, in connection with property damage, personal injury or death) arising in connection with a breach of clause 6.1 or any other breach of professional duty, whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Independent Reviewer and Environmental Auditor or its employees, agents or consultants;
- B. has a deductible of not more than the amount specified in the Contract Particulars; and
- C. has a retroactive date which is the Commencement Date,
- which complies with the requirements for insurances set out in clause 10.3(b) (as applicable); and
- (iii) **(workers' compensation insurance):** workers' compensation insurance against any Liability, whether in accordance with statute or at common law, for the death of, or injury to, persons employed, by the Independent Reviewer and Environmental Auditor, or if the Independent Reviewer and Environmental Auditor is comprised of more than one party employed by each such party in carrying out the Services.

(b) **(Requirements for insurances):**

- (i) The insurances referred to in clauses 10.3(a)(i) and 10.3(a)(ii) must be effected with Reputable Insurers and be on such terms as are approved by the Project Parties (such approval not to be unreasonably withheld).
- (ii) If the Independent Reviewer and Environmental Auditor comprises more than one person, the insurances referred to in clauses 10.3(a)(i) and 10.3(a)(ii) must (subject always to the overall limit of indemnity not being increased as a result):
 - A. insure each of those parties both jointly and severally; and
 - B. include a cross liability clause whereby the insurer agrees:
 - 1) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured; and
 - 2) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them.

10.4 Notice of matter affecting insurance

The Independent Reviewer and Environmental Auditor must notify the Project Parties immediately upon becoming aware, and where possible no less than 30 days in advance of, any event which:

- (a) **(professional indemnity insurance):** in relation to the professional indemnity insurance referred to in clause 10.3(a)(ii), could have an effect on its insurance cover under that policy; or
- (b) **(other insurance):** in relation to any other policy of insurance which the Independent Reviewer and Environmental Auditor is required to effect under this Deed, could have a material effect on its insurance cover,

or if any policy is cancelled, voided or allowed to lapse.

10.5 Provision of information

The Independent Reviewer and Environmental Auditor must provide to the Project Parties:

- (a) **(certified copies):** certified copies of any project specific insurance policies required to be effected and maintained under this Deed; and
- (b) **(certificates of currency):** certificates of currency, with respect to the insurances effected and maintained by the Independent Reviewer and Environmental Auditor for the purposes of this clause 10 at any time on request by any Project Party and upon the renewal of each policy.

10.6 Periods for insurance

The Independent Reviewer and Environmental Auditor must keep:

- (a) **(professional indemnity insurance)**: the professional indemnity insurance current for a period of 6 years after the cessation of the Services or the date of termination of this Deed, whichever is earlier;
- (b) **(workers compensation insurance)**: the employers' Liability and workers compensation insurance current until it ceases to perform the Services;
- (c) **(public liability insurance)**: the public liability insurance current until it ceases to perform the Services; and
- (d) **(other insurances)**: any other insurances current for such time as may reasonably be required by the Project Parties.

10.7 Obligations unaffected by insurance

The requirement to effect and maintain insurance in this clause 10 does not limit the Liability or other obligations of the Independent Reviewer and Environmental Auditor in accordance with this Deed.

10.8 Indemnity

- (a) **(Breach and negligent act or omission)**: Subject to clause 10.1, the Independent Reviewer and Environmental Auditor is liable for and must indemnify each Project Party against any Claim or loss brought against, suffered or incurred by a Project Party in respect of:
 - (i) any breach of this Deed by the Independent Reviewer and Environmental Auditor;
 - (ii) any negligent, wrongful, reckless or unlawful act or omission of the Independent Reviewer and Environmental Auditor or its officers, directors, employees or contractors;
 - (iii) any of the following:
 - A. the loss or damage to or of, or loss of use of (whether total or partial), any real or personal property (including property belonging to a Project Party); or
 - B. any injury to, illness or death of persons,

arising in connection with any act or omission of the Independent Reviewer and Environmental Auditor or its officers, directors, employees or contractors in connection with the Project or the Services; or
 - (iv) any third party Claims brought against a Project Party (including any Claim brought against a Project Party by another Project Party and any Claim or loss suffered or incurred by a Project Party to another Project Party) arising in connection with any negligent, wrongful, reckless or unlawful act or omission of the Independent Reviewer and Environmental Auditor or its officers, directors, employees or contractors in connection with the Project or the Services.
- (b) **(Reduction in Liability)**: The Independent Reviewer and Environmental Auditor's Liability under this clause 10.8 is reduced proportionally to the extent to which any action, proceeding, claim or demand arises out of any negligence or wrongful, reckless or unlawful act or omission of the Project Parties or their Associates.

- (c) **(Survival)**: All obligations to indemnify under this Deed survive termination of this Deed.

10.9 Proportionate Liability

- (a) **(No reduction in insurance covers)**: The Independent Reviewer and Environmental Auditor must ensure that, all policies of insurance against liabilities, which it is required by this Deed to effect or maintain, do not reduce or exclude the insurance cover in respect of liabilities governed by Part IVAA of the *Wrongs Act 1958* (Vic) or any corresponding legislation of another Australian jurisdiction, by reason of the manner in which that legislation operates or does not operate, as the case may be, in light of any of the provisions of this Deed and the obligations undertaken by the Independent Reviewer and Environmental Auditor in connection with it.
- (b) **(Reasonable endeavours)**: To the extent that the Insurance is not specific to the Project, the Independent Reviewer and Environmental Auditor is only required to use its reasonable endeavours to procure insurance on the terms referred to in clause 10.9(a).

11. Payment

Subject to clause 8.4, the Project Parties must pay to the Independent Reviewer and Environmental Auditor the Fee subject to and in accordance with the Payment Schedule.

12. Change to or suspension of Services and appointment of Substitute Reviewer

12.1 Change to Services

- (a) **(Notice of change to Services)**: The Project Parties may, by joint notice to the Independent Reviewer and Environmental Auditor, instruct the Independent Reviewer and Environmental Auditor to carry out a change to Services (including an addition or omission) which is within the general scope of this Deed. The Independent Reviewer and Environmental Auditor must comply with any such instruction. For the avoidance of doubt, a Resource Adjustment is not of itself a change to the Services.
- (b) **(Adjustment to Quarterly Fee Estimate)**: The Initial Fee (if applicable) and relevant Quarterly Fee Estimate or Quarterly Fee Estimates (as applicable) will be adjusted to reflect the change to the Services referred to in clause 12.1(a) in accordance with the Schedule of Rates. If the adjustment to the Initial Fee or relevant Quarterly Fee Estimate or Quarterly Fee Estimates for the change to the Services cannot be determined by reference to the Schedule of Rates, the adjustment will be a reasonable amount determined by the State and Project Co.

12.2 Appointment of Substitute Reviewer

- (a) **(Appointment of Substitute Reviewer)**: The Independent Reviewer and Environmental Auditor acknowledges that the Project Parties may appoint another reviewer (**Substitute Reviewer**) to carry out those Services which are omitted as referred to in clause 12.1(a).
- (b) **(Rights and powers)**: The Substitute Reviewer will have all of the rights and powers of the Independent Reviewer and Environmental Auditor under the Project Documents in connection with those Services.

- (c) **(Decisions):** Any decision of a Substitute Reviewer so appointed will be treated (between the Project Parties but not as between the Project Parties and the Independent Reviewer and Environmental Auditor) as if it is a decision of the Independent Reviewer and Environmental Auditor.
- (d) **(No responsibility for performance):** Without prejudice to any Claim which any Project Party may have in respect of the performance of the Independent Reviewer and Environmental Auditor, the Independent Reviewer and Environmental Auditor is not responsible for the performance of the Substitute Reviewer.

12.3 Independent Reviewer and Environmental Auditor must continue to perform

Notwithstanding a change to the Services or the appointment of a Substitute Reviewer, the Independent Reviewer and Environmental Auditor must continue to perform its Services, as changed in accordance with clause 12.1, in accordance with this Deed.

12.4 Suspension of Services

- (a) **(Suspension of Services):** The Project Parties may, by joint notice to the Independent Reviewer and Environmental Auditor, instruct the Independent Reviewer and Environmental Auditor to suspend and, after a suspension has been instructed, to recommence, the performance of any or all of the Services.
- (b) **(Payment during suspension):** During the period in which the Independent Reviewer and Environmental Auditor's performance of the Services are suspended in accordance with clause 12.4(a), the State (on behalf of the Project Parties) will pay the Independent Reviewer and Environmental Auditor, subject to the provisions of this Deed:
 - (i) for the Services that are not suspended (if any); and
 - (ii) subject to the Independent Reviewer and Environmental Auditor using all reasonable endeavours to mitigate, minimise or avoid the effects and consequences of the costs associated with the suspension of any or all of the Services, such unavoidable costs incurred arising in connection with the suspension of the Services or costs incurred by the Independent Reviewer and Environmental Auditor in anticipation of their Services not being suspended.

12.5 Meeting of all Project Parties

- (a) **(Project Party may call meeting):** If a Project Party is of the opinion that the Independent Reviewer and Environmental Auditor is not performing its duties in accordance with this Deed, that Project Party may call a meeting of the Project Parties' Representatives who must attend within 2 Business Days (or such other period as requested by that Project Party) to decide an appropriate action to resolve the issue.
- (b) **(Resolutions to be considered):** Without limiting the scope of the Project Parties' decision, the Project Parties will consider at such a meeting whether to resolve the issue referred to in clause 12.5(a) by:
 - (i) requesting that the Independent Reviewer and Environmental Auditor comply with this Deed;
 - (ii) changing the Services of the Independent Reviewer and Environmental Auditor in accordance with clause 12.1 and appointing a Substitute

Reviewer in accordance with clause 12.2 in connection with the Services which the Independent Reviewer and Environmental Auditor is not performing in accordance with this Deed;

- (iii) suspending the Services of the Independent Reviewer and Environmental Auditor in accordance with clause 12.4; or
- (iv) terminating the appointment of the Independent Reviewer and Environmental Auditor in accordance with clause 13.

13. Termination

13.1 Notice of default

If the Independent Reviewer and Environmental Auditor is in breach of this Deed and the breach is, in the reasonable opinion of the Project Parties, able to be remedied then the Project Parties may jointly give notice to the Independent Reviewer and Environmental Auditor:

- (a) **(specifying breach)**: specifying the breach; and
- (b) **(remedy of breach)**: requiring that the breach be remedied within 7 days, or such later date as agreed by the State and Project Co.

13.2 Termination for breach

If:

- (a) **(unable to remedy breach)**: the Independent Reviewer and Environmental Auditor is in breach of this Deed and the breach is not, in the reasonable opinion of the Project Parties, able to be remedied; or
- (b) **(breach not remedied)**: the Project Parties give a notice in accordance with clause 13.1 and the breach is not remedied within 7 days, or such later date as agreed by the State and Project Co,

then, subject to clause 13.6, the Project Parties may immediately terminate the appointment of the Independent Reviewer and Environmental Auditor by joint notice to the Independent Reviewer and Environmental Auditor.

13.3 Termination for insolvency

If an Insolvency Event occurs in respect of the Independent Reviewer and Environmental Auditor then, subject to clause 13.6, the Project Parties may immediately terminate the appointment of the Independent Reviewer and Environmental Auditor by joint notice to the Independent Reviewer and Environmental Auditor, whether or not the Independent Reviewer and Environmental Auditor is then in breach of this Deed.

13.4 Termination for convenience

Subject to clause 13.6, the Project Parties may at any time for their convenience terminate the appointment of the Independent Reviewer and Environmental Auditor upon 21 days' joint notice to the Independent Reviewer and Environmental Auditor, and appoint another person to act as the Independent Reviewer and Environmental Auditor.

13.5 No automatic termination upon termination of any State Project Document

The appointment of the Independent Reviewer and Environmental Auditor does not automatically terminate upon the termination of any of the State Project Documents.

13.6 Prior agreement on replacement

Prior to the serving of a notice in accordance with clause 13.1, 13.3 or 13.4, the Project Parties must have agreed upon, or failing agreement, the State must have determined, acting reasonably, another person to act as the Independent Reviewer and Environmental Auditor consistent with clause 9.7 of the Project Agreement.

13.7 Independent Reviewer and Environmental Auditor's rights upon termination for convenience

Where the appointment of the Independent Reviewer and Environmental Auditor is terminated in accordance with clause 13.4:

- (a) **(payment in accordance with Payment Schedule):** the Independent Reviewer and Environmental Auditor is only entitled to be paid by the State and Project Co in accordance with the Payment Schedule:
 - (i) the proportion of the Fee for Services performed up to the date of the termination; and
 - (ii) a reasonable amount in respect of any unavoidable liabilities incurred by the Independent Reviewer and Environmental Auditor as a consequence of the termination, except to the extent the Independent Reviewer and Environmental Auditor fails to mitigate such liabilities; and
- (b) **(no entitlement to Claim):** the Independent Reviewer and Environmental Auditor will not otherwise be entitled to bring any Claim against the State or Project Co arising in connection with:
 - (i) the termination of this Deed; or
 - (ii) the Project or the State Project Documents.

13.8 Termination without prejudice

Termination of the appointment of the Independent Reviewer and Environmental Auditor will be without prejudice to any other rights which the Project Parties may have in respect of any breach of the terms of this Deed which occurred prior to the date of termination.

14. Transition out

14.1 Transition Out Period

- (a) **(Obligations):** During the Transition Out Period, the Independent Reviewer and Environmental Auditor must:
 - (i) provide the Services required in accordance with, and otherwise comply with, the Transition Out Plan; and

- (ii) without being limited by clause 14.1(a)(i), cooperate and consult with the Project Parties and do all such tasks and things as may be reasonably necessary to ensure:
 - A. the smooth transition to the Project Parties of the Independent Reviewer and Environmental Auditor's responsibilities for the monitoring of Project Co's carrying out of the Project Activities; and
 - B. the final completion of all the Services and the full discharge of all of the Independent Reviewer and Environmental Auditor's responsibilities in accordance with this Deed.
- (b) **(Transition Out Plan):** For the purposes of clause 14.1(a), the Independent Reviewer and Environmental Auditor must:
 - (i) prepare a draft of the Transition Out Plan and provide it to the Project Parties by no later than 60 Business Days before the commencement of the Transition Out Period which:
 - A. is based on the draft Transition Out Plan submitted by the Independent Reviewer and Environmental Auditor with its tender for the Services (if any); and
 - B. takes into account all relevant considerations which have arisen during the Term;
 - (ii) provide all drafts of the Transition Out Plan to the Project Parties for review and consult with the Project Parties as required in relation to such drafts;
 - (iii) review and, if necessary, update the Transition Out Plan and make such amendments as may be reasonably required by the Project Parties to any draft of the Transition Out Plan; and
 - (iv) finalise, to the reasonable satisfaction of the Project Parties, the Transition Out Plan by no later than 20 Business Days before the commencement of the Transition Out Period.
- (c) **(Review Transition Out Plan every 6 months):** The Independent Reviewer and Environmental Auditor must review the Transition Out Plan at least once every 6 months during the Transition Out Period. The Independent Reviewer and Environmental Auditor must consult with the Project Parties as required in relation to any necessary amendments to the Transition Out Plan. The Project Parties may require the Independent Reviewer and Environmental Auditor, by notice, to make reasonable amendments to the Transition Out Plan during the Transition Out Period, if reasonably necessary to achieve the objectives specified in clause 14.1(a)(ii).

14.2 Delivery of documents

Upon completion of the Services, or upon the termination of the appointment of the Independent Reviewer and Environmental Auditor, the Independent Reviewer and Environmental Auditor:

- (a) **(books, records and documentation):** must deliver up to the Project Parties or to such other person as the Project Parties may direct, all books, records, drawings, specifications and other documentation in the possession, custody or control of the Independent Reviewer and Environmental Auditor relating to the Services; and

- (b) **(right to use documentation)**: acknowledges that the Project Parties have the right to use all such books, records, drawings, specifications and other documents for the purposes of the Project.

14.3 Reasonable assistance

Prior to completion of the Services, or upon the termination of the appointment of the Independent Reviewer and Environmental Auditor, the Independent Reviewer and Environmental Auditor must provide full assistance to the Project Parties and any successor to the Independent Reviewer and Environmental Auditor appointed in order to enable such successor to be in a position to perform the Services with effect from the appointment of such successor.

15. Intellectual property

The Independent Reviewer and Environmental Auditor:

- (a) **(grant)**: grants to the State and Project Co; and
- (b) **(all things necessary)**: must do all things necessary to give effect to the grant to the State and Project Co of,

a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) to use, reproduce, modify, adapt, develop, communicate to the public or otherwise exploit the Independent Reviewer and Environmental Auditor Material, for the purposes of:

- (c) **(Project)**: the Project (including, where this Deed is terminated for any reason, to complete any Services which have not been:
 - (i) carried out; or
 - (ii) carried out in accordance with the applicable State Project Documents, as at the date of termination);
- (d) **(Project Documents)**: the exercise of the rights of the State, Project Co or their Associates in accordance with the Project Documents, (including the State's step-in rights in accordance with clause 37 of the Project Agreement); and
- (e) **(further procurement)**: the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration, during and after the Term, of any part of the Project, the Relevant Infrastructure or any other project relating to aspects of the West Gate Tunnel.

16. GST

- (a) **(GST exclusive amounts)**: Unless otherwise expressly stated to include GST, any amounts payable for a taxable supply that are referred to in this Deed are exclusive of any GST (**Agreed Amount**).
- (b) **(GST payable by Supplier)**: If GST becomes payable on any taxable supply made by a party (**Supplier**) under or in connection with this Deed:
 - (i) unless the Agreed Amount is expressly stated to include GST, an additional amount will be payable by the party which is the recipient of the taxable supply (**Recipient**), equal to the amount of GST payable by

the Supplier on that taxable supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and

- (ii) the Supplier will provide a tax invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that taxable supply is to be provided in accordance with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 16(b) unless and until a tax invoice is received by the Recipient in connection with the taxable supply except where the Recipient is required to issue the tax invoice.
- (c) **(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 16(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:
 - (i) the Supplier will issue an adjustment note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (ii) no additional amount will be payable by the Recipient unless and until an adjustment note is received by the Recipient.
- (d) **(Revenue net of GST):** Any reference in this Deed to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (e) **(Cost net of GST):** Any reference in this Deed to cost, expense, liability or other similar amount (**Cost**) of a party, including in the context of an entitlement to recovery, reimbursement or compensation for any Costs of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (f) **(GST Groups):** For the purposes of this Deed, a reference to GST payable on a taxable supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.
- (g) **(Definitions):** In this clause 16 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.
- (h) **(Non-monetary consideration):** Where two parties in accordance with this Deed exchange non-monetary consideration:
 - (i) notwithstanding clause 16(b), the additional amount payable on any taxable supply by the Recipient to the Supplier shall be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate; and

- (ii) the parties agree to value the non-monetary consideration on an equal and GST-inclusive basis and swap tax invoices accordingly.

17. Dispute Resolution

17.1 Disputes to be resolved in accordance with the Project Agreement

Any dispute between the Project Parties arising in connection with this Deed must be resolved in accordance with the procedures set out in clauses 43 to 44 of the Project Agreement.

17.2 Notice of dispute

If any dispute (other than a dispute which is to be referred for resolution in accordance with clauses 43 to 44 of the Project Agreement under clause 17.1) arises between one or both of the Project Parties (on the one hand) and the Independent Reviewer and Environmental Auditor (on the other hand) (**Disputing Parties**) in respect of any fact, matter or thing arising out of or in connection with the Services or this Deed (**Dispute**), any of the Disputing Parties may give notice to each of the other parties specifying:

- (a) (**dispute**): the dispute or difference;
- (b) (**reasons**): particulars of the reasons for being dissatisfied; and
- (c) (**position**): the position which is believed to be correct.

17.3 Executive negotiation

The Dispute identified in the notice given under clause 17.2 is to be referred to the persons described in the Contract Particulars who must:

- (a) (**good faith negotiations**): meet and undertake genuine and good faith negotiations with a view to resolving the Dispute; and
- (b) (**procedure for resolution**): if they cannot resolve the Dispute, endeavour to agree upon a procedure to resolve the Dispute.

17.4 Referral to Mediation

If the persons described in the Contract Particulars cannot resolve, or agree upon a procedure to resolve, the Dispute within 10 Business Days after the date the notice is given under clause 17.2, or within such longer period of time as those persons may agree, the Dispute is to be submitted to mediation in accordance with clauses 17.5 to 17.8.

17.5 Mediation

Within 5 Business Days of the expiration of the period referred to in clause 17.4, the Dispute will be referred for mediation to:

- (a) (**person identified**): the person set out in the Contract Particulars; or
- (b) (**person not identified or unavailable**): if:
 - (i) no such person is specified; or
 - (ii) the mediator specified in the Contract Particulars or the person appointed in accordance with this clause 17.5(b):

- A. is unavailable;
- B. declines to act; or
- C. does not respond within 5 Business Days of a request for advice as to whether they are able to conduct the mediation,

a person appointed by the President (or acting President, as the case may be) of the Institute of Arbitrators and Mediators, Australia.

17.6 Place of mediation

The place of mediation will be Melbourne, Australia.

17.7 Evidence not admissible

Evidence of anything said, documents presented to, admissions made or matters raised in the course of any mediation will be confidential to the Disputing Parties and the mediator and will not be admissible in any subsequent proceedings.

17.8 Costs

Failing any agreement to the contrary between the Disputing Parties, the costs of the mediation (including any fees charged by the mediator) will be shared equally between the Disputing Parties.

17.9 Reference to litigation

If after 15 Business Days of the Mediator nominated in accordance with clause 17.5 having accepted his or her appointment, the Dispute has not been resolved, then the Dispute may be referred to litigation.

17.10 Condition precedent to litigation

The Project Parties and the Independent Reviewer and Environmental Auditor must comply with the provisions of clauses 17.2 to 17.8 as a condition precedent to commencing court proceedings in respect of any Dispute to which clause 17.2 applies (other than proceedings for urgent or injunctive relief).

17.11 Services to continue

The Independent Reviewer and Environmental Auditor must continue to perform the Services in accordance with this Deed notwithstanding the existence of a Dispute referred to in clause 17.2.

18. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time):

The State

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

Project Co

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

Independent Reviewer and Environmental Auditor

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be:
- (i) delivered by hand or posted by prepaid express post to the address; or
 - (ii) emailed (in the form agreed by the parties) to the email address, of the addressee set out in clause 18(b); or
 - (iii) transmitted using a document management system as agreed between and required by the Project Parties; and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 18(b):
- (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

- (iv) in the case of transmission by a document management system, in the same time periods as for emails as set out in clause 18(e)(iii), unless otherwise agreed between the parties.

19. Miscellaneous

19.1 Governing law and jurisdiction

- (a) **(Governing Law):** This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clause 17, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

19.2 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this Deed and the other State Project Documents:

- (a) **(entire understanding):** embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements):** supersede any prior agreement of the parties.

19.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to each party) required by Law or reasonably requested by another party to give effect to this Deed.

19.4 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
 - (i) the Project Party's rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to the State;
 - (v) any indemnity or financial security given in accordance with this Deed; or
 - (vi) any right or obligation arising on termination of this Deed.

- (b) **(Interpretation):** No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction in accordance with this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

19.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

19.6 Consents, approvals and directions

- (a) **(Project Parties):** A consent or approval required in accordance with this Deed from the Project Parties may be given or withheld, or may be given subject to any conditions, as the Project Parties think fit, unless this Deed expressly provides otherwise.
- (b) **(Project Co):** A consent or approval required in accordance with this Deed from Project Co may not be unreasonably withheld or delayed, unless this Deed expressly provides otherwise.

19.7 Amendments

- (a) **(Execution of Deed):** Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.
- (b) **(Amendments at Financial Close):** The Independent Reviewer and Environmental Auditor:
 - (i) acknowledges that at Financial Close, the State Project Documents may have been amended from the Agreed State Project Documents;
 - (ii) acknowledges that amendments may be required by the Project Parties to this Deed to reflect any such amendments; and
 - (iii) must do everything reasonably necessary to give effect to any such amendments to this Deed, including executing an amending deed to this Deed.

19.8 Expenses

Except as otherwise expressly provided in this Deed or the Project Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing, and performing this Deed.

19.9 Severance

If at any time a provision of this Deed or any other State Project Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) **(this Deed)**: any other provision of this Deed or any other relevant State Project Documents; or
- (b) **(other jurisdiction)**: that provision under the Law of any other jurisdiction.

19.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

19.11 Moratorium legislation

Without limiting clause 5.4 of the Project Agreement, to the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of the Independent Reviewer and Environmental Auditor any obligations under this Deed, or to prejudicially affect the exercise by the Project Parties of any right, power or remedy under this Deed or otherwise are expressly waived.

19.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act)**: The operation of Part IVAA of the *Wrongs Act 1958* (Vic) (and any equivalent statutory provision in any other state or territory or the Commonwealth of Australia) is excluded in relation to all and any rights, obligations or liabilities of either party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities)**: Without limiting clause 19.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (c) **(Independent Reviewer and Environmental Auditor not to apply)**: The Independent Reviewer and Environmental Auditor must not seek to apply the provisions of Part IVAA of the *Wrongs Act 1958* (Vic) (or any equivalent statutory provision in any other state or territory or the Commonwealth of Australia) in relation to any claim by the Project Parties against the Independent Reviewer and Environmental Auditor (whether in contract, tort or otherwise).
- (d) **(Indemnity)**: If any of the provisions of Part IVAA of the *Wrongs Act 1958* (Vic) (or any equivalent statutory provision in any other state or territory or the Commonwealth of Australia) are applied to any claim by the Project Parties against the Independent Reviewer and Environmental Auditor (whether in contract, tort or otherwise), the Independent Reviewer and Environmental Auditor will indemnify the Project Parties against any loss which the Project Parties are not able to recover

from the Independent Reviewer and Environmental Auditor because of the operation of Part IVAA of the *Wrongs Act 1958* (Vic) (or any equivalent statutory provision in any other state or territory or the Commonwealth of Australia).

19.13 Confidentiality

The Independent Reviewer and Environmental Auditor must keep confidential details of this Deed and all information and documents provided to, or by, the Independent Reviewer and Environmental Auditor relating to the Services and not disclose or use the information or documents except:

- (a) **(Project Parties)**: to the Project Parties;
- (b) **(Services)**: for the purposes of performing the Services;
- (c) **(Law)**: where required by Law or to obtain legal advice on this Deed; or
- (d) **(consent)**: with the prior consent of the Project Parties.

This obligation will survive completion of the Services or the termination of this Deed.

19.14 Assignment and security

- (a) **(No assignment)**: Subject to clause 19.14(b), no party to this Deed may assign, novate, transfer, mortgage, charge, encumber or otherwise deal with any of its rights or obligations under this Deed without the prior consent of each other party to this Deed.
- (b) **(Mortgage, charge or encumber)**: Project Co may mortgage, charge or encumber its rights under this Deed in accordance with the Project Agreement and the Finance Documents.

19.15 No representation or reliance

- (a) **(No representation)**: Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) **(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

19.16 Indemnities

- (a) **(Continuing Liability)**: Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) **(Expense not necessary)**: It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

19.17 Document management system

Without limiting the Independent Reviewer and Environmental Auditor's obligations under this Deed, including under clause 18 and the Services Schedule, the Independent Reviewer and Environmental Auditor must use a document management system as agreed between and required by the Project Parties.

Schedule 1 Contract Particulars

1. Other Upstream IREA Contracts

Not used.

2. Other Downstream Sub-IREA Contracts

Not used.

3. Other Downstream Parties

Project Co in its capacity as a party to a Downstream Sub-IREA Contract.

4. Independent Reviewer and Environmental Auditor's Representative

[not disclosed]

5. Project Parties' Representatives

State: [not disclosed]

Project Co: [not disclosed]

6. Key People

| Name | Role |
|----------------------------|---------------------|
| <i>IREA Governance</i> | |
| [not disclosed] | IREA Governance |
| [not disclosed] | IREA Governance |
| [not disclosed] | IREA Governance |
| <i>IREA Representative</i> | |
| [not disclosed] | IREA Representative |
| <i>Design Review</i> | |
| [not disclosed] | Design Review Lead |
| [not disclosed] | Drainage |
| [not disclosed] | Pavements |
| [not disclosed] | Road Alignment |
| [not disclosed] | ITS |

West Gate Tunnel Project
 Independent Reviewer and Environmental Auditor Deed of Appointment

| Name | Role |
|----------------------------------|--|
| To be advised | Utility Services |
| [not disclosed] | Signage, line marking, gantries |
| [not disclosed] | Design Reviewer - Bridges and structures |
| [not disclosed] | Bridges and structures |
| [not disclosed] | Retaining Walls |
| [not disclosed] | Noise Barriers |
| [not disclosed] | Landscaping and urban treatments |
| [not disclosed] | Bike and Pedestrian Pathways |
| [not disclosed] | Rail Works |
| [not disclosed] | Specialist Durability Requirements |
| [not disclosed] | Tolling |
| [not disclosed] | Buildings |
| [not disclosed] | Portals and Structures |
| [not disclosed] | Vibration and Noise |
| [not disclosed] | OMCS |
| [not disclosed] | Systems F&LS |
| [not disclosed] | Tunnel Excavation and Support |
| [not disclosed] | Electrical |
| [not disclosed] | Geotechnical |
| <i>Environmental Auditor</i> | |
| [not disclosed] | IREA Environmental Auditor Lead |
| [not disclosed] | IREA Environment Officer |
| [not disclosed] | IREA Environment Officer |
| <i>Construction Surveillance</i> | |
| To be advised | Construction Review Lead |
| [not disclosed] | WGF upgrade - Lead Engineer |
| [not disclosed] | Construction Engineers |

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| Name | Role |
|--------------------------|---|
| [not disclosed] | Surveillance Engineers/Officers |
| [not disclosed] | Surveillance Engineers/Officers |
| [not disclosed] | Tunnel Lead Engineer |
| [not disclosed] | Construction Engineers |
| [not disclosed] | Surveillance Engineers/Officers |
| [not disclosed] | Surveillance Engineers/Officers |
| [not disclosed] | Bridge and elevated Roadway Lead Engineer |
| [not disclosed] | Construction Engineers |
| [not disclosed] | Surveillance Engineers/Officers |
| [not disclosed] | Surveillance Engineers/Officers |
| [not disclosed] | Geotechnical |
| [not disclosed] | ITS |
| [not disclosed] | OMCS & Tolling |
| [not disclosed] | F&LS |
| [not disclosed] | Urban services surveillance (DCM) |
| [not disclosed] | Landscaping surveillance |
| [not disclosed] | Utility services relocation |
| [not disclosed] | Traffic Management Review |
| <i>Technical Support</i> | |
| [not disclosed] | IREA Quality Reviewer |
| [not disclosed] | IREA Safety Reviewer |
| [not disclosed] | IREA Program and EQT Reviewer |
| [not disclosed] | IREA Project Management Plan Reviewer |
| [not disclosed] | IREA Completions Manager |
| [not disclosed] | Project Manager |

7. Limitation on Independent Reviewer and Environmental Auditor's Liability

Limit: \$[not disclosed]

8. Professional indemnity insurance

Minimum limit of indemnity: \$[not disclosed] for any one claim and in the aggregate
Maximum deductible: \$[not disclosed]

9. Public Liability insurance

Minimum limit of indemnity: \$[not disclosed] for any single occurrence and unlimited in the aggregate as to the number of occurrences for any one period of insurance
Maximum deductible: \$[not disclosed]

10. Dispute resolution

State's Executive Negotiator: [not disclosed]
Project Co's Executive Negotiator: [not disclosed]
Independent Reviewer and Environmental Auditor's Executive Negotiator: [not disclosed]
Mediator: to be agreed between the parties.

Schedule 2 Services

1. General

The Independent Reviewer and Environmental Auditor must:

- (a) **(become familiar with the role)**: become familiar with the role (express or implied) under the State Project Documents and review information made available to the Independent Reviewer and Environmental Auditor by the parties in order to become fully acquainted with the Project;
- (b) **(discharge functions under the State Project Documents)**: discharge the functions which the State Project Documents contemplate will be discharged by the Independent Reviewer and Environmental Auditor;
- (c) **(attend meetings and report)**: attend meetings and report as required from time to time by the parties;
- (d) **(minimum surveillance)**: undertake, as a minimum, the surveillance of the Project as set out or described in the Monitoring Plan;
- (e) **(Hold Points and witness points)**: attend, as a minimum, the Hold Points and witness points set out or described in the Monitoring Plan;
- (f) **(certificates)**: issues certificates in accordance with the State Project Documents and in the form set out in the Schedule of Certificates and Notices; and
- (g) **(general)**: otherwise discharge the functions of the Independent Reviewer and Environmental Auditor under the State Project Documents, including the PSR.

2. Project Agreement (including the PSR)

The Independent Reviewer and Environmental Auditor's functions under the Project Agreement include, but are not necessarily limited to:

| Clause No. | Independent Reviewer and Environmental Auditor Role |
|---|---|
| Preferred Respondent Phase Services | |
| All of the functions required to be carried out by the Independent Reviewer and Environmental Auditor as part of the D&C Phase Services (as set out below), to the extent that such functions are required to be carried out during the Preferred Respondent Phase. | |
| D&C Phase Services | |
| Clause 1 Definition of "D&C Program" | As reasonably required, request a D&C Program which is prepared and updated in accordance with the Project Agreement. |
| Clause 1 Definition of "Date of Close-Out" | Sign the Certificate of Close-Out. |

West Gate Tunnel Project
Independent Reviewer and Environmental Auditor Deed of Appointment

| Clause No. | Independent Reviewer and Environmental Auditor Role |
|---|--|
| <p>Clause 1 Definition of "Date of Tolling Completion"</p> | <p>Sign the Certificate of Tolling Completion.</p> |
| <p>Clause 1 Definition of "Date of Western Distributor Completion"</p> | <p>Sign the Certificate of Western Distributor Completion.</p> |
| <p>Clause 1 Definition of "Major Default"</p> | <p>Notify the State and Project Co:</p> <ul style="list-style-type: none"> (a) if Project Co is not diligently pursuing the Remediation Plan clause 23.2(f)(i)A of the Project Agreement or the amended Remediation Plan under clause 23.2(i)(ii)A of the Project Agreement; (b) subject to clause 23.2(ib) of the Project Agreement, that the D&C Program is not consistent with the Remediation Plan; (c) subject to clause 23.2(g) and 23.2(ia) of the Project Agreement, that the Explanation is not satisfactory under clause 23.2(e)(ii) of the Project Agreement or the Remediation Plan does not address its concerns under clause 23.2(f)(ii) of the Project Agreement; (d) subject to clause 23.2(ia) of the Project Agreement, under clause 23.2(i)(i)B of the Project Agreement, that the amended Explanation is not satisfactory; or (e) subject to clause 23.2(ia) of the Project Agreement, under clause 23.2(i)(ii)B of the Project Agreement, that the amended Remediation Plan is not satisfactory. |
| <p>Clause 1 Definition of "Tolling Completion"</p> | <p>Determine whether Project Co has reasonable grounds for not promptly rectifying minor Defects which do not prevent the Tolling Works from being Fit for Purpose for the purposes of determining whether Tolling Completion has been achieved.</p> |
| <p>Clause 1 Definition of "Western Distributor Completion"</p> | <p>Determine whether Project Co has reasonable grounds for not promptly rectifying minor Defects which do not prevent the Works from being Fit for Purpose for the purposes of determining whether Western Distributor Completion has been achieved.</p> |
| <p>Clause 2.15 No State or Project Co liability for review</p> | <p>Except as otherwise expressly provided in the IREA Deed of Appointment the Independent Reviewer and Environmental Auditor does not owe a duty of care to Project Co:</p> <ul style="list-style-type: none"> (a) to review the Project Co Material submitted by Project Co (even where submitted in accordance with the Review Procedures); or (b) inspect or review the Project Activities or the Relevant Infrastructure for Defects, other errors or omissions or for compliance with the State Project |

West Gate Tunnel Project
Independent Reviewer and Environmental Auditor Deed of Appointment

| Clause No. | Independent Reviewer and Environmental Auditor Role |
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| | Documents or any Laws. |
| <p>Clause 5.1(b)(ii) Project Co's primary obligations (Comply with directions)</p> | Give Project Co directions or determinations in accordance with the State Project Documents to the extent that the Independent Review and Environmental Auditor has express rights to give such directions or determinations under the State Project Documents. |
| <p>Clause 7.4(b) Interference, obstruction and nuisance (unreasonable levels of nuisance or interference)</p> | To the extent that levels of nuisance or interference are not reasonable or are not in the interests of the safety of persons on the Site or any other areas adjacent to the Site, give Project Co reasonable directions to stop or change the manner of undertaking the Works or carrying out of the Project Activities and amend the Project Delivery Management Plan and any other relevant Project Plan or Business Management Strategy to remedy the nuisance or interference and submit it to the State for review in accordance with the Review Procedures. |
| <p>Clause 9.3(c)(iii) Project Control Group (Functions)</p> | Provide reports and plans to the Project Control Group during the Term. |
| <p>Clause 9.3(g) Project Control Group (Reports)</p> | Receive: <ul style="list-style-type: none"> (a) prior to the Date of Tolling Completion, a Monthly D&C Phase Progress Report for the previous Month; and (b) thereafter, a Monthly O&M Phase Progress Report, prepared and updated in accordance with the PSR in accordance with clause 9.3(g) of the Project Agreement, from Project Co during the D&C Phase. |
| <p>Clause 9.3 (i) Project Control Group (Other attendees)</p> | Attend any meeting of the Project Control Group, if required to do so by the State. |
| <p>Clause 9.5(d) Costs and expenses of Independent Reviewer and Environmental Auditor (Costs for reports)</p> | Where the Independent Reviewer and Environmental Auditor prepares a report not otherwise required by the Project Agreement or the Independent Reviewer and Environmental Auditor Deed of Appointment, but requested by the State or Project Co, provide a copy of that additional report to the party not requesting the report. |
| <p>Clause 9.8(c)(ii) Proof Engineer (obligations)</p> | Require from the Proof Engineer such information, assistance, documentation and access as may be reasonably required by the Independent Reviewer and Environmental Auditor for the purpose of performing its role and functions under the Project Agreement and the IREA Deed of Appointment. |
| <p>Clause 11(a) Project Plans and O&M Manuals and Business Management Strategy</p> | Receive Project Plans and O&M Manuals submitted by Project Co in accordance with the Review Procedures. |

| Clause No. | Independent Reviewer and Environmental Auditor Role |
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| (Submission) | |
| <p>Clause 11(b) Project Plans and O&M Manuals and Business Management Strategy (Additional information)</p> | <p>Reasonably request additional information from the Project Co in connection with the Business Management Strategy, Project Plans and O&M Manuals at any time.</p> |
| <p>Clause 13.3(a) State's right to enter, inspect and test (Right of entry)</p> | <p>If authorised by the State, during Business Hours or upon giving reasonable notice to Project Co (except in the case of an emergency when no notice is required) the Independent Reviewer and Environmental Auditor may enter the Site or the offices of Project Co to:</p> <ul style="list-style-type: none"> (a) inspect, observe or test any part of the Relevant Infrastructure or the Project Activities (whether or not such inspections, observations or test are otherwise required in accordance with the Project Agreement); (b) exercise any right (including any step-in right) or carry out any obligation which the State has in accordance with any State Project Document; (c) take such other action as the State considers necessary to exercise its rights in accordance with any State Project Document or to discharge its executive or statutory rights or duties; or (d) examine and make copies of the records, reports and all documents reasonably requested of Project Co or any Subcontractor in connection with the Project. |
| <p>Clause 13.3(b) State's right to enter, inspect and test (Conditions of access)</p> | <p>When entering the site in accordance with clause 13.3(a) of the Project Agreement or otherwise:</p> <ul style="list-style-type: none"> (a) comply with the Site Access and Interface Protocols and any generally applicable safety and security requirements of Project Co; (b) not unnecessarily interfere with the carrying out of the Project Activities; and (c) not damage the Relevant Infrastructure, the Site or the property of Project Co or its Associates. |
| <p>Clause 13.6 Schedule of Certificates and Notices</p> | <p>Receive, where applicable, from Project Co the certificates required by the Schedule of Certificates and Notices in accordance with the terms of the Schedule of Certificates and Notices.</p> |
| <p>Clause 15(a) D&C Program (Submission)</p> | <p>Receive from Project Co the D&C Program in accordance with the Review Procedures by the times set out in the PSR.</p> |
| <p>Clause 15(d)</p> | <p>Receive notice from Project Co:</p> |

West Gate Tunnel Project
Independent Reviewer and Environmental Auditor Deed of Appointment

| Clause No. | Independent Reviewer and Environmental Auditor Role |
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| D&C Program (Notice of departure) | <ul style="list-style-type: none"> (a) monthly upon becoming aware of any proposed or likely departure from the D&C Program; and (b) in any event before Project Co departs from the critical path in the D&C Program, <p>together with the reasons why the departure is necessary to comply with the Project Agreement.</p> |
| Clause 15(f) D&C Program (Assessing Claims) | Exercise its sole and absolute discretion as to whether to use the D&C Program for any purpose, including assessing any Claim made by Project Co. |
| Clause 17.2(c) Design Review Process (D&C) (Submission) | Receive the Design Documentation submitted by Project Co in accordance with the Design Review Section. |
| Clause 17.2(d) Design Review Process (Independent Reviewer and Environmental Auditor review) | Review the Design Documentation submitted or resubmitted by Project Co in accordance with the Design Review Section. |
| Clause 17.3 Preliminary Design Documentation submitted during the Preferred Respondent Phase | <p>Receive a re-submission of the Preliminary Design Documentation from Project Co under section 2.1(a) of the Design Review Section where:</p> <ul style="list-style-type: none"> (a) Project Co has submitted Preliminary Design Documentation to the State and the Independent Reviewer and Environmental Auditor for review during the Preferred Respondent Phase; and (b) changes are required to that Preliminary Design Documentation as a result of any change in circumstance relevant to preparation of the Design Documentation in accordance with the State Project Documents (including an Adjustment Trigger, a Change in Law and a Change in Policy) between the date of submission of the Preliminary Design Documentation and the date of the Project Agreement. |
| Clause 19(b) Temporary Operational Completion (Notice) | <p>Receive copies of separate notices from Project Co:</p> <ul style="list-style-type: none"> (a) 10 Business Days (or such lesser notice period as may be agreed between the State and Project Co) before the date upon which Project Co reasonably expects to achieve Temporary Operational Completion; and (b) when Project Co considers that Temporary Operational Completion has been achieved. |
| Clause 19(c) Temporary Operational Completion (State) | Receive a written request from Project Co to determine whether Temporary Operational Completion has been achieved. |

West Gate Tunnel Project
Independent Reviewer and Environmental Auditor Deed of Appointment

| Clause No. | Independent Reviewer and Environmental Auditor Role |
|---|--|
| response) | |
| <p>Clause 19(d) Temporary Operational Completion (Independent Reviewer and Environmental Auditor notice)</p> | <p>Upon receipt of a notice under clause 19(c) of the Project Agreement, review the Works and, within 5 Business Days, notify in writing the State and Project Co that Temporary Operational Completion:</p> <ul style="list-style-type: none"> (a) has been achieved; or (b) has not been achieved and a listing of the work remaining to be undertaken to achieve Temporary Operational Completion. |
| <p>Clause 19(e) Temporary Operational Completion (Further work)</p> | <p>Receive written notice from Project Co on completion of further work requested in accordance with clause 19(d)(ii) of the Project Agreement.</p> |
| <p>Clause 19(h) Temporary Operational Completion (Acknowledgment)</p> | <p>Temporary Operational Completion being achieved does not constitute an acknowledgement by the Independent Reviewer and Environmental Auditor that the completed Works comply with the Project Agreement.</p> |
| <p>Clause 20.1(a) Notice before completion (Notice)</p> | <p>Receive a copy of separate notices from Project Co 60 Business Days and 20 Business Days prior to the date upon which Project Co reasonably expects to achieve Western Distributor Completion or Tolling Completion.</p> |
| <p>Clause 20.1(b) Notice before completion (Revised date)</p> | <p>Receive notification from Project Co of the revised date of expected Western Distributor Completion or Tolling Completion if, after Project Co gives the State and the Independent Reviewer and Environmental Auditor a notice in accordance with clause 20.1(a) of the Project Agreement, the expected date upon which Project Co reasonably expects to achieve Western Distributor Completion changes.</p> |
| <p>Clause 20.2(a) Completion (Notice by Project Co)</p> | <p>When Project Co considers that it has achieved Western Distributor Completion or Tolling Completion, the Independent Reviewer and Environmental Auditor must:</p> <ul style="list-style-type: none"> (a) receive notification from Project Co of Project Co's opinion that it has achieved Western Distributor Completion or Tolling Completion; (b) receive a request from Project Co to issue a Certificate of Western Distributor Completion or Tolling Completion; and (c) receive a detailed list of the work (including minor Defect correction and any relevant Remaining Works) remaining to be undertaken to achieve Close-Out (in Project Co's opinion) from Project Co. |
| <p>Clause 20.2(b) Completion (Notice by State)</p> | <p>When the State considers that Project Co has achieved Western Distributor Completion, the Independent Reviewer and Environmental Auditor must:</p> <ul style="list-style-type: none"> (a) receive notification from the State of the State's |

| Clause No. | Independent Reviewer and Environmental Auditor Role |
|--|--|
| | <p>opinion that Project Co's opinion has achieved Western Distributor Completion; and</p> <p>(b) receive a request from the State to issue a Certificate of Western Distributor Completion.</p> |
| <p>Clause 20.2(c) Completion (Independent Reviewer and Environmental Auditor to make determination)</p> | <p>As soon as reasonably practicable and, in any event, within 15 Business Days of Project Co complying with clause 20.2(a) of the Project Agreement or the State giving notice under clause 20.2(b) of the Project Agreement, the Independent Reviewer and Environmental Auditor is required to determine whether Western Distributor Completion or Tolling Completion has been achieved and either:</p> <p>(a) if Western Distributor Completion or Tolling Completion has been achieved, issue a Certificate of Western Distributor Completion or Certificate of Tolling Completion to the State and Project Co:</p> <p>(i) certifying that Western Distributor Completion or Tolling Completion has been achieved;</p> <p>(ii) stating the Date of Western Distributor Completion or Date of Tolling Completion;</p> <p>(iii) listing any Defects of the kind referred to in paragraph (a) of the definition of Western Distributor Completion (including any Defects in a Returned Facility) and paragraph (b) of the definition of Tolling Completion; and</p> <p>(iv) setting out details of the Independent Reviewer and Environmental Auditor's opinion of the work remaining to be undertaken to achieve Close-Out; or</p> <p>(b) if Western Distributor Completion or Tolling Completion has not been achieved, issue a notice to the State and Project Co:</p> <p>(i) listing the work remaining to be undertaken to achieve Western Distributor Completion or Tolling Completion; or</p> <p>(ii) stating that Western Distributor Completion or Tolling Completion is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 20.2(c)(ii)A of the Project Agreement,</p> <p>after which Project Co must continue to expeditiously and diligently progress the D&C Activities to achieve Western Distributor Completion or Tolling Completion.</p> |
| <p>Clause 20.2(d) Completion (Further notice by Project Co)</p> | <p>Receive notification from Project Co when the work listed in the notice issued by the Independent Reviewer and Environmental Auditor under clause 20.2(c)(ii)A of the Project Agreement has been completed.</p> |
| <p>Clause 20.2(f)</p> | <p>In making its determination as to whether Western Distributor Completion or Tolling Completion has been achieved the</p> |

| Clause No. | Independent Reviewer and Environmental Auditor Role |
|---|--|
| Completion (No restriction on Independent Reviewer and Environmental Auditor) | <p>Independent Reviewer and Environmental Auditor will:</p> <ul style="list-style-type: none"> (a) not be restricted by any notice which it has previously issued under clause 19(d)(i) of the Project Agreement; (b) not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 20.2(c) of the Project Agreement; and (c) be entitled to raise any other items of work (other than the Defects of the kind referred to in paragraph (a) of the definition of Western Distributor Completion or paragraph (b) of the definition of Tolling Completion) as a ground for determining that Western Distributor Completion or Tolling Completion has not been achieved. |
| <p>Clause 20.3(b)(ii)(B) Progressive completion and Handback of Returned Works (General Obligations)</p> | <p>Progressively inspect the Returned Works, consider whether the Returned Works have been completed in accordance with the State Project Documents and carry out any reinspection or other activities required by the Project Agreement or the IREA Deed of Appointment to be carried out by the Independent Reviewer and Environmental Auditor in a smooth and orderly manner.</p> |
| <p>Clause 20.3(c)(i)(B) Progressive completion and Handback of Returned Works (Completion of Returned Works)</p> | <p>Determine whether Project Co has reasonable grounds for not promptly rectifying minor Defects for the purposes of clause 20.3(c)(i) of the Project Agreement.</p> |
| <p>Clause 20.3(c)(ii) Progressive completion and Handback of Returned Works (Completion of Returned Works)</p> | <p>Receive notification from Project Co in the form required by the Schedule of Certificates and Notices which states that Project Co considers that the Returned Facility has been completed in accordance with the State Project Documents and lists any Defects of the kind referred to in clause 20.3(c)(i) of the Project Agreement.</p> |
| <p>Clause 20.3(c)(iii) Progressive completion and Handback of Returned Works (Completion of Returned Works)</p> | <p>Have the opportunity to jointly inspect (with Project Co and the Facility Owner) the Returned Facility at a time agreed (or in the absence of agreement a time determined by the Independent Reviewer and Environmental Auditor) which will be no more than 5 Business Days after receipt of Project Co's notice under clause 20.3(c)(ii) of the Project Agreement.</p> |
| <p>Clause 20.3(c)(iv) Progressive completion and Handback of Returned Works (Completion of Returned)</p> | <p>Issue to the State, the Facility Owner and Project Co and a notice under clause 20.3(e)(i) of the Project Agreement.</p> |
| <p>Clause 20.3(d) Progressive completion and Handback of</p> | <p>In determining the notice to be issued under clause 20.3(e) of the Project Agreement, the Independent Reviewer and Environmental Auditor will consider any reasonable comments of the relevant Facility Owner provided within 5 Business Days</p> |

| Clause No. | Independent Reviewer and Environmental Auditor Role |
|---|---|
| Returned Works (Independent Reviewer and Environmental Auditor to consider comments of Facility Owner) | after the time of the inspection under clause 20.3(c)(iii) of the Project Agreement. |
| <p>Clause 20.3(e) Progressive completion and Handback of Returned Works (Independent Reviewer and Environmental Auditor to make determination)</p> | <p>As soon as reasonably practicable following the inspection under clause 20.3(c)(iii) of the Project Agreement, and in any event within 25 Business Days, the Independent Reviewer and Environmental Auditor is required to determine whether the Returned Facility has been completed in accordance with the State Project Documents (subject only to Defects of the kind referred to in clause 20.3(c)(i) of the Project Agreement) and issue to the State and Project Co either:</p> <ul style="list-style-type: none"> (a) a notice in the form required by the Schedule of Certificates and Notices confirming that the Returned Facility has been completed (subject only to Defects of the kind referred to in clause 20.3(c)(i) of the Project Agreement); or (b) a notice either: <ul style="list-style-type: none"> (i) listing the work remaining to be undertaken in order to complete the Returned Facility in accordance with the State Project Documents or Rail Interface Party's Requirements (subject only to Defects of the kind referred to in clause 20.3(c)(i) of the Project Agreement); or (ii) stating that the Returned Facility is so far from being completed in accordance with the State Project Documents that it is not practicable to provide a list of the type referred to in clause 20.3(e)(ii)A of the Project Agreement, <p>after which Project Co must continue to expeditiously and diligently progress the D&C Activities to complete the Returned Facility in accordance with the State Project Documents.</p> |
| <p>Clause 20.3(f) Progressive completion and Handback of Returned Works (Copy to Facility Owner)</p> | <p>The Independent Reviewer and Environmental Auditor must provide a copy of:</p> <ul style="list-style-type: none"> (a) any notice under clause 20.3(e)(i) of the Project Agreement to the relevant Facility Owner; and (b) any notice under clause 20.3(e)(ii) of the Project Agreement, to the relevant Facility Owner where requested by the Facility Owner or where the Facility Owner is the Port Manager. |
| <p>Clause 20.3(g) Progressive completion and Handback of Returned Works (Further notice by Project Co)</p> | <p>Receive notification from Project Co when the work listed in a notice issued by the Independent Reviewer and Environmental Auditor under clause 20.3(e)(ii)A of the Project Agreement has been completed.</p> |

| Clause No. | Independent Reviewer and Environmental Auditor Role |
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| <p>Clause 20.3(i) Progressive completion and Handback of Returned Works (No restriction on Independent Reviewer and Environmental Auditor)</p> | <p>The Independent Reviewer and Environmental Auditor, in making its determination as to whether the Returned Facility has been completed in accordance with the State Project Documents (subject only to Defects of the kind referred to in clause 20.3(c)(i) of the Project Agreement), will:</p> <ul style="list-style-type: none"> (a) not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 20.3(e)(ii) of the Project Agreement; and (b) be entitled to raise any other items of work (other than the Defects of the kind referred to in clause 20.3(c)(i) of the Project Agreement) as a ground for determining that the Returned Facility has not been completed in accordance with the State Project Documents. |
| <p>Clause 20.3(j)(i) Progressive completion and Handback of Returned Works (Project Co's Handback obligations)</p> | <p>Receive from Project Co a copy of Project Co's notification to the Facility Owner of the date upon which Handback of the Returned Facility will occur (which date must not be fewer than 5 Business Days from the notice under this clause 20.3(j)(i) of the Project Agreement).</p> |
| <p>Clause 21.1(b) Close-Out (Notice of Close-Out)</p> | <p>When Project Co considers that Close-Out has been achieved, receive from Project Co:</p> <ul style="list-style-type: none"> (a) notification of Project Co's opinion; and (b) a request to issue a Certificate of Close-Out. |
| <p>Clause 21.1(c) Close-Out (Independent Reviewer and Environmental Auditor to make determination)</p> | <p>Within 15 Business Days of Project Co's notice under clause 21.1(b) of the Project Agreement, the Independent Reviewer and Environmental Auditor is required to inspect the Works to determine whether Close-Out has been achieved and either:</p> <ul style="list-style-type: none"> (a) if Close-Out has been achieved, issue a Certificate of Close-Out to the State and Project Co: <ul style="list-style-type: none"> (i) certifying that Close-Out has been achieved; and (ii) stating the Date of Close-Out (being the date of the Certificate of Close-Out); or (b) if Close-Out has not been achieved, issue a notice to the State and Project Co listing the work remaining to be undertaken to achieve Close-Out, including any relevant Remaining Works. |
| <p>Clause 21.1(e) Close-Out (Further notice by Project Co)</p> | <p>Receive notification from the Project Co when the work listed in the Independent Reviewer and Environmental Auditor's notice under clause 21.1(c)(ii) of the Project Agreement has been completed.</p> |
| <p>Clause 21.1(g) Close-Out (No restriction by Independent Reviewer and Environmental</p> | <p>The Independent Reviewer and Environmental Auditor, in making a determination as to whether Close-Out has been achieved:</p> |

| Clause No. | Independent Reviewer and Environmental Auditor Role |
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| Auditor) | <ul style="list-style-type: none"> (a) will not be restricted by any: <ul style="list-style-type: none"> (i) Certificate of Western Distributor Completion, Certificate of Tolling Completion, notice, list or opinion already provided in accordance with the Project Agreement; or (ii) obligation of Project Co under the Project Agreement to correct any Defects; and (b) will be entitled to raise any items of work as a ground for determining that Close-Out has not been achieved. |
| Clause 21.2(a)(iii) Late Close-Out (Close-Out Bond) | <p>If:</p> <ul style="list-style-type: none"> (a) Project Co does not achieve Close-Out by the Date for Close-Out; or (b) at any time 6 months after the Date of Western Distributor Completion, the State considers (acting reasonably) that Close-Out will not be achieved by the relevant Date for Close-Out, <p>then:</p> <ul style="list-style-type: none"> (c) the Independent Review and Environmental Auditor may receive a notice from the State which requires the Independent Reviewer and Environmental Auditor to: <ul style="list-style-type: none"> (i) identify the work remaining to be undertaken to achieve Close-Out; and (ii) determine the cost of performing such work. |
| Clause 21.2(a)(iv) Late Close-Out (Close-Out Bond) | <p>Within 5 Business Days of the State's notice under clause 21.2(a)(iii) of the Project Agreement, the Independent Reviewer and Environmental Auditor must issue a notice to the State and Project Co:</p> <ul style="list-style-type: none"> (a) listing the work remaining to be undertaken to achieve Close-Out; and (b) setting out the cost of performing such work (Outstanding Close-Out Costs). |
| Clause 21.2(c) Late Close-Out (Calling upon Close-Out Bond) | <p>If Project Co has not achieved Close-Out within 3 months after Project Co is required to provide the Close-Out Bond to the State in accordance with clause 21.2(b) of the Project Agreement, the Independent Reviewer and Environmental Auditor must receive any notice from the State requiring the Independent Reviewer and Environmental Auditor to:</p> <ul style="list-style-type: none"> (a) identify the work remaining to be undertaken to achieve Close-Out; and (b) determine the cost of performing such work. |
| Clause 21.2(c)(ii) Late Close-Out (Calling | <p>Within 5 Business Days of the State's notice under clause 21.2(c)(i) of the Project Agreement, the Independent Reviewer and Environmental Auditor must issue a notice to the State and</p> |

| Clause No. | Independent Reviewer and Environmental Auditor Role |
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| upon Close-Out Bond) | Project Co: <ul style="list-style-type: none"> (a) listing the work remaining to be undertaken to achieve Close-Out; and (b) setting out the cost of performing such work. |
| Clause 22.1(b)(i) Defects (Notification by Project Co) | Receive notification from Project Co, if Project Co identifies a Defect at any time during the D&C Rectification Period. |
| Clause 22.1(d) Defects (Notification by the State) | If the Independent Review and Environmental Auditor believes there is a Defect during the D&C Rectification Period, the Independent Reviewer and Environmental Auditor may give notice to Project Co specifying: <ul style="list-style-type: none"> (a) that Defect; and (b) where the Defect is a Defect in a Returned Facility which is identified after the Date of Handback relating to that Returned Facility, the reasonable period of time within which Project Co must rectify that Defect. |
| Clause 22.1(e)(iii) Defects (Dispute) | Receive notice from the State or Project Co that refers a Dispute for determination: <ul style="list-style-type: none"> (a) where the Independent Reviewer and Environmental Auditor is the original provider of the notice under clause 22.1(d) or 20.3(e) of the Project Agreement, under clauses 43 to 44 of the Project Agreement and the expert must; or (b) otherwise by the Independent Reviewer and Environmental Auditor, who must, within 10 Business Days after the date of the notice given under this clause 22.1(e)(iii) of the Project Agreement make a determination as to the matter and notify the parties of its determination and reasons. |
| Clause 22.1(i) Defects (Notice of rectification) | Receive notification from Project Co that a Defect has been rectified promptly after its rectification by Project Co, or as otherwise described in clause 20.3(k) of the Project Agreement. |
| Clause 22.3(b) Non-Conformances (Request for acceptance) | Receive a copy of a written request from Project Co to the State requesting acceptance of a Non-Conformance. |
| Clause 22.3(c) Non-Conformances (State's discretion) | Receive a copy of notification required under clause 22.3(c) of the Project Agreement from the State within a reasonable time of receipt of the request referred to in clause 22.3(b) of the Project Agreement having regard to the Non-Conformance. |
| Clause 23.2(a) Independent Reviewer and Environmental Auditor's review of | Continually review (by general overview and reasonable checking) and, where requested by the State, undertake a review of, the undertaking of the Works to ensure that: <ul style="list-style-type: none"> (a) the obligations of Project Co under the State |

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| progress (Review by Independent Reviewer and Environmental Auditor) | <p>Project Documents relating to the Works are being complied with;</p> <ul style="list-style-type: none"> (b) Western Distributor Completion will be achieved by the Date for Western Distributor Completion; (c) Western Distributor Completion will be achieved by the Sunset Date; and (d) the D&C Program accurately reflects the actual progress of the Works. |
| <p>Clause 23.2(b) Independent Reviewer and Environmental Auditor's review of progress (Notice of non-compliance)</p> | <p>Subject to clauses 23.2(ba) and 23.2(m) of the Project Agreement, if the Independent Reviewer and Environmental Auditor is of the opinion that:</p> <ul style="list-style-type: none"> (a) the obligations of Project Co under the State Project Documents in relation to the construction of the Works are not being complied with; (b) subject to clause 23.2(k) of the Project Agreement, Western Distributor Completion will not be achieved by the Date for Western Distributor Completion; (c) Western Distributor Completion will not be achieved by the Sunset Date; or (d) the D&C Program does not accurately reflect the actual progress of the Works in a manner which is false or misleading, <p>the Independent Reviewer and Environmental Auditor may give notice to the State and Project Co of its opinion together with its reasons for forming that opinion.</p> |
| <p>Clause 23.2(ba) Independent Reviewer and Environmental Auditor's review of progress (Non-Compliance Notice)</p> | <p>Subject to clause 23.2(bb) of the Project Agreement, the Independent Reviewer and Environmental Auditor must not issue a notice pursuant to clause 23.2(b) of the Project Agreement during the period commencing on Financial Close until 18 months after Financial Close.</p> |
| <p>Clause 23.2(bb) Independent Reviewer and Environmental Auditor's review of progress (Failure to progress the works)</p> | <p>If the Independent Reviewer and Environmental Auditor is of the opinion that Project Co is in breach of clause 23.1(a) of the Project Agreement at any time during the period commencing on Financial Close until 18 months after Financial Close, the Independent Reviewer and Environmental Auditor may issue a notice under clause 23.2(b) of the Project Agreement.</p> |
| <p>Clause 23.2(c)(i) Independent Reviewer and Environmental Auditor's review of progress (Project Co's response)</p> | <p>Within 20 Business Days of receipt by Project Co of the Independent Reviewer and Environmental Auditor's notice in accordance with clause 23.2(b) of the Project Agreement, the Independent Reviewer and Environmental Auditor must (from Project Co):</p> <ul style="list-style-type: none"> (a) receive notification of any matters in connection with which Project Co disagrees with the Independent Reviewer and Environmental Auditor's opinion together with its reasons for doing so; and |

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| | <ul style="list-style-type: none"> (b) be provided with a plan and a program, to the extent that Project Co does not disagree, for: <ul style="list-style-type: none"> (i) the rectification of any non-compliance; or (ii) in the case of a notice issued pursuant to clause 23.2(b)(ii) or clause 23.2(b)(iii) of the Project Agreement, overcoming the effects of the non-compliance. |
| <p>Clause 23.2(d) Independent Reviewer and Environmental Auditor's review of progress (Notice by Independent Reviewer and Environmental Auditor)</p> | <p>Within 10 Business Days of receipt of the Explanation or Remediation Plan, the Independent Reviewer and Environmental Auditor must give notice to the State and Project Co of its opinion, taking into account any comments of the State provided in accordance with the Review Procedures, as to whether or not the Explanation or the Remediation Plan satisfactorily addresses its concerns together with its reasons for forming that opinion. Without limiting the State's rights under clause 41 of the Project Agreement in relation to a Major Default, to the extent that a Remediation Plan has been prepared in response to a notice issued pursuant to clause 23.2(b)(ii), 23.2(g) or 23.2(i) of the Project Agreement, a Remediation Plan will:</p> <ul style="list-style-type: none"> (a) satisfactorily address the Independent Reviewer and Environmental Auditor's concern if: <ul style="list-style-type: none"> (i) it identifies a date on which Western Distributor Completion will be achieved, which date must be as early as reasonably practicable in the circumstances and otherwise prior to the Sunset Date; and (ii) it contains a detailed plan and reasoning which properly demonstrates how Project Co will achieve Western Distributor Completion by the Sunset Date; and (b) not satisfactorily address the Independent Reviewer and Environmental Auditor's concern if it identifies a date on which Western Distributor Completion will be achieved which is after the Sunset Date. |
| <p>Clause 23.2(e) Independent Reviewer and Environmental Auditor's review of progress (Explanation)</p> | <p>Notify the State and Project Co that in its opinion:</p> <ul style="list-style-type: none"> (a) the Explanation is satisfactory such that: <ul style="list-style-type: none"> (i) the obligations of Project Co under the State Project Documents in relation to the construction of the Works are being complied with; (ii) the D&C Program is not false or misleading and accurately reflects the actual progress of the Works; (iii) subject to clause 23.2(k) of the Project Agreement, Western Distributor Completion will be achieved by the Date for Western Distributor Completion; and |

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| | <p>(iv) Western Distributor Completion will be achieved by the Sunset Date; or</p> <p>(b) the Explanation is not satisfactory.</p> |
| <p>Clause 23.2(g) Independent Reviewer and Environmental Auditor's review of progress (Submission of amended Explanation or Remediation Plan)</p> | <p>Receive an amended or replacement Explanation or Remediation Plan (as applicable) from Project Co in accordance with clause 23.2(g) of the Project Agreement for review in accordance with the Review Procedures.</p> |
| <p>Clause 23.2(h) Independent Reviewer and Environmental Auditor's review of progress (Notice by Independent Reviewer and Environmental Auditor)</p> | <p>Within 5 Business Days of receipt of the Explanation or Remediation Plan in accordance with clause 23.2(g) of the Project Agreement, the Independent Reviewer and Environmental Auditor must give notice to the State and Project Co of its opinion, taking into account any comments of the State provided in accordance with the Review Procedures, as to whether or not the Explanation or the Remediation Plan satisfactorily addresses its concerns together with its reasons for forming that opinion.</p> |
| <p>Clause 23.2(i) Independent Reviewer and Environmental Auditor's review of progress (Amended Explanation or Remediation Plan)</p> | <p>If Project Co:</p> <p>(a) submits an Explanation in accordance with clause 23.2(g) of the Project Agreement, the Independent Reviewer and Environmental Auditor may notify Project Co and the State that in its opinion:</p> <p>(i) subject to clause 23.2(k) of the Project Agreement, the Explanation is satisfactory such that:</p> <p>A. the obligations of Project Co under the State Project Documents in relation to the construction of the Works are being complied with;</p> <p>B. the D&C Program is not false or misleading and accurately reflects the actual progress of the Works;</p> <p>C. Western Distributor Completion will be achieved by the Date for Western Distributor Completion; and</p> <p>D. Western Distributor Completion will be achieved by the Sunset Date,</p> <p>Project Co must proceed with the Works; or</p> <p>(ii) the Explanation is not satisfactory, then subject to clause 23.2(ia) of the Project Agreement this will constitute a Major Default; or</p> <p>(a) submits a Remediation Plan in accordance with clause 23.2(g) of the Project Agreement, the Independent Reviewer and Environmental Auditor may notify Project Co and the State that in its</p> |

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| | <p>opinion:</p> <ul style="list-style-type: none"> (i) the Remediation Plan satisfactorily addresses its concerns, and Project Co must diligently pursue the amended Remediation Plan and, subject to clause 23.2(ib) of the Project Agreement, if Project Co does not diligently pursue the amended Remediation Plan this will constitute a Major Default; or (ii) the Remediation Plan does not satisfactorily address its concerns, then subject to clause 23.2(ia) of the Project Agreement, this will constitute a Major Default. |
| <p>Clause 23.2(ia) Independent Reviewer and Environmental Auditor's review of progress (Dispute)</p> | <p>If the Independent Reviewer and Environmental Auditor gives notice:</p> <ul style="list-style-type: none"> (a) under clause 23.2(i)(i)B of the Project Agreement that an Explanation submitted under clause 23.2(g) of the Project Agreement is not satisfactory; or (b) under clause 23.2(i)(ii)B of the Project Agreement that a Remediation Plan submitted under clause 23.2(g) of the Project Agreement does not satisfactorily address its concerns, <p>this will not constitute a Major Default if within a further 10 Business Days of such notice Project Co refers the matter to dispute resolution in accordance with clauses 43 to 44 of the Project Agreement and the outcome of the Dispute is a determination that the Independent Reviewer and Environmental Auditor erred in finding that:</p> <ul style="list-style-type: none"> (c) an Explanation submitted under clause 23.2(g) of the Project Agreement was not satisfactory; or (d) a Remediation Plan submitted under clause 23.2(g) of the Project Agreement did not satisfactorily address its concerns. |
| <p>Clause 23.2(ib) Independent Reviewer and Environmental Auditor's review of progress (Compliance with a Remediation Plan)</p> | <p>If at any time the State or the Independent Reviewer and Environmental Auditor notifies Project Co that:</p> <ul style="list-style-type: none"> (a) Project Co is not diligently pursuing a Remediation Plan approved under clauses 23.2(f)(i), 23.2(i)(ii)A or 23.2(j)(ii) of the Project Agreement; or (b) the D&C Program is not consistent with a Remediation Plan approved under clauses 23.2(f)(i), 23.2(i)(ii)A or 23.2(j)(ii) of the Project Agreement, <p>this will not constitute a Major Default if within 10 Business Days of receipt of the such notice Project Co refers the matter to dispute resolution in accordance with clauses 43 to 44 of the Project Agreement and the outcome of the Dispute is a determination that:</p> <ul style="list-style-type: none"> (a) Project Co is diligently pursuing the Remediation Plan; and / or (b) the D&C Program is consistent with the |

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| | Remediation Plan, (as applicable). |
| <p>Clause 23.2(j) Independent Reviewer and Environmental Auditor's review of progress (Submission of amended Explanation or Remediation Plan)</p> | <p>Receive, in respect of an Explanation approved under clauses 23.2(e)(i) or 23.2(i)(i)A of the Project Agreement or a Remediation Plan approved under clauses 23.2(f)(i) or 23.2(i)(ii)A of the Project Agreement, an amended Explanation or amended Remediation Plan (as applicable) from Project Co for review in accordance with the Review Procedures and if in the opinion of the Independent Reviewer and Environmental Auditor:</p> <ul style="list-style-type: none"> (a) (if applicable) the amended Explanation is satisfactory such that: <ul style="list-style-type: none"> (i) the obligations of Project Co under the State Project Documents in relation to the construction of the Works are being complied with; (ii) the D&C Program is not false or misleading and accurately reflects the actual progress of the Works; (iii) Western Distributor Completion will be achieved by the Date for Western Distributor Completion; and (iv) Western Distributor Completion will be achieved by the Sunset Date, then the amended Explanation will replace the previous Explanation; or (b) (if applicable) the amended Remediation Plan satisfactorily addresses its concerns under the initial notice given by it under clause 23.2(b) of the Project Agreement, then the amended Remediation Plan will replace the previous Remediation Plan. |
| <p>Clause 23.2(k) Independent Reviewer and Environmental Auditor's review of progress (Past determinations of the Independent Reviewer and Environmental Auditor)</p> | <p>Subject to Project Co complying with the relevant Remediation Plan in accordance with clauses 23.2(f)(i) and 23.2(i)(ii)A of the Project Agreement, in reviewing the undertaking of the Works in accordance with clause 23.2(a)(ii) of the Project Agreement, the Independent Reviewer and Environmental Auditor must take into consideration any Remediation Plan previously considered satisfactory in accordance with clauses 23.2(f)(i) and 23.2(i)(ii)A of the Project Agreement.</p> |
| <p>Clause 23.2(m) Independent Reviewer and Environmental Auditor's review of progress (Determinations of the Sub-Independent Reviewer and Environmental Auditor)</p> | <p>Must not give notice under:</p> <ul style="list-style-type: none"> (a) clause 23.2(b) of the Project Agreement: <ul style="list-style-type: none"> (i) to the extent that the Sub-Independent Reviewer and Environmental Auditor has reviewed the corresponding matters under the D&C Subcontract and has not issued a notice under clause 23.2(b) of the D&C Subcontract; or |

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| | <ul style="list-style-type: none"> (ii) to the extent that the Independent Reviewer and Environmental Auditor's notice would be inconsistent with a notice issued under clause 23.2(b) of the D&C Subcontract where the Independent Reviewer and Environmental Auditor's notice relates to the same subject matter, submitted by the D&C Subcontractor under clause 23.2(b) of the D&C Subcontract; and (b) clauses 23.2(e)(ii), 23.2(f)(ii), 23.2(h), 23.2(i)(i)B or 23.2(i)(ii)B of the Project Agreement that an Explanation, amended Explanation, Remediation Plan or amended Remediation Plan (as applicable) is not satisfactory or does not satisfactorily address its concerns, if the Sub-Independent Reviewer and Environmental Auditor has notified Project Co and the D&C Subcontractor that an equivalent, explanation, amended explanation, remediation plan or amended remediation plan (as applicable) relating to the same subject matter as identified in the notice, submitted by the Sub-Independent Reviewer and Environmental Auditor under clause 23.2(b) of the D&C Subcontract is satisfactory to the Sub-Independent Reviewer and Environmental Auditor. |
| <p>Clause 23.3 Delay to Western Distributor Completion</p> | Receive prompt notification from Project Co when Project Co becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Western Distributor Completion or Tolling Completion. |
| <p>Clause 23.6(a) Change of Notice (submission of Change Notice)</p> | Receive a Change Notice from Project Co within 15 Business Days from the date Project Co became aware, or ought reasonably to have become aware, of a delay of the type referred to in clause 23.4 of the Project Agreement. |
| <p>Clause 23.7(c) Conditions precedent to extension (effect of delay)</p> | Be satisfied that Project Co has demonstrated that: <ul style="list-style-type: none"> (a) it has actually been delayed in achieving Western Distributor Completion, Tolling Completion or Close-Out by an Extension Event; and (b) the Extension Event has caused or will cause activities on the critical path, contained in the then current D&C Program to be delayed. |
| <p>Clause 23.8(a) Extension of Time determined by Independent Reviewer and Environmental Auditor (State right to provide information)</p> | Receive any evidence from the State which the State considers relevant to the Independent Reviewer and Environmental Auditor's consideration of Project Co's Change Notice under clause 23.6 of the Project Agreement. |
| <p>Clause 23.8(b) Extension of Time</p> | If the conditions precedent in clause 23.7 of the Project Agreement have been satisfied, the Independent Reviewer and |

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| determined by Independent Reviewer and Environmental Auditor (Extension of time) | <p>Environmental Auditor:</p> <ul style="list-style-type: none"> (a) will extend the Date for Western Distributor Completion, Date for Tolling Completion or Date for Close-Out by a reasonable period determined by the Independent Reviewer and Environmental Auditor and in doing so must take into account all relevant evidence presented by the parties but is not bound by the D&C Program; and (b) must notify the State and Project Co of: <ul style="list-style-type: none"> (i) the period of time that the Date for Western Distributor Completion, Date for Tolling Completion or Date for Close-out is extended; and (ii) the applicable maximum daily rate(s) for the Prolongation Costs for the period of time notified under clause 23.8(b)(ii)A of the Project Agreement as determined in accordance with the Change Compensation Principles. |
| <p>Clause 23.16(a) Extension of Sunset Date (Claim for extension to Sunset Date)</p> | <p>Receive a notice from Project Co claiming an extension of time to the Sunset Date, and reasonably request any information in relation to such a notice.</p> |
| <p>Clause 23.16(b) Extension of Sunset Date (State right to provide information)</p> | <p>Receive from the State any evidence the State considers relevant to the Independent Reviewer and Environmental Auditor's consideration of Project Co's notice under clause 23.16(a) of the Project Agreement.</p> |
| <p>Clause 23.16(c) Extension of Sunset Date (Independent Reviewer and Environmental Auditor to make determination)</p> | <p>If the Independent Reviewer and Environmental Auditor receives a notice from Project Co under clause 23.16(a) of the Project Agreement claiming an extension of time to the Sunset Date, the Independent Reviewer and Environmental Auditor must, as soon as reasonably practicable following Project Co's notice and, in any event, prior to the date which is 36 months after the Date for Western Distributor Completion, determine whether:</p> <ul style="list-style-type: none"> (a) Western Distributor Completion can be achieved by the Extended Sunset Date; and (b) Project Co is diligently pursuing the D&C Activities to achieve Western Distributor Completion. |
| <p>Clause 23.16(d) Extension of Sunset Date (Extension of Sunset Date)</p> | <p>Subject to clause 23.16(e) of the Project Agreement, if the Independent Reviewer and Environmental Auditor has determined that:</p> <ul style="list-style-type: none"> (a) Western Distributor Completion can be achieved by the Extended Sunset Date; and (b) Project Co is diligently pursuing the D&C Activities to achieve Western Distributor Completion, <p>the Independent Reviewer and Environmental Auditor will</p> |

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| | extend the Sunset Date by a reasonable period determined by the Independent Reviewer and Environmental Auditor. |
| Clause 23.16(e)(ii) Extension of Sunset Date (Maximum extension of Sunset Date) | The Independent Reviewer and Environmental Auditor cannot extend the Sunset Date under clause 23.16(d) of the Project Agreement beyond 42 Months after the Date for Western Distributor Completion. |
| Clause 43.1(a) Procedure for resolving disputes (Resolution procedure) | Decisions of the Independent Reviewer and Environmental Auditor which are capable of being disputed under clause 43 of the Project Agreement must be resolved in accordance with clause 43 and clause 44 of the Project Agreement. |
| Clause 43.1(b) Procedure for resolving disputes (Exclusion) | The functions of the Independent Reviewer and Environmental Auditor under section 2.3(e) of the Design Review Section are: <ul style="list-style-type: none"> (a) advisory only and not binding on any party; and (b) not a decision or determination of the Independent Reviewer and Environmental Auditor capable of forming the subject matter of a Dispute which can be resolved under clause 43 and clause 44 of the Project Agreement. |
| Clause 53.3(a)(i) Confidential Information and disclosure by Project Co (Disclosure of Confidential Information) | Receive Confidential Information to enable the Independent Reviewer and Environmental Auditor and their employees, officers, consultants advisers and agents to properly carry out their duties or in connection with any legitimate State purpose or process. |

The Independent Reviewer and Environmental Auditor's functions under the PSR include, but are not necessarily limited to, functions under the following sections:

Part A

Section 2.1(f)(vi)

Section 2.1(f)(viii)

Section 2.1(i)(ii)

Part B

Section 3.1(a)(iv)

Section 10(c)

Part E

Section 4(c)

Part F1

Section 1.2(a)(i)

Section 1.3(a)(ii)

Section 1.7(b)(i)A.1

Section 1.7(b)(i)A.2

Section 1.8

Section 1.9(a)(ii)

Section 1.9(a)(iii)

Section 1.9(a)(v)

Section 1.9(a)(vi)

Section 1.9(b)(i)

Section 2.1(c)(iii)

Section 2.1(e)(v)A

Section 2.1(e)(v)B

Section 2.1(e)(v)C

Part F2

Section 1.2(a)(ii)

Section 1.2(a)(x)

Section 1.2(a)(xii)

Section 1.2(a)(xii)A

Section 1.2(a)(xiii)

Section 1.2(a)(xxi)

Section 1.2(a)(xxii)

Part F3

Section 2(d)

Part F4

Section 2(a)(iii)

Section 2(b)(i)

Part F5

Section 1.2(b)(i)A

Section 1.2(b)(ii)

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Section 2.1(a)

Section 2.1(b)

Section 2.1(c)

Section 2.2(b)

Section 2.2(d)

Section 2.3(c)

Section 2.3(d)

Section 2.4(b)

Section 2.4(c)

Section 2.4(d)(i)

Section 2.4(d)(ii)

Section 2.4(e)(i)

Section 2.4(e)(ii)

Section 2.4(f)

Section 2.4(f)(i)

Section 2.4(f)(iii)

Section 2.4(g)

Section 2.4(h)

Section 2.4(i)

Section 2.4(k)(i)

Section 2.5(a)(i)

Section 2.5(a)(ii)

Section 2.5(a)(iii)A

Section 2.5(a)(iii)B

Section 2.5(b)

Section 2.5(c)

Section 2.5(c)(i)

Section 2.9(b)

Part F6

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Section 2(f)

Section 2(g)(i)

Section 2(g)(ii)

Section 4(b)

Section 5.2

Section 6.4(a)

Section 7.2(c)(iii)

Section 7.3(b)

Section 8.1(f)

Section 8.1(g)

Section 8.1(h)

Section 8.1(i)

Section 8.1(j)

Section 8.2(a)(i)

Section 8.2(a)(iii)A

Section 8.2(a)(iii)C

Section 9.3(a)

Section 9.4(a)(iii)

Section 9.6

Section 10.1

Section 10.4(b)

Section 10.4(d)

Section 10.4(f)

Section 11.2(c)(iv)

Section 11.2(d)(i)

Section 11.2(e)

Section 13(b)

Section 14.1

Section 14.6(a)

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Section 14.6(b)(iii)

Section 14.6(b)(vi)

Section 14.7(a)

Section 14.7(b)(iii)F

Section 14.7(b)(vii)

Section 14.8(b)

Section 14.8(c)

Part F7

Section 4.1(c)

Section 4.1(d)

Section 4.1(f)

Section 4.1(g)

Section 7.3

Part H21

EM3

Part I

Table I.1, Ref 14

Schedule 3 Payment Schedule

1. Payment of the Fee for Services

- (a) **(Payment for special reports):** Without limiting any provision of the Project Agreement, the relevant Project Party requesting the preparation of an additional report under clause 8.4 will be solely responsible for payment to the Independent Reviewer and Environmental Auditor for the costs associated with the preparation of such additional report.
- (b) **(Payment for Downstream Sub-IREA Functions):** For the avoidance of doubt, the State will have no liability for the payment to the Independent Reviewer and Environmental Auditor of any fees payable in respect of Downstream Sub-IREA Functions.

2. Payment claim

- (a) **(Independent Reviewer and Environmental Auditor to prepare and submit):** Subject to section 5, the Independent Reviewer and Environmental Auditor must submit to the State and Project Co a claim for payment:
 - (i) during the Initial Period, on account of the relevant amount of the Initial Fee (not including an additional report required under clause 8.4), calculated in and otherwise in accordance with this Payment Schedule; and
 - (ii) after the Initial Period, on account of the Monthly Fee (not including an additional report required under clause 8.4):
 - A. for the Services performed in accordance with this Deed during a month, at the end of the month; and
 - B. calculated in and otherwise in accordance with this Payment Schedule.
- (b) **(Content):** Each payment claim prepared in accordance with section 2(a) must set out:
 - (i) a breakdown of the Services, including details of personnel hours worked for each resource (in a form and including such information and supporting documentation as the Project Parties may require from time to time) actually carried out during the relevant month;
 - (ii) details of approved disbursements actually incurred during the relevant month (including such information and supporting documentation as the Project Parties may require from time to time);
 - (iii) the part of the Fee then payable; and
 - (iv) the amounts previously claimed by the Independent Reviewer and Environmental Auditor in relation to the Quarter and the amount of the Initial Fee or Quarterly Fee Estimate (as applicable) and otherwise be in a form and substance agreed with the Project Parties.
- (c) **(Payment Claims for special reports):** Where an additional report has been requested by a Project Party under clause 8.4, the Independent Reviewer and

Environmental Auditor must submit a separate payment claim to the Project Party who made the request in respect of the preparation of the report.

3. Payment

- (a) **(Payment of Fee):** Subject to sections 3(b), 4(b) and 5, within 20 Business Days of receipt of a payment claim in accordance with section 2(a), the Project Parties must each pay or procure the payment to the Independent Reviewer and Environmental Auditor of [not disclosed]% of the part of the Fee which the Project Parties believe represents the value of the Services performed by the Independent Reviewer and Environmental Auditor during the period for which the payment claim is submitted.
- (b) **(Payment for special reports):** Within 20 Business Days of receipt of a payment claim under section 2(c), the relevant Project Party must pay the Independent Reviewer and Environmental Auditor the amount which it believes represents the value of the Services performed by the Independent Reviewer and Environmental Auditor relating to the preparation of the additional report during the period for which the payment claim is submitted.

4. Payment of wages by Independent Reviewer and Environmental Auditor

- (a) **(Signed statement required):** Before a payment is made to the Independent Reviewer and Environmental Auditor under section 3, a Project Party may require the Independent Reviewer and Environmental Auditor to give the Project Parties a statement signed by the Independent Reviewer and Environmental Auditor stating that no wages or payments to any sub-contractors of the Independent Reviewer and Environmental Auditor are due and owing by the Independent Reviewer and Environmental Auditor in respect of the Services at the time of payment.
- (b) **(Possible to withhold money):** If, within 2 Business Days after the request, the Independent Reviewer and Environmental Auditor fails to provide the statement, then the party responsible for the payment of the relevant payment claim may withhold payment of moneys due to the Independent Reviewer and Environmental Auditor until the statement is received.

5. Insurance

Before a payment claim can be made by the Independent Reviewer and Environmental Auditor under section 2(a), the Independent Reviewer and Environmental Auditor must have effected the insurance required by clause 10.3 and provided evidence of this to the Project Parties. If a payment claim is purported to be submitted by the Independent Reviewer and Environmental Auditor prior to effecting such insurance and providing such evidence, neither of the Project Parties will be liable to make or procure the making of any payment in respect of such claim.

6. Books of account

The Independent Reviewer and Environmental Auditor must, for the purposes of this Deed:

- (a) **(books of account and records):** institute and maintain all proper books of account and operating records necessary to afford a correct and complete record and explanation of all payment claims (including relevant supporting documentation) made by the Independent Reviewer and Environmental Auditor under this Deed; and

- (b) **(access):** permit the Project Parties' representatives (and any persons authorised by either of them) access at all reasonable times to all relevant books of account and operating records necessary to establish that all payment claims made by the Independent Reviewer and Environmental Auditor and all moneys paid to the Independent Reviewer and Environmental Auditor under the terms of this Deed are or have been properly accounted for.

7. Notification of disputed amounts

If the State or Project Co disputes any amount which the Independent Reviewer and Environmental Auditor has claimed then the State or Project Co (as applicable) must notify the Independent Reviewer and Environmental Auditor of its reasons for disputing that amount within 20 Business Days after receipt of the relevant payment claim.

8. The Fee

- (a) **(Initial Fee):** The Initial Fee payable for the Initial Period will be as follows:

| Description | Amount |
|--|---|
| Initial Fee - for the Initial Period - from Commencement Date to 30 September 2017 | [\$not disclosed], paid in equal instalments on a monthly basis over the Initial Period |

- (b) **(Quarterly Fee Estimate):** After the Initial Period, the Quarterly Fee Estimate will be as follows:

| Description | Amount |
|---------------------------------|--------------------------|
| <i>Quarterly Period 1</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 2</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 3</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |

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| | |
|---------------------------------|--------------------------|
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 4</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 5</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 6</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 7</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 8</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 9</i> | |

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| | |
|---------------------------------|--------------------------|
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 10</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 11</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 12</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 13</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 14</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |

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| | |
|---------------------------------|--------------------------|
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 15</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 16</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 17</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 18</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |
| <i>Quarterly Period 19</i> | |
| Month 1 | [\$not disclosed] |
| Month 2 | [\$not disclosed] |
| Month 3 | [\$not disclosed] |
| Sub-total for the period | [\$not disclosed] |

- (c) **(Defects Liability Period):** The total of the Quarterly Fee Estimates for the term of the Defects Liability Period (as defined in the D&C Subcontract) is as follows:

| Description | Amount |
|---------------------------------|-------------------|
| <i>Defects Liability Period</i> | [\$not disclosed] |

- (d) **(Initial Fee and Quarterly Fee Estimates inclusive):** Except as otherwise provided, the Initial Fee and the Quarterly Fee Estimates are inclusive of labour, material, disbursements and expenses, overhead, supervision, management of subcontracts and profit.

9. Schedule of Rates

Except as otherwise provided, the rates and prices set out in the Schedule of Rates are inclusive of overhead, supervision, management of subcontracts and profit.

Table 1

| Key People | Discipline | Level | Hourly Rate | Maximum Daily Rate |
|----------------------------|---------------------|-------|-------------------|--------------------|
| <i>IREA Governance</i> | | | | |
| [not disclosed] | IREA Governance | 12 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | IREA Governance | 12 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | IREA Governance | 12 | [\$not disclosed] | [\$not disclosed] |
| <i>IREA Representative</i> | | | | |
| [not disclosed] | IREA Representative | 10 | [\$not disclosed] | [\$not disclosed] |
| <i>Design Review</i> | | | | |
| [not disclosed] | Design Review Lead | 11 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Drainage | 8 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Pavements | 9 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Road Alignment | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | ITS | 10 | [\$not disclosed] | [\$not disclosed] |

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| Key People | Discipline | Level | Hourly Rate | Maximum Daily Rate |
|-----------------|--|-------|-------------------|--------------------|
| | | | disclosed] | |
| To be advised | Utility Services | 9 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Signage, line marking, gantries | 11 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Design Reviewer - Bridges and structures | 11 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Bridges and structures | 9 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Retaining Walls | 9 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Noise Barriers | 7 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Landscaping and urban treatments | 9 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Bike and Pedestrian Pathways | 11 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Rail Works | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Specialist Durability Requirements | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Tolling | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Buildings | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Portals and Structures | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Vibration and Noise | 9 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | OMCS | 10 | [\$not disclosed] | [\$not disclosed] |

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| Key People | Discipline | Level | Hourly Rate | Maximum Daily Rate |
|----------------------------------|---------------------------------|--------------|--------------------|---------------------------|
| [not disclosed] | Systems F&LS | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Tunnel Excavation and Support | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Electrical | 9 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Geotechnical | 11 | [\$not disclosed] | [\$not disclosed] |
| <i>Environmental Auditor</i> | | | | |
| [not disclosed] | IREA Environmental Auditor Lead | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | IREA Environment Officer | 8 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | IREA Environment Officer | 10 | [\$not disclosed] | [\$not disclosed] |
| <i>Construction Surveillance</i> | | | | |
| To be advised | Construction Review Lead | 11 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | WGF upgrade - Lead Engineer | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Construction Engineers | 8 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Surveillance Engineers/Officers | 7 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Surveillance Engineers/Officers | 8 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Tunnel Lead Engineer | 11 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Construction Engineers | 9 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Surveillance Engineers/Officers | 8 | [\$not disclosed] | [\$not disclosed] |

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| Key People | Discipline | Level | Hourly Rate | Maximum Daily Rate |
|--------------------------|---|-------|-------------------|--------------------|
| | | | ed] | |
| [not disclosed] | Surveillance Engineers/Officers | 8 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Bridge and elevated Roadway Lead Engineer | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Construction Engineers | 8 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Surveillance Engineers/Officers | 8 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Surveillance Engineers/Officers | 8 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Geotechnical | 11 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | ITS | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | OMCS & Tolling | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | F&LS | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Urban services surveillance (DCM) | 8 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Landscaping surveillance | 9 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Utility services relocation | 9 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Traffic Management Review | 9 | [\$not disclosed] | [\$not disclosed] |
| <i>Technical Support</i> | | | | |
| [not disclosed] | IREA Quality Reviewer | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | IREA Safety Reviewer | 9 | [\$not disclosed] | [\$not disclosed] |

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| Key People | Discipline | Level | Hourly Rate | Maximum Daily Rate |
|-----------------|---------------------------------------|-------|-------------------|--------------------|
| | | | ed] | |
| [not disclosed] | IREA Program and EQT Reviewer | 9 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | IREA Project Management Plan Reviewer | 9 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | IREA Completions Manager | 10 | [\$not disclosed] | [\$not disclosed] |
| [not disclosed] | Project Manager | 10 | [\$not disclosed] | [\$not disclosed] |

Table 2

This Table 2 will only be applied if a new resource, not included in the Schedule of Rates in Table 1, is added to the Independent Reviewer and Environmental Auditor team.

| Name | Description | Level | Banded rate /hr (discounted) | Maximum Daily Rate (office and PM Staff) ¹ | Maximum Daily Rate Construction Phase Staff ² |
|---|--|-------|------------------------------|---|--|
| Senior Executive | >25 years' experience | 12 | N/C | N/C | N/C |
| Senior Project Director/ Senior Technical Director | >25 years' experience, industry recognised | 11 | [\$not disclosed] | [\$not disclosed] | [\$not disclosed] |
| IREA Representative | >25 years' experience | 10 | [\$not disclosed] | [\$not disclosed] | n/a |
| Project Director/ Technical Director/ Business Leader/ Senior PM | Generally, more than 20-25 years' experience | 10 | [\$not disclosed] | [\$not disclosed] | [\$not disclosed] |
| Associate Technical Director | >15 years' experience | 9 | [\$not disclosed] | [\$not disclosed] | [\$not disclosed] |
| Principal Engineer (design)/ Senior Project Engineer | Generally, more than 10-15 years' experience | 8 | [\$not disclosed] | [\$not disclosed] | [\$not disclosed] |
| Senior Engineer/ Scientist | >5 years' experience | 7 | [\$not disclosed] | [\$not disclosed] | [\$not disclosed] |
| Graduate Engineer/ Scientist | <5 Years' experience | 5 | [\$not disclosed] | [\$not disclosed] | [\$not disclosed] |
| Senior Surveillance Officer | >15 Years' experience | 8 | [\$not disclosed] | n/a | [\$not disclosed] |
| Surveillance Officer | >10 Years' experience | 7 | [\$not disclosed] | n/a | [\$not disclosed] |
| Senior Administration/ Document Controller | >10 years' experience and/or specialist skillset | A5 | [\$not disclosed] | [\$not disclosed] | [\$not disclosed] |
| Administrative Assistant | >5 Years' experience | A4 | [\$not disclosed] | [\$not disclosed] | [\$not disclosed] |
| Administrative Assistant | <5 Years' experience | A3 | [\$not disclosed] | [\$not disclosed] | [\$not disclosed] |

| | | | | |
|--|--|--|----|--|
| | | | d] | |
|--|--|--|----|--|

1 - Office based design review staff daily rate is based upon 8 hours per day

2 - Construction (site-based) staff daily rate is based upon 9 hours per day

3 - This rate is subject to the qualifications and experience of the relevant resource, and will be agreed between the parties

10. Disbursements

The Independent Reviewer and Environmental Auditor will:

(a) **(approved disbursements):** be entitled to reimbursement of the following disbursements:

(i) during the Initial Period, being the following items which are included in the Initial Fee:

| Item | Total amount during Initial Period |
|---|------------------------------------|
| IREA Team Office in Melbourne City | \$(not disclosed] |
| IT Equipment | \$(not disclosed] |
| Utilities, cleaning services, incidentals | \$(not disclosed] |
| Total | \$(not disclosed] |

and;

(ii) after the Initial Period, being the following items which are included in the Quarterly Fee Estimates:

| Item | Total amount after Initial Period |
|---|-----------------------------------|
| 1 Hardie Rd, Yarraville, Vic 3013 | \$(not disclosed] |
| Utilities, cleaning services, incidentals | \$(not disclosed] |
| IREA Team Office in Melbourne City | \$(not disclosed] |
| Surveillance management systems | \$(not disclosed] |
| IT equipment setup | \$(not disclosed] |
| Computer, IT, Communications | \$(not disclosed] |
| Motor Vehicles | \$(not disclosed] |

| | |
|-------|-------------------|
| Total | \$[not disclosed] |
|-------|-------------------|

- (b) **(entitlement to disbursements)**: otherwise, only be entitled to reimbursement of disbursements after the Initial Period and only if those disbursements:
- (i) have been reasonably and properly incurred for the sole purpose of performing Services;
 - (ii) where they exceed or are likely to exceed \$[not disclosed], have the prior approval of the State and Project Co;
 - (iii) to the extent applicable, are in accordance with the Schedule of Rates;
 - (iv) are charged at cost with no margin or mark up; and
 - (v) are supported by documentation provided to the State and Project Co which is satisfactory to the State and Project Co; and
- (c) **(no claim)**: not be entitled to make any Claim against the State and Project Co arising in connection with disbursements or other costs incurred in connection with the performance of the Services other than in accordance with sections 10(a) and 10(b).

11. Payments

11.1 Initial Period

Subject to clause 12.1:

- (a) **(Fee payable)**: during the Initial Period, the amount of the Fee payable for the Initial Period will be equal to the Initial Fee as set out in section 8(a); and
- (b) **(Initial Fee fixed)**: the Initial Fee is a fixed amount, is not subject to adjustment and is inclusive of all overheads, supervision, management of subcontracts, profits and all disbursements.

11.2 After Initial Period

Subject to sections 11.4 and 11.8, where the Independent Reviewer and Environmental Auditor makes a payment claim under section 2(a) after the Initial Period, the Monthly Fee then payable will be equal to the costs of the Independent Reviewer and Environmental Auditor incurred in providing the Services based on the Schedule of Rates (including the maximum daily rates allowed), the personnel hours and approved disbursements incurred during the relevant month.

11.3 Adjustment of Quarterly Fee Estimates and Schedule of Rates

The amounts with respect to:

- (a) **(Quarterly Fee Estimates)**: the Quarterly Fee Estimates, and
- (b) **(Schedule of Rates)**: the Schedule of Rates,

are to be indexed in accordance with section 12.

11.4 Quarterly Fee Estimate

The total Monthly Fees payable to the Independent Reviewer and Environmental Auditor in respect of any Quarter under section 11.2 must not be greater than [not disclosed]% more than the Quarterly Fee Estimate in respect of that Quarter unless otherwise agreed by the Project Parties.

11.5 Resource Adjustment Order

The Project Parties may direct the Independent Reviewer and Environmental Auditor to carry out a Resource Adjustment by issuing a document entitled 'Resource Adjustment Order' in accordance with this section.

11.6 Notice of resource evaluation

No fewer than 20 Business Days before the start of every Quarter and within 20 Business Days of Financial Close, the Independent Reviewer and Environmental Auditor must provide the Project Parties with:

- (a) **(notice)**: a notice setting out:
 - (i) its evaluation of the resource levels (in a form set out in Schedule 5 or as otherwise agreed by the Project Parties) required for the Quarter having regard to the actual nature and extent of the Services to be carried out by the Independent Reviewer and Environmental Auditor during the relevant Quarter (having regard to the minimum resourcing estimates contained in the Initial Monitoring Plan); and
 - (ii) its estimate of the costs for performing the Services having regard to its evaluation of the resource levels and the rates and prices set out in the Schedule of Rates and the amount by which the Quarterly Fee Estimate should be adjusted as a result of the Resource Adjustment (if any) which the Independent Reviewer and Environmental Auditor should effect in the relevant Quarter; and
- (b) **(information)**: any additional information requested by the Project Parties in respect of the details included in the notice, including to evidence how the requirements of section 1 will be achieved in respect of that resource evaluation.

11.7 Quarterly meeting

No fewer than 10 Business Days before the start of every Quarter, and within 20 Business Days of Financial Close, the Independent Reviewer and Environmental Auditor must meet with the Project Parties to:

- (a) **(evaluate resource levels)**: evaluate the resource levels required for the Quarter having regard to the actual nature and extent of the Services to be carried out by the Independent Reviewer and Environmental Auditor in that Quarter; and
- (b) **(discuss Resource Adjustment)**: discuss:
 - (i) the possibility of effecting a Resource Adjustment in that Quarter; and
 - (ii) the Independent Reviewer and Environmental Auditor's estimate of the amount by which the Quarterly Fee Estimate should be adjusted as a result of any such Resource Adjustment.

11.8 Resource adjustment and its approval

If the Project Parties and the Independent Reviewer and Environmental Auditor agree on a Resource Adjustment and the adjustment in the Quarterly Fee Estimate before the start of the relevant Quarter (and such adjustment is equal to or greater than [not disclosed]% higher or lower than the Quarterly Fee Estimate in respect of the relevant Quarter), then:

- (a) **(Resource Adjustment Order)**: the Project Parties will issue a Resource Adjustment Order;
- (b) **(Quarterly Fee Estimate adjustment)**: the Quarterly Fee Estimate will be adjusted by the agreed adjustment in the Quarterly Fee Estimate; and
- (c) **(effect Resource Adjustment)**: the Independent Reviewer and Environmental Auditor must promptly effect the Resource Adjustment.

12. Indexation

- (a) **(Adjusted amount)**: Subject to section 12(b), the Quarterly Fee Estimates and the Schedule of Rates will be adjusted annually commencing 30 September 2018 in accordance with the following formula:

Adjusted Amount = Original Amount x Payment Multiplier

where:

Original Amount = the Quarterly Fee Estimates and the Schedule of Rates as at 30 September 2017

Payment Multiplier = A / B

A = the quarterly WPI figure published immediately prior to the relevant 30 September;

B = the quarterly WPI figure published immediately prior to 30 September 2017; and

WPI has the meaning given in the Indexes Schedule.

- (b) **(Rules for indexation)**: The rules set out in the Indexes Schedule apply in relation to the WPI during the Term, other than that reference to referral for dispute resolution under clause 43.3 of the Project Agreement will be deemed to mean referral to dispute resolution under this Deed.

Schedule 4 Monitoring Plan

Part A: Requirements of Monitoring Plan

The Monitoring Plan must, as a minimum, address and detail:

- (a) the detailed schedule of functions, obligations, duties and services which the State Project Documents contemplate will be discharged by the Independent Reviewer and Environmental Auditor;
- (b) all compliance records to be maintained;
- (c) the proposed procedures for the review of Design Documentation including keeping and maintaining records of submissions received as part of the Design Review Process;
- (d) the information outlined in paragraph (c) in a diagrammatic/pictorial format;
- (e) attendance of the Independent Reviewer and Environmental Auditor at Hold Points and witness points;
- (f) the Independent Reviewer and Environmental Auditor's comprehensive plans for:
 - (i) monitoring, auditing, reviewing, assessment and testing (as applicable) of the Project Activities;
 - (ii) surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey;
 - (iii) carrying out its role as environmental auditor;
 - (iv) off-site surveillance of critical activities; and
 - (v) surveillance of all aspects of the Project Activities relating to safety management and performance;
- (g) the Independent Reviewer and Environmental Auditor's strategies, processes, methodologies and procedures for:
 - (i) reviewing all D&C Programs, the Business Management Strategy, Project Plans and O&M Manuals;
 - (ii) addressing environmental monitoring and protection; and
 - (iii) verifying that each as-built drawing identified as such and certified by Project Co is an accurate representation of the constructed work;
- (h) the Independent Reviewer and Environmental Auditor's processes and procedures for reporting to the Project Parties in respect of its activities including:
 - (i) ensuring that the reporting requirements clause 8.1 will be satisfied and that all reports will be prepared in a timely manner and include all relevant information; and
 - (ii) notifying the Project Parties as soon as practicable if the Independent Reviewer and Environmental Auditor is of the view that Project Co has

not complied with or may not be complying with its obligations in relation to:

- A. safety management and performance; or
 - B. environmental monitoring and protection;
- (i) the responsibilities of identification and management of safety issues for staff of the Independent Reviewer and Environmental Auditor when undertaking the Independent Reviewer and Environmental Auditor role;
 - (j) the role in reviewing Certified Design Documentation and Construction Documentation (both as defined in the Project Agreement) and advising of any safety issues either to workers or the general public;
 - (k) the role in reviewing the activities of Project Co to ensure compliance with relevant plans relating to safety, including Project Co's Health and Safety Management Plan
 - (l) the processes and plans to be developed to best manage quality issues associated with the Services;
 - (m) how the Independent Reviewer and Environmental Auditor will ensure that the functions of the Independent Reviewer and Environmental Auditor are managed within a quality assured environment;
 - (n) the Independent Reviewer and Environmental Auditor's plans for identification and management of quality issues, including reporting, management and system requirements; and
 - (o) the proposed electronic document management system, which must have the ability to extract reports and which must be accessible to the Project Parties.

Part B: Initial Monitoring Plan

The Initial Monitoring Plan comprises the document attached at Part C of this Schedule, amended as required by the Project Parties, including the amendments set out below. The section references provided below are indicative only, and the Independent Reviewer and Environmental Auditor should consider these issues in the context of the entire Initial Monitoring Plan.

| No. | Section | Amendment |
|-----|---|--|
| 1. | Throughout | Terminology to be updated to reflect Agreed State Project Documents, as well as any plans that are prepared during the Preferred Respondent Phase. |
| 2. | Throughout | Distinction between the Independent Reviewer and Environmental Auditor role and the Sub-Independent Reviewer and Environmental Auditor role to be clarified, including clarifying who the Independent Reviewer and Environmental Auditor will be reporting to, giving notices to and receiving notices from. |
| 3. | Throughout | Cross references in tables of contents to be updated. |
| 4. | Appendix 2: IREA Organisational Chart to Volume 1: Framework of the Initial Monitoring Plan | Organisation chart to be completed. |

| No. | Section | Amendment |
|-----------------------------------|--|---|
| Volume 2: Design Review Procedure | | |
| 5. | Volume 2: Design Review Procedure of Initial Monitoring Plan | Design review process to be updated to reflect Agreed State Project Documents, including updating the temporary works design review and approval process. |
| 6. | Appendix C: Methodology Qualifications | Methodology to be updated to reflect Agreed State Project Documents. |
| 7. | Appendix B: Mobilisation Plan | Incorporate Mobilisation Plan into the Monitoring Plan. |
| 8. | B.4 Transition Out Plan | Transition Out Plan to be further developed. |
| 9. | B.4 Transition Out Plan | Incorporate Transition Out Plan into the Monitoring Plan. |
| 10. | Appendix D: Event Reporting Procedure | Incorporate Event Reporting Procedure into the Monitoring Plan. |
| 11. | B.6 Quality Assurance | Incorporate Quality Assurance into the Monitoring Plan. |
| 12. | Appendix E: Risk Management Framework | Incorporate Risk Management Framework into the Monitoring Plan. |
| 13. | Appendix 5: Surveillance Requirements to Volume 3: Construction Surveillance & Completion Procedure of Initial Monitoring Plan | Surveillance requirements to be updated to reflect proposed monitoring for this project. |
| 14. | N/A | Incorporate a Handover Plan into the Monitoring Plan. |

Part C: Initial Monitoring Plan

[not disclosed]

Schedule 5 Resource Allocation proforma

| Rate | Resource Level - Year X QY (As per Deed) | | | | Resource Level Evaluation - Year X QY | | | | Amount Payable | | | | | | | |
|--------------------------|--|-------------|-------------|-------|---------------------------------------|-------------|-------------|-------|----------------|-------------|-------------|-------|--|--|--|--|
| | Month A | Month A + 1 | Month A + 2 | Total | Month A | Month A + 1 | Month A + 2 | Total | Month A | Month A + 1 | Month A + 2 | Total | | | | |
| 1.0 Fixed Costs | | | | | | | | | | | | | | | | |
| 2.0 Activity | | | | | | | | | | | | | | | | |
| 3.0 Activity | | | | | | | | | | | | | | | | |
| sub activity 1 | | | | | | | | | | | | | | | | |
| Person | | | | | | | | | | | | | | | | |
| Person | | | | | | | | | | | | | | | | |
| sub activity 2 | | | | | | | | | | | | | | | | |
| Person | | | | | | | | | | | | | | | | |
| Person | | | | | | | | | | | | | | | | |
| QUARTER SUB-TOTALS | | | | | | | | | | | | | | | | |
| 4.0 Activity | | | | | | | | | | | | | | | | |
| Person | | | | | | | | | | | | | | | | |
| Person | | | | | | | | | | | | | | | | |
| TOTAL | | | | | | | | | | | | | | | | |
| days | | | | | | | | | | | | | | | | |
| Full-time equivalents | | | | | | | | | | | | | | | | |
| FIXED COST TOTALS | | | | | | | | | | | | | | | | |
| RESOURCE TOTALS | | | | | | | | | | | | | | | | |
| MONTH AND QUARTER TOTALS | | | | | | | | | | | | | | | | |
| PROPOSED FEE ADJUSTMENT | | | | | | | | | | | | | | | | |

Executed as a deed.

**Signed sealed and delivered by Luke
Donnellan MP, Minister for Roads and Road
Safety of the State of Victoria for and on
behalf of the Crown in Right of the State of
Victoria** in the presence of:

Signature

Signature of Witness

Name of Witness in full

**Executed by TRANSURBAN WD CO PTY LTD
ACN 617 420 023** in accordance with
section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

West Gate Tunnel Project
Independent Reviewer and Environmental Auditor Deed of Appointment

**Signed sealed and delivered by Arcadis
Australia Pacific Pty Limited ABN 76 104 485
289** by its attorneys pursuant to Power of
Attorney dated

.....who states that no notice of
revocation of the Power of Attorney has been
received:

Signature of Attorney

Signature of Attorney

Name of Attorney (Print)

Name of Attorney (Print)