Schedule 25 – [OHS / WHS] Schedule

# Definitions

1. Unless otherwise expressly defined below, expressions used in this Schedule have the meanings given to them in this Deed:
2. **OHS Legislation** means all Laws in connection with occupational health and safety including the *Occupational Health and Safety Act 2004* (Vic), the OHS Regulations, the *Heavy Vehicle National Law Application Act 2013* (Vic), the *Dangerous Goods Act Electricity Safety Act 1998* (Vic) and any related codes of practice, guidelines and advisory standards applicable to the Project Activities.
3. **OHS Regulations** means the *Occupational Health and Safety Regulations 2017* (Vic).
4. **Principal Contractor** has the meaning given in the OHS Legislation.

# Work health and safety

## Work health and safety

### (**Employee**): In this section 2 a reference to an 'employee' is a reference to that term as it is defined in the OHS Legislation.

### (**Works**): Project Co must carry out and must ensure that the Works are carried out:

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

#### in a manner that protects property.

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

#### the State Representative or the Operator Representative may direct Project Co to change its manner of working or to cease working to minimise that risk; and

#### Project Co must, at its cost, comply with any direction given by the State Representative or the Operator Representative under section 2.1(c)(i).

### (**Project Co obligations**): Project Co must and must ensure that the Key Subcontractors:

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

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

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

#### ensure that any Subcontracts that they enter into contain the same or substantially the same terms as this section 2;

#### consult, co-operate and co-ordinate activities with all other persons who have a work health and safety duty in relation to the same matter;

#### notify the State Representative and the Operator Representative immediately (and in any event, within 12 hours after such matter arising) of any 'notifiable incident' (as defined in the OHS Legislation) in connection with, the Works, the Maintained Assets or the Project Activities;

#### in respect of any notifiable incident referred to in section 2.1(d)(vi):

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

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

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

##### within 10 days of the date of notification to the relevant Commonwealth, State or Territory regulator, provide the State Representative with a summary of the related investigations, actions to be taken and any impact on the Project that may result from the notifiable incident;

#### within 1 Business Day of receipt, provide to the State Representative copies of:

##### all formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the applicable OHS Legislation to Project Co or a Subcontractor relating to work health and safety matters;

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

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

#### institute systems to:

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

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

#### provide the State Representative and the Operator Representative with a written report of all work health and safety matters (including matters in connection with sections 2.1 and 2.2) or any other relevant matters as the State Representative may reasonably require from time to time, including a summary of Project Co's (and the Key Subcontractors') compliance with the OHS Legislation;

#### exercise a duty of utmost good faith to the State and the Operator in carrying out the Project Activities to enable the State and the Operator to discharge its duties under the OHS Legislation;

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

#### if requested by the State Representative, the Operator Representative or required by OHS Legislation, demonstrate compliance with the OHS Legislation, including providing evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety matters; and

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

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

## Principal Contractor

1. ***[Note: The Principal Contractor appointment arrangements will be considered on a project specific basis to ensure that they reflect the timing and relevant sites/workplace for Principal Contractor appointments in accordance with the D&C Contractor Direct Deed, Services Contractor Direct Deed and the successful Respondent's consortium structure.]***

### (**Definitions**): In this section ‎2.2, the terms "construction project", "construction work" and "workplace" have the same meanings given to those terms under the OHS Legislation. For the purposes of the OHS Legislation and this Deed:

#### any Project Activity, including work under any Subcontract; and

#### any construction work carried out on the Project Area by the State or any State Associate or an Interface Party carrying out Site Interface Works:

##### during any period in which the D&C Contractor or the Services Contractor has been engaged as Principal Contractor in respect of the Project Area; and

##### which interfaces with the Project Activities,

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

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

#### the State must:

##### engage the D&C Contractor as Principal Contractor:

###### in respect of the Development Activities, from Financial Close up to the Date of Commercial Acceptance; and

###### for the rectification of Defects and the undertaking of any Works during the Operational Phase, where the D&C Contractor undertakes such work;

##### authorise the D&C Contractor to have management and control of each workplace at which the D&C Contractor carries out construction work and to discharge the duties of a Principal Contractor under the OHS Legislation in respect of construction work at that workplace;

##### engage, or procure that the Operator engages (as applicable), the Services Contractor as Principal Contractor in respect of the Services from the Operational Commencement Date until the Expiry Date; and

##### authorise, or procure that the Operator authorises (as applicable), the Services Contractor to have management and control of each workplace at which construction work is to be carried out and to discharge the duties of a Principal Contractor under the OHS Legislation in respect of the construction work carried out at that workplace,

* + 1. in accordance with the D&C Contractor Direct Deed and the Services Contractor Direct Deed (as applicable); and

#### Project Co must procure that each of the D&C Contractor and the Services Contractor (as the case may be) accepts the appointment as Principal Contractor and agrees to discharge the duties imposed on a Principal Contractor by the OHS Legislation.

### (**Project Co to ensure compliance**): Project Co must procure that the D&C Contractor or the Services Contractor (as the case may be) exercise and fulfil all of their functions and obligations as Principal Contractor under the OHS Legislation that are relevant to the Project.

### (**Functions and obligations of Principal Contractor**): If the appointment of the D&C Contractor or the Services Contractor (as the case may be) as Principal Contractor under the D&C Contractor Direct Deed or the Services Contractor Direct Deed (as applicable) is not effective for any reason, Project Co must procure that the D&C Contractor or the Services Contractor (as applicable) exercise and fulfil the functions and obligations of the Principal Contractor under the OHS Legislation as if it had been validly appointed and authorised as Principal Contractor under the D&C Contractor Direct Deed or the Services Contractor Direct Deed (as applicable).

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

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

##### a person:

###### to be authorised or licensed (in accordance with the OHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; or

###### to have prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the OHS Legislation), that person has the required qualifications or experience or is so supervised; or

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

#### not direct or allow a person to carry out work or use plant or a substance at a workplace unless the requirements of section 2.2(e)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and

#### if requested by the State or required by the OHS Legislation in respect of any work, produce evidence of any approvals, certificates, authorisations, licenses, prescribed qualifications or experience or any other information relevant to work health and safety (as the case may be) to the satisfaction of the State (acting reasonably) before Project Co or a Subcontractor (as the case may be) commences such work.