

# Project Alliance Agreement

## Level Crossing Removal Project: Burke Road, Glen Iris North Road, Ormond McKinnon Road, McKinnon Centre Road, Bentleigh

The Roads Corporation

Public Transport Victoria

Metro Trains Melbourne Pty Ltd

John Holland Pty Ltd

Kellogg Brown & Root Pty Ltd


Execution version  
Commercially sensitive information has been redacted for publication

Contract 8961

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# The agreement

## Project Alliance Agreement

Date ►

Between the parties	
Project Owner	<b>The Roads Corporation</b> under the <i>Transport Integration Act 2010</i> (Vic) on behalf of the Crown in Right of the State of Victoria, of 60 Denmark Street, Kew, Victoria 3101, trading as VicRoads ( <b>VicRoads</b> )
PTV	<b>The Public Transport Development Authority</b> (ABN 37 509 050 593), a body corporate established under the <i>Transport Integration Act 2010</i> (Vic) trading as Public Transport Victoria, of 750 Collins Street, Docklands VIC 3008 ( <b>PTV</b> )
MTM	<b>Metro Trains Melbourne Pty Ltd</b> (ACN 136 429 948), of Level 16, 700 Collins Street, Docklands VIC 3008 ( <b>MTM</b> )
John Holland	<b>John Holland Pty Ltd</b> (ACN 004 282 268), of Level 5, 380 St Kilda Road, Melbourne VIC 3004 ( <b>John Holland</b> )
KBR	<b>Kellogg Brown &amp; Root Pty Ltd</b> (ACN 007 660 317), of Level 3, 441 St Kilda Road, Melbourne VIC 3004 ( <b>KBR</b> )
Background	<ol style="list-style-type: none"> <li>1 The Project Owner intends to undertake level crossing removals at: <ul style="list-style-type: none"> <li>• Burke Road, Glen Iris;</li> <li>• North Road, Ormond;</li> <li>• McKinnon Road, McKinnon; and</li> <li>• Centre Road, Bentleigh.</li> </ul> </li> <li>2 The Burke Road level crossing intersects the Glen Waverley railway line in Glen Iris approximately 10 km from the Melbourne CBD. The North Road level crossing intersects the Frankston railway line in Ormond approximately 14km from the Melbourne CBD. The McKinnon Road level crossing intersects the Frankston railway line in McKinnon approximately 15km from the Melbourne CBD. The Centre Road level crossing intersects the Frankston railway line in Bentleigh approximately 16km from the Melbourne CBD.</li> <li>3 As a general summary, works will comprise: <ul style="list-style-type: none"> <li>• a grade separation by lowering the Glen Waverley railway line underneath Burke Road, with associated tram works;</li> <li>• a grade separation by lowering the Frankston railway line underneath North Road;</li> <li>• a grade separation by lowering the Frankston railway line</li> </ul> </li> </ol>



	<p>underneath McKinnon Road;</p> <ul style="list-style-type: none"> <li>• a grade separation by lowering the Frankston railway line underneath Centre Road;</li> <li>• reconstruction of the station over the rail cutting at each location, with upgrades of various station facilities; and</li> <li>• realignment of roads including road related infrastructure at each location, and provision of bicycle facilities and pedestrian access routes,</li> </ul> <p><b>(Project).</b></p> <p>4 Generally, the scope of works for the Project will include the design and construction of civil, track and structural works within the Project site.</p> <p>5 The Project Owner developed the VfM Statement in respect of the Project.</p> <p>6 PTV and MTM have agreed to join the Project Owner to develop the Alliance to deliver the Project.</p> <p>7 The Project Owner selected John Holland and KBR to participate in the RFP Phase, and, for that purpose, the Project Owner, John Holland and KBR entered into the Alliance Development Agreement.</p> <p>8 As part of the RFP Phase, John Holland and KBR developed the Final Project Proposal to achieve the VfM Statement in respect of the Project.</p> <p>9 The Project Owner has accepted the Final Project Proposal under the Alliance Development Agreement, and the Project Owner, PTV and the NOPs have agreed to enter into this Agreement for the carrying out of the Project and performance of the Works in return for the payments set out in this Agreement.</p> <p>10 The Participants have undertaken to enter into an alliance and perform their respective roles in relation to the Project in a spirit of cooperation and openness with the objective of performing the Works using an alliance relationship.</p> <p>11 The Participants are committed to achieving the Project Owner's requirements in the carrying out of the Project and the performance of the Works, and in particular:</p> <ul style="list-style-type: none"> <li>• achieving the Project Owner's VfM Statement; and</li> <li>• meeting the Alliance Objectives.</li> </ul>
<p>This Agreement witnesses</p>	<p>that in consideration of, among other things, the mutual promises contained in this Agreement, the Participants agree as set out in the operative part of this Agreement.</p>

## 1 Definitions and interpretation

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### 1.1 Definitions

The meanings of the terms used in this Agreement are set out below.

Term	Meaning
<b>Aboriginal Heritage</b>	a place, object, remain or any other thing that is of significance to Aboriginal persons in accordance with their practices, observances, customs, traditions, beliefs or history and includes any place or object or thing that is subject to protection under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth), the <i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i> (Cth) or the <i>Aboriginal Heritage Act 2006</i> (Vic).
<b>Accreditation</b>	accreditation under Division 4 of the Rail Safety National Law.
<b>Act of Parliament</b>	all Acts of the Parliament of the Commonwealth, and of the State of Victoria and includes any ordinance, rule, regulation, by-law, local law, order, code of practice, guideline, instruction and proclamation made or issued under any such Act now in existence or which comes into existence during the Term.
<b>Actual Outturn Costs or AOC</b>	<p>the total verified sum of:</p> <ol style="list-style-type: none"> <li>1 all Reimbursable Costs reasonably and actually incurred by the NOPs in performing the Works, including MTM RTO Role Reimbursable Costs;</li> <li>2 all Reimbursable Costs reasonably and actually incurred by PTV in performing the Works;</li> <li>3 all Reimbursable Costs reasonably and actually incurred by the Project Owner (whether as the client or the Owner Participant) in performing the Works or in connection with this Agreement (including any costs incurred by the Project Owner which are expressly stated by this Agreement to be Reimbursable Costs for the purposes of calculating the AOC), except to the extent already included in 1 to 2; and</li> <li>4 all Corporate Overhead and Profit paid by the Project Owner to the NOPs under this Agreement, including MTM RTO Role Corporate Overhead and Profit,</li> </ol> <p>until the Final Completion Date, but not including amounts specifically excluded under this Agreement.</p>
<b>Adjudicator</b>	the independent person appointed under clause 2 of Schedule 14.

<b>Term</b>	<b>Meaning</b>
<b>Adjustment Event</b>	<p>any of the following acts, events or circumstances:</p> <ol style="list-style-type: none"> <li>1 a Scope Variation, except to the extent that a Scope Variation is the subject of a Scope Variation Allowance under clause 17A;</li> <li>2 a change to a Statutory Requirement after the Commencement Date which substantially and materially affects the Works;</li> <li>3 any suspension by the Project Owner of all or part of the Works under clause 26 (other than as a result of a breach of this Agreement by a NOP, where the suspension is necessary to ensure that the Works comply with the requirements of this Agreement or in the circumstances set out in clause 26.5);</li> <li>4 a Wilful Default by the Owner Participant or PTV;</li> <li>5 an Excepted Risk; and</li> <li>6 any event or circumstance identified in the Adjustment Event Guidelines as an Adjustment Event.</li> </ol>
<b>Adjustment Event Guidelines</b>	the adjustment event guidelines set out in the Final Project Proposal.
<b>Agreement</b>	this agreement.
<b>Alliance</b>	the Burke Road, Glen Iris, North Road, Ormond, McKinnon Road, McKinnon and Centre Road, Bentleigh Level Crossing Removal Project Alliance which the Participants have created to perform the Works and achieve the VfM Statement in accordance with this Agreement.
<b>Alliance Charter</b>	the alliance charter (including the Alliance Principles, Alliance Purpose and Alliance Objectives) for the performance of the Works as set out in Schedule 2 which, together with the other terms of this Agreement, governs the relationship between the Participants under this Agreement.
<b>Alliance Development Agreement or ADA</b>	the alliance development agreement for the Project entered into between the Project Owner, John Holland and KBR under which the Final Project Proposal was developed.
<b>Alliance Leadership Team or ALT</b>	the alliance leadership team established under clause 6.1.
<b>Alliance Management Team or AMT</b>	the alliance management team to be established under clause 9.2.
<b>Alliance Manager</b>	the person specified in clause 9.1 or any other person appointed by the ALT as the alliance manager for the purposes of this Agreement from time to time.
<b>Alliance Objectives</b>	are set out in Schedule 2.
<b>Alliance Principles</b>	are set out in Schedule 2.
<b>Alliance Purpose</b>	is set out in Schedule 2.
<b>Alliance Risk and Opportunity Provisions</b>	the alliance risk and opportunity provisions developed by the Participants as set out in the Final Project Proposal.

<b>Term</b>	<b>Meaning</b>
<b>Alternative Liable Entity</b>	means any Authority other than the Project Owner who is liable under legislation listed in clause 19.18 in respect of the emission of Greenhouse Gas associated with the performance of the Works or the Project.
<b>Associate</b>	<p>in relation to a Person, any Related Entity of that Person or any officer, employee, agent, contractor, consultant, nominee, secondee, licensee or advisor of that Person or that Related Entity, and:</p> <ol style="list-style-type: none"> <li>1 in the case of the Owner Participant includes: <ul style="list-style-type: none"> <li>• any officer, employee, agent, contractor, consultant, nominee, secondee, licensee of the Owner Participant; and</li> <li>• any Person who directly or indirectly provides advice to the Owner Participant in connection with this Agreement, the Works or the Project and any Associate of that Person (other than a NOP or an Associate of a NOP);</li> </ul> </li> <li>2 in the case of a NOP includes: <ul style="list-style-type: none"> <li>• a Related Entity or any officer, employee, agent, contractor, consultant, nominee, secondee, licensee of the NOP or Related Entity and anyone who is an associate under sections 10 to 17 of the Corporations Act; and</li> <li>• any Person who directly or indirectly provides advice to the NOP or Related Entity in connection with this Agreement, the Works or the Project and any Associate of that Person; and</li> </ul> </li> <li>3 in the case of PTV includes: <ul style="list-style-type: none"> <li>• any officer, employee, agent, contractor, consultant, nominee, secondee or licensee of PTV; and</li> <li>• any Person who directly or indirectly provides advice to PTV in connection with this Agreement, the Works or the Project and any Associate of that Person (other than a NOP or an Associate of a NOP).</li> </ul> </li> </ol>
<b>Authorisation</b>	any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency or a Third Party.
<b>Authority</b>	<p>any Commonwealth, State or municipal statutory or government body or organisation or any non-government body or organisation (and their respective departments, agencies, authorities or officers or representatives) that supply utilities or services to, or which have authority or jurisdiction over:</p> <ol style="list-style-type: none"> <li>1 all or part of the Works;</li> <li>2 a Participant;</li> <li>3 the Site; or</li> <li>4 any land external to the Site on which the Works may be carried out.</li> </ol>
<b>Best For Project</b>	an approach, determination, decision, method, solution, interpretation, outcome or resolution that is consistent with the VfM Statement and the Alliance Charter.
<b>Business Day</b>	a day on which banks are open for business in Melbourne, Victoria, excluding a Saturday, Sunday or public holiday in Melbourne, Victoria.
<b>Casual Staff</b>	an employee engaged as such who is paid a casual loading for each hour worked in lieu of entitlements including annual leave, personal leave, notice of termination and redundancy benefits.

<b>Term</b>	<b>Meaning</b>
<b>Certificate of Practical Completion</b>	is defined in clause 14.2(d).
<b>Change in Control</b>	<p>if, in relation to any person (the first mentioned person):</p> <ol style="list-style-type: none"> <li>1 there is a change in the person that controls the first mentioned person (other than if the Ultimate Holding Company of the first mentioned person remains the same following the change);</li> <li>2 a person that controls the first mentioned person ceases to control that person (other than if the Ultimate Holding Company of the first mentioned person remains the same following the change); or</li> <li>3 if the first mentioned person is not controlled, another person acquires control of the first mentioned person.</li> </ol> <p>For the purposes of this definition, the term 'control' (including the term 'controlled') has the same meaning as in section 50AA of the Corporations Act.</p>
<b>Chargeable Rate</b>	has the meaning given in Schedule 6.
<b>Commencement Date</b>	means the date of this Agreement.
<b>Commercial Framework</b>	the combination of the Reimbursable Costs, the Corporate Overhead and Profit, and the Risk or Reward Regime.
<b>Commonwealth</b>	the Commonwealth of Australia.
<b>Consequential Loss</b>	loss of production, loss of revenue, loss of profit or anticipated profit or loss of business reputation, but does not include any entitlement of a NOP under this Agreement to Corporate Overhead and Profit or any loss expressly stated under clause 14.6(b).
<b>Construction Plant</b>	apparatus, facilities, plant, equipment, materials, products, processes, temporary works, machinery and other things used in performing the Works but not forming part of the completed Works.
<b>Contract Staff</b>	a person engaged under a contract for services rather than a contract of service or employment contract.
<b>Contracting Strategy</b>	the contracting strategy developed by the Participants as part of the Project Management System.
<b>Corporate Overhead and Profit</b>	the NOPs' corporate overhead and profit calculated in accordance with Schedule 7.
<b>Corporations Act</b>	the <i>Corporations Act 2001 (Cth)</i> .
<b>Cost Risk or Reward Regime</b>	has the meaning given in the Risk or Reward Regime.
<b>Date for Practical Completion</b>	is defined in Schedule 1.

<b>Term</b>	<b>Meaning</b>
<b>Date of Practical Completion</b>	the date of Practical Completion stated in the Certificate of Practical Completion.
<b>Date of Project Practical Completion</b>	the Date of Practical Completion in respect of the last Separable Portion to reach Practical Completion.
<b>Default</b>	is defined in clause 28.1.
<b>Defaulting NOP</b>	is defined in clause 28.1.
<b>Defect</b>	<p>any error, omission, defect, non-conformity, deficiency or discrepancy in any part of the Works or any other matter that is not in accordance with this Agreement, other than any defect, non-conformity, deficiency or discrepancy:</p> <ol style="list-style-type: none"> <li>1 caused by fair wear and tear; or</li> <li>2 arising out of or in connection with a failure to perform operations and maintenance activities in accordance with operations and maintenance manuals properly prepared and accredited prior to Practical Completion, provided that such operations and maintenance manuals are not defective, non-complying or incomplete or do not omit works or services required by the Agreement.</li> </ol>
<b>Defects Correction Period</b>	is defined in Schedule 1 and, where relevant, clause 13.5(e)(2).
<b>Determination</b>	means any approach, determination, decision, direction, outcome, solution or resolution in respect of the Works, the Alliance or the Agreement.
<b>Diligence</b>	the exercise of the degree of skill, care, expertise, diligence and foresight which would from time to time be expected of skilled and experienced professional persons engaged in undertakings of a similar type as the Works.
<b>Disruption to Rail Operations</b>	any disruption to Rail Operations as a result of or in connection with the Works.
<b>Documentation</b>	is defined in clause 13.2.
<b>Draft Local Industry Development Plan or Draft LID Plan</b>	has the meaning given in clause 32.1(a).
<b>Enhanced Project Bylaw Scheme or EPBS</b>	the Australian Government's enhanced project bylaw scheme which provides tariff duty concessions on eligible capital goods which exceed \$10 million in value.
<b>Enhancements</b>	is defined in clause 31.2(a).
<b>Environment</b>	has the same meaning as in the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).

<b>Term</b>	<b>Meaning</b>
<b>Environmental Credits</b>	includes the legal, commercial, marketing or other benefit (whether present or future) of any: <ol style="list-style-type: none"> <li>1 reduction or offset of greenhouse gas emissions (whether by total greenhouse gas emissions or efficiencies or offset abatement projects);</li> <li>2 use of renewable energy or generation of energy; or</li> <li>3 reduction or offset of any Environmental impact including credits derived from native vegetation offsets.</li> </ol>
<b>EPA</b>	the Environment Protection Authority established under the <i>Environment Protection Act 1970 (Vic)</i> .
<b>Excepted Risk</b>	<ol style="list-style-type: none"> <li>1 war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), terrorism, civil war, rebellion, revolution, insurrection or militarily usurped power, martial law or confiscation by order of any Authority; or</li> <li>2 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by a Participant, a Subcontractor or any of the Participants' Associates.</li> </ol>
<b>Exceptional Performance</b>	has the meaning given in the Risk or Reward Regime.
<b>Fee Reduction Modifier</b>	has the meaning given in the Risk or Reward Regime.
<b>Fee Reduction Modifier – KRA Performance</b>	is the Fee Reduction Modifier in respect of KRA performance, set out in Part A of Schedule 8.
<b>Fee Reduction Modifier – Safety</b>	is each Fee Reduction Modifier in respect of safety, set out in Part A of Schedule 8.
<b>Final Certificate</b>	is defined in clause 15.1.
<b>Final Completion</b>	has the meaning given in clause 15.5.
<b>Final Completion Date</b>	the final completion date of the Works, including all Separable Portions, as specified in the Final Certificate.
<b>Final Local Industry Development Plan or Final LID Plan</b>	has the meaning given in clause 32.1(b).

<b>Term</b>	<b>Meaning</b>
<b>Final Project Proposal</b>	the proposal for the Project developed from the Initial Project Proposal during the RFP Phase, as set out in Schedule 11, which comprises: <ol style="list-style-type: none"> <li>1 the Scope of Works;</li> <li>2 design development requirements;</li> <li>3 the TOC;</li> <li>4 Alliance Risk and Opportunity Provisions;</li> <li>5 the Adjustment Event Guidelines;</li> <li>6 the Governance Plan; and</li> <li>7 the Draft Local Industry Development Plan.</li> </ol>
<b>Franchise Business</b>	in relation to MTM, has the meaning in the MTM Franchise Agreement.
<b>Freedom of Information Commissioner</b>	the freedom of information commissioner appointed under the <i>Freedom of Information Act 1982</i> (Vic).
<b>Full-Time Staff</b>	an employee who is engaged to work an average of 40 ordinary hours per week or any other amount specified by a contract of employment or agreement for a full time employee.
<b>Gainshare Amount</b>	the payment (if any) to be made by the Project Owner to the NOPs which will be calculated as at the Final Completion Date in accordance with the Risk or Reward Regime and paid in accordance with clause 3(h) of Schedule 9.
<b>Gainshare Retention Amount</b>	the amount of any Interim Gainshare Amount retained by the Project Owner in accordance with clause 3(c) of Schedule 9.
<b>Good Faith</b>	in the context of this Agreement means: <ol style="list-style-type: none"> <li>1 acting in accordance with the Alliance Principles, Alliance Purpose and Alliance Objectives both in a literal sense and with their intent;</li> <li>2 undertaking, adopting and implementing all things reasonably necessary to seek to ensure a Best For Project outcome; and</li> <li>3 being fair, honest and reasonable and acting with integrity at all times.</li> </ol>
<b>Goods and Services Tax or GST</b>	has the meaning given in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Governance Plan</b>	the governance plan for the Project, as set out in the Final Project Proposal.
<b>Government Agency</b>	any government, parliament or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, government minister, agency or entity.
<b>Greenhouse Gas</b>	any gas currently defined in the <i>National Greenhouse and Energy Reporting Act 2007</i> (Cth) and any other gas which is recognised by a law of the Australian Parliament as a gas which contributes to the greenhouse effect or anthropogenic climate change.
<b>GST Exclusive Consideration</b>	is defined in clause 20.12.



<b>Term</b>	<b>Meaning</b>
<b>IBAC Commissioner</b>	means the commissioner appointed under the <i>Independent Broad-based Anti-corruption Commission Act 2011</i> (Vic).
<b>Industry Capability Network or ICN</b>	means Industry Capability Network Victoria of Level 11, 10 Queens Road, Melbourne, Victoria 3004 (ACN 007 058 120).
<b>Initial Project Proposal</b>	the written response submitted by the NOPs in respect of the Project in response to the Requests for Proposal.
<b>Insolvency Event</b>	<p>where a Participant or its parent company:</p> <ol style="list-style-type: none"> <li>1 informs another Participant or creditors generally that it is insolvent;</li> <li>2 has a meeting of its creditors called with a view to entering a scheme of arrangement or composition with creditors;</li> <li>3 enters a scheme of arrangement or composition with creditors;</li> <li>4 has a controller (as that term is defined in the Corporations Act) of its property or part of its property appointed;</li> <li>5 is the subject of an application to a court for its winding up, which application is not stayed within 10 Business Days;</li> <li>6 has a winding up order made in respect of it;</li> <li>7 has an administrator appointed under section 436A, 436B or 436C of the Corporations Act;</li> <li>8 enters into voluntary liquidation;</li> <li>9 fails to comply with a statutory demand issued under section 459E of the Corporations Act, unless the demand is set aside by a court within 10 Business Days; or</li> <li>10 has execution levied against it by creditors, debenture holders or trustees or under a floating charge,</li> </ol> <p>or an act is done or an event occurs which, under the laws from time to time of a country having jurisdiction in relation to the Participant or its parent company, has an analogous or similar effect to any of the events in paragraphs 1 to 10 of this definition.</p>
<b>Intellectual Property</b>	all intellectual property rights existing worldwide and the subject matter of those rights including any patent, design (whether registered or not), copyright, trade mark, protected circuit layout (or similar right), trade secret or other right whether existing under a Statutory Requirement, at common law or in equity.
<b>Interim Gainshare Amount</b>	the interim Gainshare Amount which will be calculated as at the Date of Project Practical Completion, in accordance with the Risk or Reward Regime, and paid by the Project Owner to the NOPs in accordance with clause 3(c) of Schedule 9.
<b>Interim Painshare Amount</b>	the interim Painshare Amount which will be calculated as at the Date of Project Practical Completion, in accordance with the Risk or Reward Regime, and paid by the NOPs to the Project Owner in accordance with clause 3(c) of Schedule 9.
<b>Intellectual Property Assets</b>	are defined in clause 31.3(a).
<b>IP Documents</b>	are defined in clause 31.3(a).
<b>Joint Coordination Committee</b>	has the meaning given in clause 18.4A(b)(2).

<b>Term</b>	<b>Meaning</b>
<b>Key Performance Indicator or KPI</b>	the key performance indicators in respect of each KRA, set out in Schedule 8, as may be further detailed in the KRA Performance Management and Monitoring Plan included in the Project Management System.
<b>Key Project Interface</b>	means each of the following interfaces as they relate to the Works: 1 accreditation and management of change; 2 communications and community relations; 3 construction; 4 engineering; 5 environment; 6 industrial relations; 7 safety; 8 testing and commissioning; and 9 track access and occupations, or as otherwise determined by the Joint Coordination Committee.
<b>Key Result Areas or KRAs</b>	are defined in the Risk or Reward Regime.
<b>KPI Performance Score</b>	the performance score in respect of each KPI, calculated in accordance with Schedule 8.
<b>KRA Performance Liability Amount</b>	has the meaning given in the Risk or Reward Regime.
<b>KRA Performance Score</b>	the performance score in respect of each KRA, calculated in accordance with Schedule 8.
<b>Latent Conditions</b>	the physical conditions on a Site including the soil and rock conditions, surface water, groundwater, geotechnical conditions, contamination, Pollution and artificial things.
<b>LIDP Monitoring Tables</b>	the set of tables set out in Schedule 22.
<b>Local Industry Development Plan or LID Plan</b>	the local industry development plan for the purposes of the VIPP to be prepared in accordance with clause 32.1.
<b>Materials</b>	materials, plant, machinery, equipment and products for incorporation into the Works.
<b>MCOS Performance</b>	has the meaning given in the Risk or Reward Regime, being the benchmark level of performance for the minimum conditions of satisfaction in respect of each KRA or KPI.
<b>Mitigation Modifier</b>	has the meaning given in the Risk or Reward Regime.
<b>Mitigation Modifier – KRA Performance</b>	is the Mitigation Modifier in respect of KRA performance, set out in Part A of Schedule 8.

<b>Term</b>	<b>Meaning</b>
<b>Mitigation Modifier – Safety</b>	is the Mitigation Modifier in respect of safety, set out in Part A of Schedule 8.
<b>Modifier Performance Liability Amount</b>	is, in respect of each Fee Reduction Modifier, the amount calculated as set out in Part A of Schedule 8.
<b>Month</b>	calendar month.
<b>MTM Change in Control</b>	is the occurrence of any one of the events set out in clause 22.1(f) of the MTM Franchise Agreement which occurs or arises without the prior written consent of PTV.
<b>MTM Design Practice Note 13</b>	the document entitled [REDACTED]
<b>MTM Emergency Event</b>	<p>an unanticipated event as a result of which a section of track which was otherwise the subject of an agreed Track Occupation is unavoidably required:</p> <ol style="list-style-type: none"> <li>1 to ensure the safety of Rail Operations or the Rail Infrastructure; or</li> <li>2 as a result of the redeployment of major rail resources to other sites to ensure the safety of Rail Operations or the Rail Infrastructure.</li> </ol>
<b>MTM Force Majeure Event</b>	<ol style="list-style-type: none"> <li>1 act of God, lightning, storm, explosion, flood, landslide, bush fire or earthquake;</li> <li>2 strikes or other industrial action, other than strikes or other industrial action primarily involving some or all of MTM employees, or the employees of any of MTM's Related Bodies Corporate or any associate (as that term is defined in the Corporations Act) of MTM or any of MTM's Related Bodies Corporate or primarily involving the rail (train and tram) industry;</li> <li>3 act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;</li> <li>4 any change in Statutory Requirement; or</li> <li>5 embargo, power shortage or water shortage,</li> </ol> <p>the consequences of which:</p> <ol style="list-style-type: none"> <li>6 are beyond the control of MTM; and</li> <li>7 could not have been prevented, overcome or remedied by the exercise by MTM of a standard of care and diligence consistent with that of a prudent and competent person under the circumstances (including the expenditure of reasonable sums of money and the application of technology known to such prudent and competent person).</li> </ol>
<b>MTM Franchise Agreement</b>	the Franchise Agreement -Train between PTV and MTM for the provision of metropolitan passenger rail services and maintenance services.
<b>MTM Infrastructure Lease</b>	the Infrastructure Lease - Train between PTV, VicTrack and MTM which governs the operation, maintenance and future development of the metropolitan Rail Infrastructure.
<b>MTM Occupations Protocol</b>	the MTM protocol for requesting and granting access for Track Occupations and includes: [REDACTED]
<b>MTM Projects Agreement</b>	the agreement entitled 'Projects Agreement – Train' entered into between PTV and MTM.

<b>Term</b>	<b>Meaning</b>
<b>MTM Rail Transport Operator Role or MTM RTO Role</b>	the works and services to be performed by MTM which are identified in the Scope of Works as constituting the MTM RTO Role.
<b>MTM RTO Role Corporate Overhead and Profit</b>	the part of the Corporate Overhead and Profit payable by the Project Owner to MTM in respect of the performance of the MTM RTO Role, as set out in clause (a)(i)(A) of Schedule 7.
<b>MTM RTO Role Reimbursable Costs</b>	Reimbursable Costs reasonably and actually incurred by MTM in connection with the MTM RTO Role.
<b>MTM Shared Direct Costs</b>	in respect of MTM, direct costs which are shared across projects undertaken by MTM as agreed with PTV, including identified shared resources (such as finance and accounts, safety, administration, human resources, program managers and occupations management), head office stationary and office consumables, head office telephones, mobile phone and transport costs for identified shared resources (including vehicle lease and running costs), head office corporate IT systems, occupational health & safety expenses such as vests, first aid and medical supplies, the costs of group financial and safety audits).
<b>MTM's CEO</b>	is the Chief Executive Officer of MTM or any individual nominated in writing by him or her and advised to the other Participants.
<b>MTM's CEO's Reserved Powers</b>	has the meaning given in clause 8.2(a)(2).
<b>MTM's Final Operational Requirements</b>	the document entitled Final Operational Requirements with the document number: <div style="background-color: black; width: 100px; height: 15px; margin: 5px 0;"></div>
<b>Native Title Laws</b>	the <i>Native Title Act 1993</i> (Cth), the <i>Land Titles Validation Act 1994</i> (Vic) and the <i>Aboriginal &amp; Torres Strait Islander Heritage Protection Act 1984</i> (Cth) and any secondary legislation under those Acts.
<b>Nominated Subcontractor</b>	in respect of a NOP, any person: <ol style="list-style-type: none"> <li>1 nominated as part of the Initial Project Proposal as a person the NOP intended to engage as a Subcontractor for the performance of the Works under this Agreement; and</li> <li>2 engaged by the NOP as a Subcontractor under this Agreement.</li> </ol>
<b>Non-Owner Participants or NOPs</b>	John Holland, KBR and MTM, collectively and individually.
<b>Non-Wages Personnel</b>	any Full-Time Staff, Part-Time Staff, Casual Staff, Contract Staff or Temporary Staff or any other person employed or engaged by a Participant to perform an element of the Works, other than Wages Personnel.
<b>NOP Key Personnel</b>	the persons nominated in Schedule 4.
<b>NOP Risk Cap</b>	has the meaning given in the Risk or Reward Regime.
<b>Notice</b>	is defined in clause 32.

<b>Term</b>	<b>Meaning</b>
<b>Officer</b>	has the meaning given to that term in the <i>Corporations Act 2001</i> (Cth).
<b>OPR</b>	has the meaning in the MTM Franchise Agreement.
<b>Overall Performance Score or OPS</b>	has the meaning given in the Risk or Reward Regime.
<b>Owner Participant</b>	the Project Owner, in its capacity as a Participant in the alliance for the performance of the Works.
<b>Painshare Amount</b>	the payment (if any) to be made by the NOPs to the Project Owner which will be calculated as at the Final Completion Date in accordance with the Risk or Reward Regime and paid in accordance with clause 3(h) of Schedule 9.
<b>Participant</b>	the Owner Participant, PTV, MTM, John Holland or KBR, as the context requires.
<b>Participants</b>	the Owner Participant, PTV and the NOPs.
<b>Part-Time Staff</b>	an employee who is engaged to work fewer than Full-Time Staff ordinary hours.
<b>Passenger Services</b>	has the meaning in the MTM Franchise Agreement.
<b>Performance Liability Amount</b>	the payment (if any) to be made by the NOPs to the Project Owner which will be calculated in accordance with the Risk or Reward Regime.
<b>Performance Risk Regime</b>	has the meaning given in the Risk or Reward Regime.
<b>Person</b>	includes an individual, a body corporate, company, firm, joint venture, partnership, trust, association or unincorporated body.
<b>Personal Information</b>	information or an opinion (including information or an opinion forming part of a database) that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
<b>[REDACTED]</b>	<b>[REDACTED]</b>
<b>[REDACTED]</b>	<b>[REDACTED]</b>
<b>Pollution</b>	a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance of any kind which makes or may make any segment of the Environment: <ol style="list-style-type: none"> <li>1 unsafe, unfit or harmful for habitation, use or occupation by any person or animal;</li> <li>2 degraded in any way; or</li> <li>3 not comply with any Statutory Requirements.</li> </ol>
<b>Poor Performance</b>	has the meaning given in the Risk or Reward Regime.

Term	Meaning
<b>Post Practical Completion Documentation</b>	the documentation outlined in clause 2 of Schedule 19.
<b>PPS Act</b>	the <i>Personal Property Securities Act 2009</i> (Cth).
<b>PPS Law</b>	<ol style="list-style-type: none"> <li>1 the PPS Act and any regulations made at any time under the PPS Act, as amended from time to time;</li> <li>2 any relevant amendment made at any time to any other legislation as a consequence of paragraph 1;</li> <li>3 any provision of the PPS Act or regulations referred to in paragraph 1;</li> <li>4 any amendment to any of the above, made at any time; or</li> <li>5 any amendment made at any time to the <i>Corporations Act 2001</i> (Cth) or any other legislation in connection with the implementation or as a consequence of the PPS Act.</li> </ol>
<b>Practical Completion</b>	<p>the stage in the performance of the Works when:</p> <ol style="list-style-type: none"> <li>1 the Works are complete except for minor Defects: <ul style="list-style-type: none"> <li>• which do not prevent the Works from being reasonably capable of being used for the Stated Purpose;</li> <li>• which the Participants have reasonable grounds for not promptly rectifying; and</li> <li>• rectification of which will not prejudice the immediate, efficient, safe and convenient use of the Works for the Stated Purpose;</li> </ul> </li> <li>2 the requirements of all relevant certifying authorities and insurance surveyors for the purposes of achieving Practical Completion have been met; and</li> <li>3 all Testing which is required under the Agreement and any applicable Statutory Requirements to be carried out and passed before the Works reach Practical Completion have been satisfactorily carried out and passed and certified as such by the Alliance Manager; and</li> <li>4 the Project Owner has received all documents and information required as part of the Practical Completion Report, and any other documentation reasonably required by the Project Owner with respect to the Works, including all documents and other information and things essential for the maintenance, operation or use of the Works.</li> </ol>
<b>Practical Completion Documentation</b>	has the meaning given in paragraph 4 of the definition of Practical Completion.
<b>Practical Completion Report</b>	the report outlined in clause 1 of Schedule 19 required as a condition precedent to the Certificate of Practical Completion.
<b>Pre-existing Intellectual Property Materials</b>	is defined in clause 31.1.
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<b>Term</b>	<b>Meaning</b>
<b>Privacy Laws</b>	the <i>Privacy Act 1988 (Cth)</i> , the <i>Privacy and Data Protection Act 2014 (Vic)</i> and any other legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information.
<b>Project</b>	is defined in paragraph 1 of the Background of this Agreement.
<b>Project Management System</b>	has the meaning given in clause 19.10(b).
<b>Project Office</b>	the office for the purpose of performing the Works.
<b>Project Owner</b>	is defined in Schedule 1.
<b>Project Owner's Reserved Powers</b>	the Project Owner's reserved powers under this Agreement as set out in clause 8.1.
<b>PTV's CEO</b>	the chief executive officer of the Public Transport Development Authority appointed under the <i>Transport Integration Act 2010 (Vic)</i> .
<b>PTV's CEO's Reserved Powers</b>	has the meaning given in clause 8.3(a)(2).
<b>Rail Access Management Plan</b>	the rail access management plan for the Project, which must include the Track Occupations Program, required to be developed by the Participants as part of the Project Management System.
<b>Rail Infrastructure</b>	<p>the infrastructure required to maintain and operate the Melbourne metropolitan rail network and includes:</p> <ol style="list-style-type: none"> <li>1 all improvements, plant, equipment, fixtures and fittings installed or erected on, over or under the Land from time to time including track, sidings/stabling facilities and yards, associated track structures (such as points and crossings, track support earthworks cuttings, embankments, track formation and track drainage systems), structures that accommodate and allow the movement of people, rolling stock, plant and equipment (such as tunnels, bridges, subways, platforms, station buildings including retail premises, at-grade pedestrian crossings, maintenance depots/workshops/facilities), signalling system assets (such as signals, track circuits, point machines, train stops, level crossing protection equipment), traction power assets (such as overhead wiring, structures supporting overhead wiring, substations, tie stations, rectifiers, rectifier transformers, circuit breakers, feeder cables remote control systems), communications systems (such as passenger information display equipment, public address systems, CCTV systems), building services (such as power supply, lighting, air conditioning, water supply, sewerage and storm water drainage), service roads, notices and signs;</li> <li>2 the train control system;</li> <li>3 the train electrical control system;</li> <li>4 the disaster recovery system;</li> <li>5 the associated infrastructure; and</li> <li>6 the operational control systems.</li> </ol>

<b>Term</b>	<b>Meaning</b>
<b>Rail Operations</b>	<p>the:</p> <ol style="list-style-type: none"> <li>1 provision, maintenance, movement, shunting, storage, fuelling, loading and unloading of rolling stock for rail services;</li> <li>2 provision of Rail Infrastructure to enable rail services;</li> <li>3 maintenance, storage, building, rebuilding, servicing, replacing and repairing of Rail Infrastructure and rolling stock; and</li> <li>4 conduct of the business of providing rail services.</li> </ol>
<b>Rail Safety National Law</b>	has the meaning given in the <i>Rail Safety National Law Application Act 2013 (Vic)</i> .
<b>Rail Transport Operator</b>	has the meaning given in the Rail Safety National Law.
<b>Reimbursable Cost Multiplier or RCM</b>	has the meaning given in Table 2 of Schedule 6.
<b>Reimbursable Costs</b>	is defined in Schedule 6.
<b>Related Body Corporate</b>	has the meaning given to that term in the Corporations Act.
<b>Related Entity</b>	a related entity of a Participant as that term is defined under section 9 of the Corporations Act and includes a subsidiary and a related party as those terms are defined in the Corporations Act.
<b>Related Works</b>	<p>any works or services performed or undertaken or to be performed or undertaken by:</p> <ol style="list-style-type: none"> <li>1 the Project Owner or PTV;</li> <li>2 MTM;</li> <li>3 contractors, consultants or suppliers (other than a Participant) to the Project Owner, PTV or MTM;</li> <li>4 a public or private utility or statutory or other relevant Authority including any utility companies or Authority engaged by the Alliance as part of the Works; or</li> <li>5 persons arising out of or in connection with Rail Operations,</li> </ol> <p>either concurrently or sequentially with the Works:</p> <ol style="list-style-type: none"> <li>6 at, on, over, under, in or adjacent to the Site; or</li> <li>7 which may be connected to, associated with, ancillary to or otherwise related or relevant to the Works,</li> </ol> <p>and may include:</p> <ol style="list-style-type: none"> <li>8 sidings works adjacent to the Works;</li> <li>9 procurement of long lead time items (such as signalling conduits); and</li> <li>10 relocation of utility services including rail related utility services.</li> </ol>
<b>Relevant Period</b>	<p>the period commencing on the Commencement Date and ending on:</p> <ol style="list-style-type: none"> <li>1 a date agreed by the ALT; or</li> <li>2 failing agreement, the date necessary to ensure that all Participants comply with any Statutory Requirement relating to record keeping.</li> </ol>



<b>Term</b>	<b>Meaning</b>
<b>Request for Proposal (RFP)</b>	is defined in Schedule 1.
<b>Request for Proposal Phase (RFP Phase)</b>	the phase of the procurement process for the Project as described in the Requests for Proposal under which the NOPs develop the Final Project Proposal in accordance with the terms of the Alliance Development Agreement.
<b>Responsibilities Matrix</b>	the responsibilities matrix designating roles and responsibilities under this Agreement to the Alliance Manager, the ALT, the AMT and the WPT, as set out in Schedule 3.
<b>Risk or Reward Regime</b>	the risk or reward regime for the Project under which: <ol style="list-style-type: none"> <li>1 a Gainshare Amount may be payable by the Project Owner to the NOPs or a Painshare Amount may be payable by the NOPs to the Project Owner (if any and as the case may be); and</li> <li>2 a Performance Liability Amount may be payable by the NOPs to the Project Owner (if any),</li> </ol> each as set out in Schedule 8.
<b>Risk &amp; Contingency Provisions</b>	the provision for all possible Reimbursable Costs associated with risks and contingencies that may arise in performing the Works that have been set out in the Alliance Risk and Opportunity Provisions and included in estimating the TOC, but excluding any Adjustment Events.
<b>Road Infrastructure</b>	has the meaning given to that term in section 3 of the <i>Road Management Act 2004</i> (Vic).
<b>Road Safety Act</b>	means the <i>Road Safety Act 1986</i> (Vic).
<b>Rolling Stock</b>	means a vehicle or a part of a vehicle that operates on or uses a railway track, and includes a locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, road/rail vehicle, trolley, wagon or monorail vehicle but does not include a vehicle or a part of a vehicle designed to operate both on and off a railway track when the vehicle is not operating on a railway track.
<b>Safety Management Documentation</b>	the safety management documentation required to be prepared by MTM to comply with its obligations under the Rail Safety National Law.
<b>Safety Management System</b>	has the meaning given in the Rail Safety National Law.
<b>Safety Regulator</b>	the Regulator as defined in the Rail Safety National Law.
<b>Scope of Works</b>	the scope of works for the Project, as set out in the Final Project Proposal.
<b>Scope Variation</b>	is defined in clause 17.6(a).
<b>Scope Variation Allowance</b>	is defined in clause 17A(a).
<b>Scope Variation Sum</b>	is defined in clause 17A(d).

<b>Term</b>	<b>Meaning</b>
<b>Scope Variation Report</b>	is defined in clause 17.6(c).
<b>Security Interest</b>	has the meaning given to it in the PPS Law.
<b>Sensitive Information</b>	is defined in clause 19.19(c).
<b>Separable Portion</b>	is defined in clause 7.
<b>Separable Portion 1</b>	is defined in clause 7(a)(1).
<b>Separable Portion 2</b>	is defined in clause 7(a)(2).
<b>Separable Portion 3</b>	is defined in clause 7(a)(3).
<b>Separable Portion 4</b>	is defined in clause 7(a)(4).
<b>Signalling Functional Specification</b>	means, in respect of: <ul style="list-style-type: none"> <li>1 Separable Portion 1: the document entitled [REDACTED]; and</li> <li>2 Separable Portion 2: the document entitled [REDACTED].</li> </ul>
<b>Site</b>	any land, or any part of land, where the Works are to be performed.
<b>SoP Act</b>	the <i>Building and Construction Industry Security of Payment Act 2002</i> (Vic).
<b>Specialist Non-Wages Personnel</b>	a person with a subject specific skill set unique to the engineering or design or construction challenge or solution relevant for the task the subject of the Project or who has demonstrated a level of expertise, capability or experience required by the Project.
<b>Standards</b>	the various standards with which the Works must comply, specified in the RFPs (except to the extent of any inconsistency with this Agreement) and this Agreement, including: <ul style="list-style-type: none"> <li>1 the Project Owner's standards; and</li> <li>2 standards in respect of Rail Infrastructure [REDACTED].</li> </ul>
<b>State</b>	the State of Victoria.
<b>Stated Purpose</b>	the intended purpose of the Works: <ul style="list-style-type: none"> <li>1 stated by the Project Owner (including performance, design and functional requirements) or those purposes necessarily inferred from the contents of the Agreement; and</li> <li>2 includes any purpose which, having regard to the nature of the Works and what is stated in the Agreement, could be reasonably inferred by a person experienced and competent in the performance of or implementation of works or rail infrastructure similar to the Works.</li> </ul>

<b>Term</b>	<b>Meaning</b>
<b>Station Functional Specification</b>	means, in respect of: 1 Separable Portion 1: the document entitled [REDACTED]; 2 Separable Portion 2: the document entitled [REDACTED]; 3 Separable Portion 3: the document entitled [REDACTED]; and 4 Separable Portion 4: the document entitled [REDACTED].
<b>Statutory Requirements</b>	1 Acts of Parliament; 2 Authorisations; 3 directions given under a statute that affect the performance of the Works; and 4 all other laws, regulations, conventions, orders, directions, guidelines and policies given by or on behalf of any Government Agency which may apply to the Works.
<b>Stipulation</b>	is defined in clause 28.2(a).
<b>Subcontract</b>	any contract, purchase order or arrangement made in respect of the Works between a Participant and a Subcontractor.
<b>Subcontractor</b>	any person engaged by a Participant to perform any part of the Works and includes, where it is not inconsistent with the context, that person's employees, agents and consultants.
<b>Supplier</b>	is defined in clause 20.12(d).
<b>Target Outturn Cost or TOC</b>	the specific sum identified as the TOC in the Final Project Proposal, being the estimate of all Reimbursable Costs, Corporate Overhead and Profit and Risk & Contingency Provisions required to achieve MCOS Performance, perform the Works (including all Separable Portions) and bring the Works (including all Separable Portions) to a stage where the Final Certificate can be issued in accordance with this Agreement.
<b>Tax Invoice</b>	has the meaning given to that term in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Temporary Staff</b>	an employee engaged as such for a specified period of time or for a specified task.
<b>Term</b>	is described in clause 10.
<b>Testing</b>	testing, commissioning, examining, inspecting, certifying or measuring (and their derivatives shall have corresponding meanings) of the Works required by the Project Owner, MTM, PTV or the Standards.
<b>Third Party</b>	a person who is not a Participant or a director, officer or employee of a Participant or a Related Body Corporate of a Participant.
<b>Total Modifier Performance Liability Amount</b>	has the meaning given in the Risk or Reward Regime.

<b>Term</b>	<b>Meaning</b>
<b>Total Fixed Remuneration or TFR</b>	<p>the full time equivalent salary or contract amount payable to each Non-Wages Personnel by their employer which for:</p> <ol style="list-style-type: none"> <li>1 Full-Time Staff and Part-Time Staff, is exclusive of any employment on cost, allowance or accrual;</li> <li>2 Casual Staff, is exclusive of any employment on cost, allowance or accrual other than the applicable casual loading for annual leave, personal leave, notice of termination and redundancy benefits;</li> <li>3 Contract Staff, is the cost or rate as set out in the applicable contract for services and exclusive of any other on cost, allowance or accrual; and</li> <li>4 Temporary Staff, is exclusive of any employment on cost, allowance or accrual, on the basis stated in the applicable letter of engagement.</li> </ol>
<b>Track Occupation</b>	the controlled use of Rail Infrastructure which would ordinarily cause a Disruption to Rail Operations.
<b>Track Occupations Program</b>	the Track Occupations program contained in the Rail Access Management Plan.
<b>Track Occupations Request Protocol</b>	means the protocol for requesting Track Occupations which includes the MTM Occupations Protocol.
<b>Transaction Document</b>	<ol style="list-style-type: none"> <li>1 this Agreement;</li> <li>2 any guarantee by which any person guarantees a NOP's compliance with its obligations under any Transaction Document;</li> <li>3 agreements between the Participants and any Subcontractors;</li> <li>4 any agreement which the Participants agree is a Transaction Document for the purposes of this Agreement;</li> <li>5 any agreement or instrument created under any of the above documents; and</li> <li>6 each document entered into for the purpose of amending, novating, restating or replacing any of the above documents.</li> </ol>
<b>Ultimate Holding Company</b>	has the meaning given in the Corporations Act.
<b>Urban Design Advisory Panel</b>	an urban design advisory panel convened by the Project Owner.
<b>Urban Design Principles and Guidelines</b>	<p>in respect of:</p> <ol style="list-style-type: none"> <li>1 Separable Portion 1, the document entitled "Burke Road LCRP – Urban Design Principles, Design Guidelines and Schematic Concept Design" dated 16 October 2014;</li> <li>2 Separable Portion 2, the document entitled "North Road LCRP – Urban Design Principles, Design Guidelines and Schematic Concept Design" dated 16 October 2014; and</li> <li>3 Separable Portions 3 and 4, the document entitled "McKinnon Road (McKinnon Station) and Centre Road (Bentleigh Station) LCRP – Urban Design Principles, Design Guidelines and Schematic Concept Design" dated 12 February 2015.</li> </ol>

<b>Term</b>	<b>Meaning</b>
<b>Utility Services</b>	any service, asset, structure or item of utility infrastructure, including but not limited to water (including water supply and sewerage pipelines and structures including pumping and storage facilities), overhead and underground electricity (including connections to infrastructure), gas, oil, fuel, telephone (including wire, fibre optic and cable communication facilities), drainage, sewerage, fibre optic cable, electronic communication services and any physical infrastructure assets utilised or deployed in the provisions of any such service.
<b>Value for Money Report</b>	a report to be developed for the Project Owner independently of the Alliance to report on matters including the extent to which the Participants, the performance of the Works have satisfied the requirements of the VfM Statement.
<b>VfM Statement</b>	the Project Owner's value for money proposition for the Project, set out in Schedule 5 as may be amended or substituted by the Project Owner in accordance with clause 3(c).
<b>Victorian Inspector</b>	the inspector appointed under the <i>Victorian Inspectorate Act 2011</i> (Vic).
<b>VicTrack</b>	Victorian Rail Track, a body corporate established under the <i>Transport Integration Act 2010</i> (Vic).
<b>VIPP</b>	the Victorian Industry Participation Policy established under section 4 of the <i>Victorian Industry Participation Policy Act 2003</i> (Vic).
<b>VRIOG Standards or VRIOGS</b>	Victorian Rail Industry Operators Group Standards (draft, or if finalised, then final).
<b>VRIOGS Infrastructure Drafting Standards</b>	VRIOGS 'Infrastructure Drafting Standards' document number [REDACTED] as amended from time to time, including being developed from a draft to final document.
<b>VRIOGS PASS Assets Data Standards</b>	VRIOGS 'PASS Assets Data Requirements – Train' document number [REDACTED] as amended from time to time, including being developed from a draft to final document.
<b>Wages Personnel</b>	any person employed by a NOP and governed by a relevant industrial instrument or agreement and not employed or engaged under a contract for services, contract of service or employment contract.
<b>Wider Project Team or WPT</b>	the alliance project team to be established under clause 9.4.

<b>Term</b>	<b>Meaning</b>
<b>Wilful Default</b>	<ol style="list-style-type: none"> <li>1 a deliberate and purposeful act or omission carried out, or real and substantial evidence of a deliberate and purposeful act or omission carried out, with a reckless disregard or calculated regard for the consequences of the act or omission by a Participant, its Officers, or any representative of the Participant on the ALT or AMT or, in the case of a NOP only, any Nominated Subcontractor of the NOP, which is a breach of a duty, obligation or Stipulation arising out of this Agreement, or which is a breach of a duty or obligation owed to another Participant however arising (which includes a breach of the Alliance Charter);</li> <li>2 a fraudulent act or omission under, arising out of or in connection with this Agreement, by a Participant, any director, officer, employee or agent of the Participant, any representative of the Participant on the ALT or AMT or, in the case of a NOP only, any Nominated Subcontractor of the NOP;</li> <li>3 a repudiation of this Agreement by a Participant;</li> <li>4 any act or omission under, arising out of or in connection with this Agreement, by an officer, representative or employee of a Participant that: <ul style="list-style-type: none"> <li>• would, if done by an Officer, constitute a Wilful Default;</li> <li>• has come to the attention of an Officer of that Participant, or any representative of that Participant appointed to the ALT or AMT; and</li> <li>• the relevant Officer or representative appointed to the ALT or AMT has not taken reasonable action to address;</li> </ul> </li> <li>5 any deliberate or reckless act or omission by a Participant or any of its officers or directors or any of its representatives appointed to the ALT or AMT which: <ul style="list-style-type: none"> <li>• is a breach of any Statutory Requirements; or</li> <li>• prevents a non-defaulting Participant from performing a role, responsibility or function or discharging an obligation under any Statutory Requirements;</li> </ul> </li> <li>6 a failure by a NOP to comply with clause 37.8; or</li> <li>7 a failure by a NOP to comply with clause 37.10;</li> </ol> <p>but does not include (with the exception of paragraph 6):</p> <ol style="list-style-type: none"> <li>8 any error of judgment, mistake, or act or omission, whether negligent or not, which is made or done in Good Faith by that Participant or by any director, officer, employee or agent of that Participant, any representative of the Participant on the ALT, AMT or WPT or, in the case of a NOP only, any Nominated Subcontractor of the NOP; or</li> <li>9 a cancellation by MTM of an agreed Track Occupation in accordance with clause 18.5.</li> </ol>
<b>Works</b>	<p>the whole of the works and services to be performed by the Participants from time to time under this Agreement and includes:</p> <ol style="list-style-type: none"> <li>1 any Scope Variations;</li> <li>2 the Construction Plant;</li> <li>3 rectification work necessary to make good any Defects arising before and during any Defects Correction Period; and</li> <li>4 the MTM RTO Role,</li> </ol> <p>but excluding any works or services performed by the Participants which are not directly referable to the VfM Statement, the Scope of Works and the assumptions expressly adopted by the Participants in developing the TOC.</p>

## 1.2 Interpretation

In this Agreement:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (e) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a clause, party, schedule, attachment, annexure or exhibit is a reference to a clause of, and a party, schedule, attachment, annexure or exhibit to, this Agreement and a reference to this Agreement includes any clause, schedule, attachment, annexure and exhibit;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments;
- (h) a reference to a document (including this Agreement) is that document as varied, amended, novated, ratified or replaced from time to time;
- (i) a covenant or agreement on the part of John Holland and KBR (or any one or more of them) made to the Project Owner binds both of John Holland and KBR jointly and severally to the Project Owner;
- (j) all money referred to under this Agreement is in Australian dollars;
- (k) a reference to a body (including an institute, association or authority), other than a party to this Agreement, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions; and
- (l) specifying anything in this Agreement after the words "include" or "for example" or similar expressions does not limit what else is included.

## 1.3 References to the Project Owner and Owner Participant

- (a) Whilst the Project Owner and the Owner Participant are the same entity, throughout this Agreement references are made to "Project Owner" and "Owner Participant" respectively to indicate the distinction between when that entity is acting as the client for the performance of the Works and when it is acting as one of the Participants in the alliance for the performance of the Works.
- (b) The Project Owner must perform its obligations under this Agreement through a representative appointed in writing by the Project Owner from time to time. In addition, the Project Owner's representative will also perform the roles and functions and have the powers and rights allocated to him or her as set out in Schedule 15. The Participants will provide all assistance necessary to ensure the Project Owner's representative can fulfil the responsibilities, perform those roles and functions and exercise those rights. The Project Owner has initially selected the person named in Schedule 1 as its representative for the purposes of this Agreement. The Project Owner may, from time to time, change its representative by giving notice in writing to the NOPs.
- (c) Notwithstanding the alliance relationship established under this Agreement, the NOPs acknowledge that, where the Project Owner is exercising its rights (including the Project Owner's Reserved Powers under clause 8) and performing its obligations under this

Agreement in its role as client for the performance of the Works (rather than as a Participant in the alliance), the Project Owner will not be subject to the commitments made under clauses 3 and 4.

#### **1.4 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

#### **1.5 Ambiguity, discrepancy and inconsistency**

- (a) The Participants acknowledge and agree that, if there is any ambiguity, discrepancy or inconsistency in this Agreement, and the documents comprising this Agreement, the ALT will make a recommendation to the Project Owner as to how to resolve the ambiguity, discrepancy or inconsistency, in a manner consistent with the commitments given by the Participants under clause 4.
- (b) Following consideration of a recommendation by the ALT as to how to resolve an ambiguity, discrepancy or inconsistency under clause 1.5(a), the Project Owner will direct the Participants as to how to resolve the ambiguity, discrepancy or inconsistency and the provisions of clause 17 will apply.

#### **1.6 Provision of information and documentation by the Participants**

The Participants have, prior to the Commencement Date, exchanged information and advice about the Works and the performance of the Works. The Participants acknowledge that they will continue to do this during the Relevant Period. To avoid the possibility of issues between the Participants arising and the need for any subsequent alterations to the TOC, each Participant must undertake its own enquiries to satisfy itself as far as reasonably practical of the accuracy, completeness and relevance of that information or advice.

#### **1.7 Interpretation for Separable Portions**

The interpretation of:

- (a) "Certificate of Practical Completion";
- (b) "Date for Practical Completion";
- (c) "Date of Practical Completion";
- (d) "Practical Completion"; and
- (e) "Defects Correction Period";

will apply separately to each Separable Portion and, where appropriate, references to the "Works" will mean so much of the Works as is comprised in the relevant Separable Portion.

#### **1.8 Exclusion of the Wrongs Act 1958 (Vic)**

Except as provided in clause 24.3 and to the extent permitted by Statutory Requirements, the Participants agree that Part IVAA of the *Wrongs Act 1958* (Vic) has no operation in relation to the obligations of the NOPs under this Agreement.

#### **1.9 Future tendering and contracting opportunities**

Each NOP acknowledges and agrees that the NOP's performance under this Agreement (including the NOP's performance as part of the alliance with the Owner Participant in carrying out the Project and performing the Works) may be taken into account by the



Project Owner and any other Government Agency when considering the NOP for future tendering and contracting opportunities.

## 2 Value for money outcome for Project

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- (a) The Participants acknowledge and agree that:
  - (1) the key purpose of this Agreement is, and they commit themselves to achieving, a value for money outcome in respect of the Project and the Works (which, for this Agreement, means achieving the VfM Statement); and
  - (2) the Alliance Charter (including the Alliance Objectives) has been developed by the Participants with the aim of carrying out the Project and performing the Works so as to achieve the VfM Statement.

## 3 Alliance Charter

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- (a) The Participants will perform the Works in accordance with the Alliance Charter. The Alliance Charter, together with the other terms of this Agreement, will govern the relationship between the Participants at all levels of the alliance.
- (b) The Participants acknowledge and agree that the VfM Statement and the Alliance Charter are the key drivers of the Participants in carrying out the Project and performing the Works. The ALT may, where it considers it appropriate, review and amend any part of the Alliance Charter, but not the VfM Statement.
- (c) The Project Owner may, in its absolute discretion, amend or substitute the whole or any part of the VfM Statement at any time by written notice to the Participants setting out the details of the amendment or substitution.

## 4 Commitments

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### 4.1 Good Faith

In exercising their rights and performing their obligations under this Agreement, the Participants agree at all times to act in Good Faith.

### 4.2 Achievement of objectives

The Participants commit to working together to:

- (a) achieve the VfM Statement;
- (b) meet or exceed MCOS Performance in respect of each KRA; and
- (c) meet the Alliance Objectives, both in carrying out the Project and performing the Works.

### 4.3 Best For Project

The Participants acknowledge and agree that the VfM Statement is one of the key drivers for the carrying out of the Project and the performance of the Works. Consistent with that,

the Participants commit to establishing an alliance culture based on the Alliance Charter and to act at all times in a manner that is consistent with a Best For Project approach.

#### **4.4 Open book commitment**

- (a) Each Participant commits to:
- (1) maintain, for at least the Relevant Period, all of their records and other documentation referred to in this Agreement that relate to the Works in accordance with, where applicable, good accounting practices, standards and procedures;
  - (2) fully disclose any corporate or other objectives or affiliations that could reasonably be considered to have an adverse impact on the achievement of either or both of the VfM Statement or the Alliance Objectives;
  - (3) make their records and other documentation referred to in this Agreement that relate to the Works available to each other (or each other's nominated auditor) on request; and
  - (4) make available to each other (or each other's nominated auditor) any existing documentation or information in whatever form relating to the Works.
- (b) The obligation to make records and documentation available does not apply to records or documentation that may be the subject of legal professional privilege or are confidential lawyer/client communications.
- (c) For the purposes of this clause 4.4, all of the references to the nominated auditor of the Owner Participant will include the Auditor-General of the State of Victoria.

#### **4.5 Commitment to "no-blame" culture**

The Participants acknowledge and agree that a key purpose of this Agreement is, and they will commit themselves to:

- (a) the promotion and maintenance of a "no-blame" culture between the Participants in relation to disputes, errors, mistakes, Defects, poor performance and other issues which may arise; and
- (b) the prompt and mutual resolution of all disputes, differences and other issues by all Participants within the framework created by this Agreement.

#### **4A No interference to MTM**

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- (a) The Participants acknowledge and agree that in performing the Works they will not, except as is otherwise necessary to perform the Works and as is agreed by PTV, prevent MTM from meeting its obligations or pursuing its rights under the MTM Franchise Agreement, the MTM Infrastructure Lease or the MTM Projects Agreement.
- (b) MTM agrees that it will immediately notify the ALT if it becomes aware of:
  - (1) a breach, or likely breach, by MTM or PTV of; or
  - (2) an entitlement of MTM to make a claim under,the MTM Franchise Agreement, MTM Infrastructure Lease or the MTM Projects Agreement which is, or may be, caused or contributed to by the performance of the Works.

## 5 Avoidance of issues between the Participants

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### 5.1 No litigation or arbitration

- (a) Consistent with the commitment made by the Participants under clause 4.5 and subject to clause 5.3, the Participants agree that there will be no litigation or arbitration between them arising out of or in connection with this Agreement. The Participants must use their best endeavours to avoid issues arising as between each other and, to the extent an issue arises, must resolve the issue internally and otherwise comply with the procedure for the resolution of issues set out in Schedule 16.
- (b) The Participants agree that, subject to the exceptions listed in clause 5.3:
- (1) a failure by a Participant to perform any obligation or to discharge any duty under, or arising out of or in connection with this Agreement, or which is otherwise an obligation to or duty owed to another Participant however arising, does not give rise to any enforceable right or obligation at law or in equity; and
  - (2) to the extent that a failure by a Participant to perform any obligation or to discharge any duty under, or arising out of or in connection with this Agreement, or which is otherwise an obligation to or duty owed to another Participant however arising, gives rise to any enforceable right or obligation at law or in equity, the other Participants release and hold harmless that Participant from any consequences at law or in equity for that failure.

### 5.2 Immediate notification of possible issue

Each Participant agrees to immediately notify the other of any matter which may amount to or result in an issue between the Participants in relation to this Agreement or the Project.

### 5.3 Saving of certain legal and equitable rights

Clause 5.1 has no force or effect:

- (a) in respect of a Wilful Default by a Participant;
- (b) in respect of a Participant's construction and equipment insurer, motor vehicle insurer or workers' compensation insurer exercising a right of subrogation under a policy of insurance required by this Agreement, to the extent it is permitted to do so, against another Participant;
- (c) where a Participant has a right to bring a claim or action under a Statutory Requirement which cannot be excluded by the Participants as a matter of law;
- (d) in respect of any claim for breach of any Statutory Requirement (including any prosecution brought against a Participant by a Government Agency) in connection with the Works, except where the Project Owner determines otherwise by notice in writing to the Participants, having regard to the nature of the breach and the effect of the breach on the Project, the Works and the Project Owner;
- (e) in respect of a failure by a Participant to make a payment within 30 days of it becoming due under this Agreement, including under any indemnity under this Agreement, or within such longer period as directed by the ALT; and
- (f) where this Agreement expressly states that clause 5.1 does not apply.

### 6.1 Establishment and composition

- (a) The Participants have established the ALT. The ALT comprises six representatives, each to be a senior member of the relevant Participant's organisation, of which:
  - (1) two (including the chairperson) will be appointed by the Owner Participant;
  - (2) one will be appointed by PTV; and
  - (3) one will be appointed by each NOP.
- (b) The first representatives appointed by each Participant are set out in Schedule 1.
- (c) Each of the Participants must use its reasonable endeavours to ensure that, where appropriate, its representatives appointed to the ALT remain as representatives on the ALT for the duration of the Works. Any removal and replacement by a Participant of any of its representatives appointed to the ALT must be to a replacement representative agreed by the ALT and with the level of experience and capability in project alliancing considered appropriate by the ALT.
- (d) Where a NOP removes or replaces an ALT representative other than:
  - (1) in the event of a personal conflict of interest;
  - (2) in exceptional circumstances; or
  - (3) otherwise with the written consent of the Project Owner,the Project Owner may determine that the costs of removing or replacing the ALT representative (including any costs incurred in familiarising the new ALT representative with the Alliance or the Works) will not be a Reimbursable Cost.

### 6.2 Chairperson

The Owner Participant must appoint a chairperson. The chairperson must be a representative of the Owner Participant and a member (and not an alternative member) of the ALT.

### 6.3 Functions and responsibilities

- (a) The primary functions of the ALT are to:
  - (1) establish and ensure the implementation of the strategic leadership and direction of the Participants;
  - (2) establish and implement transparent governance and accountability structures for the Participants; and
  - (3) assume responsibility for the performance of the Participants under this Agreement.

The roles and responsibilities of the ALT are more fully described in the Governance Plan and the Responsibilities Matrix. Each Participant must ensure that its representative or representatives on the ALT comply with the Governance Plan and the Responsibilities Matrix.

- (b) The Participants acknowledge and agree that the ALT will be responsible for ensuring that all of the members of the AMT and WPT understand the Alliance Charter and perform the Works in accordance with the Alliance Charter.

## 6.4 Representatives authorised to bind Participant

A Participant's representative is authorised to represent and bind its appointor on any matter relating to this Agreement. The Owner Participant's representatives may only represent and bind their appointer in its capacity as the Owner Participant under this Agreement, and not in its capacity as the Project Owner.

## 6.5 Meetings

(a) The ALT must hold a meeting at intervals of no greater than:

- (1) prior to the Date of Project Practical Completion, 1 Month; and
- (2) after the Date of Project Practical Completion, 3 Months or at a frequency otherwise determined by the ALT,

and otherwise when reasonably required by any Participant. Meetings of the ALT must be conducted in accordance with the Governance Plan.

(b) The Participants acknowledge that the continuous involvement in and attendance at the ALT meetings of the nominated ALT representatives is critical to the success of the alliance. However, the Participants also acknowledge that there may be limited circumstances when an ALT representative cannot attend an ALT meeting through reasons beyond its reasonable control. To address this situation, each of the Participants has appointed an alternative representative or representatives who may attend an ALT meeting in substitution for a nominated ALT representative in these limited circumstances. These alternative representatives are set out in Schedule 1 and a Participant may only change one of its alternative representatives to a replacement alternative representative agreed by the ALT and with the level of experience and capability in project alliancing considered appropriate by the ALT.

(c) Where a substitute, alternate or delegate attends an ALT meeting in accordance with clause 6.5(b), that substitute, alternate or delegate has the powers of an ALT representative as if they were appointed by a Participant as an ALT representative under clause 6.1(b).

(d) Each ALT representative that attends an ALT meeting has a positive obligation to ensure that any non-attending ALT representative from his or her respective Participant is fully briefed on the business conducted at the ALT meeting such that they can understand and support each decision of the ALT at that ALT meeting.

## 6.6 Decisions

No decision can be made by the ALT unless:

(a) there are present at the meeting:

- (1) two representatives of the Owner Participant, or one representative of the Owner Participant and one representative of PTV; and
- (2) one representative of each of the NOPs;

(b) the decision is unanimous; and

(c) it is within the matters contemplated by this Agreement and is made in accordance with this Agreement.

## 6.7 Compliance with decisions

(a) Subject to clause 6.7(b), a Participant must comply with an ALT decision.

- (b) If a Participant thinks that compliance with an ALT decision would cause the Participant or a Participant's officer, director, agent, or employee to do or omit to do anything that contravenes any law or Statutory Requirement, or the Participant's constituent statute, constitution, memorandum or articles of association, the Participant need not comply, but must immediately give notice in writing to the remaining Participants providing the details of the law or Statutory Requirement, or the Participant's constituent statute, constitution, memorandum or articles of association, as the case may be, that will be so contravened and, where appropriate, the ALT will then make a further decision in respect of the relevant matter.

## 6.8 Disclosure of conflict of interest

- (a) A Participant's representative on the ALT, the AMT or the WPT (as the case may be) must fully disclose to an ALT meeting, an AMT meeting or a WPT meeting (as the case may be), any conflicting interest or duty, or potential conflict of interest or duty, the representative may have (whether personally or as a representative) before participating in a discussion on any relevant issue or making a decision about that issue. A representative who has made full disclosure may fully participate in any discussion and decision, even though the representative has or may have a conflicting interest or duty.
- (b) For the purposes of clause 6.8(a), a conflict of interest will include any corporate or other objective or affiliations of a Participant that could reasonably be considered to have an adverse impact on the achievement of either or both of the VfM Statement or the Alliance Objectives. A conflict of interest is not created merely by the fact that a representative is an appointee and/or an employee of a Participant.

## 7 Determination of Separable Portions

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- (a) At the Commencement Date, the Separable Portions are:
- (1) the part of the Works consisting of, or associated with, the carrying out of the Project at and around Burke Road, Glen Iris, Victoria (**Separable Portion 1**);
  - (2) the part of the Works consisting of, or associated with, the carrying out of the Project at and around North Road, Ormond, Victoria (**Separable Portion 2**);
  - (3) the part of the Works consisting of, or associated with, the carrying out of the Project at and around McKinnon Road, McKinnon, Victoria (**Separable Portion 3**); and
  - (4) the part of the Works consisting of, or associated with, the carrying out of the Project at and around Centre Road, Bentleigh, Victoria (**Separable Portion 4**).
- (b) The Project Owner, after consulting with MTM and PTV, following a recommendation from the ALT or otherwise, may determine by notice in writing to the Participants that:
- (1) works directed to be carried out pursuant to a Scope Variation constitute a new Separable Portion; or
  - (2) the Works be divided into smaller packages of works,
- (each a **Separable Portion**), each with its own Date for Practical Completion. If the Project Owner makes a determination under this clause 7, the interpretation provisions of clause 1.7 will apply to the new Separable Portions.
- (c) Where the Project Owner gives notice under clause 7(b), except where this Agreement is terminated by the Project Owner in accordance with clause 27 or where otherwise determined by the Project Owner, and subject to any adjustments to the Gainshare Amount or Painshare Amount (as the case may be) under the Risk or Reward Regime following the Date of Practical Completion, the calculation of any Gainshare Amount or

Painshare Amount (if any and as the case may be) under the Risk or Reward Regime must not occur until all Separable Portions have reached Practical Completion.

## 8 Project Owner's Reserved Powers

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### 8.1 Project Owner's Reserved Powers

- (a) Notwithstanding clause 4.1 and the alliance relationship established under this Agreement, the Participants acknowledge that:
- (1) when making any Determination reserved to the Project Owner under this Agreement, the Project Owner may act in its absolute discretion except where such Determination may have any prejudicial effect on MTM's Accreditation or MTM's ability to comply with the MTM Franchise Agreement, MTM Infrastructure Lease or MTM Projects Agreement, in which case PTV and MTM as the case may be must be consulted prior to such Determination; and
  - (2) subject to clause 8.1(a)(1), the final Determination on the following matters (**Project Owner's Reserved Powers**) is reserved for unilateral determination by the Project Owner:
    - (i) amendment or substitution of the VfM Statement in accordance with clause 3(c);
    - (ii) the decision to suspend all or part of the Works under clause 26.2 or 26.5;
    - (iii) any decisions or matters regarding any actual or threatened legal action, litigation or third party claims arising out of or in connection to this Agreement, excluding where the Project Owner is not a party or prospective party to such actual or threatened legal action, litigation or third party claims;
    - (iv) any decision, direction or approval to enter into any Subcontract which is a sub-alliance or is otherwise not subject to a fixed price, in accordance with the Contracting Strategy;
    - (v) any approval by the Project Owner in accordance with clause 17.2(d)(2);
    - (vi) the removal (and consent to re-instatement) of any person from the Site, Works or Rail Infrastructure in accordance with clause 10.1(c)(1);
    - (vii) appointment of independent advisors under clause 16.1(f);
    - (viii) certification of Practical Completion and Final Completion in accordance with clauses 14.2(d) and 15.3(a) respectively;
    - (ix) a Scope Variation in accordance with clause 17.1(a) or 17.5(d);
    - (x) an Adjustment Event in accordance with clause 16;
    - (xi) directions in respect of local or broader community issues which relate to performance of the Works, in accordance with clause 19.6(b);
    - (xii) a direction that the ALT attend an alliance exchange in accordance with clause 19.20;
    - (xiii) publication or disclosure in accordance with clause 37.13(b);

- (xiv) urgent protection of the Works, other property, people or the Environment;
  - (xv) any decisions, directions or actions the Project Owner determines are necessary following any event which significantly impacts on the whole or any part of the Works or the achievement of the VFM Statement;
  - (xvi) any Determination, matter, approval or thing expressed under this Agreement as being at the discretion of the Project Owner;
  - (xvii) any matter which the Project Owner determines, after consultation with the ALT, or the ALT unanimously agrees, should be reserved to the Project Owner; and
  - (xviii) unless otherwise specified, the decision to terminate this Agreement where the Project Owner has such a right under this Agreement.
- (b) The Participants agree to abide by and implement a Determination by the Project Owner in respect of the Project Owner's Reserved Powers as though it was a decision of the ALT.
- (c) The impact, if any, that the exercise of a Project Owner's Reserved Power has on any or all of:
- (1) the TOC;
  - (2) the KRAs; and
  - (3) the Date for Practical Completion,
- under this Agreement will be calculated in the manner prescribed by this Agreement, and if no manner is prescribed, as determined by the Project Owner following a recommendation from the ALT. If this Agreement does not specify the manner of calculation of the impact, if any, that the exercise of a Project Owner's Reserved Power has on the matters set out in this clause 8.1(c) and the ALT fails to reach agreement on the recommendation to be made to the Project Owner under this clause 8.1(c), then the Participants must comply with the procedure set out in Schedule 16 to resolve the issue.
- (d) No:
- (1) decision by the ALT, or any of the Owner Participants' ALT representatives; or
  - (2) documentation contemplated by the Agreement, and nothing contained in or set out in or implied by any such documentation;
- can limit, restrict, modify, constrain or place any fetter on the exercise by the Project Owner of any:
- (3) discretion, right, entitlement or power (express or reserve) under any law; or
  - (4) Determination by the Project Owner under the Agreement.

## 8.2 MTM's CEO's Reserved Powers

- (a) Notwithstanding clause 4.1 and the alliance relationship established under this Agreement, the Participants acknowledge that:
- (1) MTM's CEO may, in making any Determination reserved to MTM's CEO under this Agreement, act in its absolute discretion, except where such Determination may have any prejudicial effect on the Project Owner's requirements for the Project or road safety requirements or obligations, in which case the Project Owner must be consulted prior to such Determination; and



- (2) Determinations in respect of the following matters (**MTM's CEO's Reserved Powers**) are reserved to MTM's CEO:
- (i) removal of any person from the Rail Infrastructure or Rail Operations in accordance with clause 10.1(c)(2);
  - (ii) issuing a direction under clause 19.15(b)(3);
  - (iii) issuing a direction under clause 17.2(a);
  - (iv) a suspension of the Works under clause 26.1; and
  - (v) any other Determination reserved to MTM's CEO under the Agreement.
- (b) MTM's CEO will, except where more urgent action is required, exercise any of MTM's CEO's Reserved Powers through the ALT (and its approved protocols).
- (c) The Participants agree to abide by and implement a Determination by MTM in respect of MTM's CEO's Reserved Powers as though it was a decision of the ALT.
- (d) No:
- (1) decision by the ALT, or any of MTM's ALT representatives; or
  - (2) documentation contemplated by the Agreement, and nothing contained or set out in or implied by any such documentation,
- can limit, restrict, modify, constrain or place any fetter on the exercise by MTM's CEO of any of MTM's CEO's Reserved Powers under clause 8.2.

### 8.3 PTV's CEO's Reserved Powers

- (a) Notwithstanding clause 4.1 and the alliance relationship established under this Agreement, the Participants acknowledge that
- (1) PTV's CEO may, when making any Determination reserved to PTV's CEO under the Agreement, act in its absolute discretion except where such Determination may have a prejudicial effect on the Project Owner's requirements for the Project or MTM's Accreditation, in which case the Project Owner and MTM must be consulted prior to such Determination; and
  - (2) Determinations in respect of the following matters (**PTV's CEO's Reserved Powers**) are reserved to PTV's CEO:
    - (i) issuing a direction under clause 17.3;
    - (ii) a suspension of the Works under clause 26.1; and
    - (iii) any other Determination reserved to PTV's CEO under the Agreement.
- (b) The Participants agree to abide by and implement a Determination by PTV's CEO in respect of PTV's CEO's Reserved Powers as though it was a decision of the ALT.
- (c) No:
- (1) decision by the ALT, or any of PTV's ALT representatives; and
  - (2) documentation contemplated by the Agreement, and nothing contained or set out in or implied by any such documentation,
- can limit, restrict, modify, constrain or place any fetter on the exercise by PTV's CEO of any of PTV's CEO's Reserved Powers under clause 8.3.

### 9.1 Alliance Manager – appointment and functions

The ALT has selected and appointed the person named in Schedule 1 as the Alliance Manager. The functions and responsibilities of the Alliance Manager are described in the Governance Plan and the Responsibilities Matrix.

### 9.2 AMT – selection, endorsement and functions

- (a) Subject to the requirements of this clause 9.2, the AMT will be selected by the Alliance Manager and endorsed by the ALT.
- (b) The AMT will comprise the Alliance Manager and individuals drawn from the Participants reporting directly to the Alliance Manager, provided that at all times there will be at least one representative from each Participant on the AMT.
- (c) The Owner Participant may nominate personnel for inclusion in the AMT and those persons nominated must form part of the AMT.
- (d) The AMT must perform the functions described in the Governance Plan and the Responsibilities Matrix and otherwise determined by the ALT from time to time during the Term. The Participants must ensure that their employees who are members of the AMT comply with the Governance Plan and the Responsibilities Matrix and otherwise perform the functions determined by the ALT from time to time during the Term.
- (e) The Participants must ensure that their employees who are members of the AMT exercise proper Diligence in the performance of all aspects of the Works.

### 9.3 Change in membership of AMT

- (a) The membership of the AMT may only be amended with the approval of the ALT.
- (b) The Participants must (subject to satisfactory performance by the relevant personnel) use their reasonable endeavours to ensure that, where appropriate, each person that has been assigned to the AMT remains a member of the AMT for the duration of the Works or otherwise until the ALT decides that he or she is no longer required.
- (c) If a member of the AMT ceases to be a member without the approval of the ALT, then the Project Owner may determine that any costs incurred by the Participants in replacing that member of the AMT (including any costs incurred in familiarising the replacement member with the Project) will not be Reimbursable Costs under this Agreement.

### 9.4 WPT – selection and functions

- (a) Subject to the requirements of this clause 9.4, a WPT will be selected by the Alliance Manager. The WPT must include personnel from each of the Participants.
- (b) The WPT must, under the guidance of the ALT and the AMT, perform the functions determined by the ALT and AMT as soon as practicable after the Commencement Date and from time to time during the Term. Without limiting the foregoing sentence, the WPT will perform the roles and responsibilities designated to the WPT in the Governance Plan and the Responsibilities Matrix. The Participants must ensure that their employees who are members of the WPT comply with the Governance Plan and the Responsibilities Matrix and otherwise perform the functions determined by the ALT and AMT from time to time during the Term.
- (c) The Owner Participant may nominate personnel for inclusion in the WPT (including nominating some personnel for the purpose of gaining training and experience in

alliancing) for any period of time. The Participants acknowledge and agree that the Alliance Manager must include in the WPT those persons nominated by the Owner Participant for the period of time specified by the Owner Participant.

- (d) The Participants must ensure that their employees who are members of the WPT exercise proper Diligence in the performance of all aspects of the Works.

## **9.5 Change in membership of WPT**

- (a) The membership of the WPT may only be amended with the approval of the ALT or the AMT (as appropriate).
- (b) The Participants must (subject to satisfactory performance by the relevant personnel) use their reasonable endeavours to ensure that, where appropriate, each person that has been assigned to the WPT remains a member of the WPT for the Term or otherwise until the ALT or the AMT (as appropriate) decides that he or she is no longer required.
- (c) If a member of the WPT ceases to be a member without the approval of the ALT or the AMT, then the Project Owner may determine that any costs incurred by the Participants in replacing that member of the WPT (including any costs incurred in familiarising the replacement member with the Project) will not be Reimbursable Costs under this Agreement.

## **9.6 Project Office**

The Participants must provide the Project Office from the Commencement Date until the Date of Project Practical Completion or such other period as specified by the ALT.

# **10 Personnel and NOP Key Personnel**

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## **10.1 Personnel**

- (a) The Participants must ensure that all persons employed in connection with the performance of the Works:
  - (1) are skilled, qualified and experienced in their respective trades and professions and suitably qualified and experienced in the type and nature of work they are undertaking to perform the Works;
  - (2) are registered and licensed as necessary under any Statutory Requirements for the purposes of, or incidental to, the performance of the Works;
  - (3) are competent to carry out the work for which they are engaged for the purposes of the Rail Safety National Law;
  - (4) have been inducted by the Alliance in accordance with the Alliance's induction program; and
  - (5) comply with the Agreement.
- (b) The Participants acknowledge and accept that if the Alliance Manager is of the opinion that a person does not or has not met the requirements of clause 10.1(a), then the Alliance Manager may immediately have that person removed from the Site or the Works.
- (c) The Participants acknowledge and accept that:
  - (1) the Project Owner may direct the removal of any person from a Site, the Works or Rail Infrastructure; and

- (2) MTM's CEO may, in respect of matters essential or critical to the safe operation or safe maintenance of Rail Infrastructure or Rail Operations, direct the removal of any person from the Rail Infrastructure or Rail Operations.
- (d) A Participant must ensure that any person subject to a direction under clause 10.1(c) does not become involved in the performance of the Works in any capacity without the written consent of the Project Owner.

## **10.2 NOP Key Personnel**

- (a) The NOPs must provide the NOP Key Personnel to the Project.
- (b) If any of the NOP Key Personnel die, become seriously ill, resign from the employment of a NOP, or become the subject of a direction under clause 10.1(c) then, subject to the ALT's determination on a Best For Project basis, the employer of the respective NOP Key Personnel must replace them with a person of at least equivalent experience, ability and expertise as approved by the ALT and Alliance Manager.

# **11 Assurance**

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## **11.1 Appointment of advisors**

- (a) The Project Owner may appoint advisors including:
  - (1) probity or financial advisors, auditors or investigators;
  - (2) construction, engineering or technical reviewers;
  - (3) estimators; and
  - (4) any additional expert or advisor,to be accountable independently and directly to the Project Owner, to perform any task determined by the Project Owner including to provide independent reports in relation to the Works.
- (b) The NOPs and PTV acknowledge and accept that any advisor appointed by the Project Owner:
  - (1) is independent of the Alliance;
  - (2) is accountable to, and will report directly and solely to, the Project Owner to ensure robust governance and oversight of the Alliance;
  - (3) may be replaced or have its role amended or augmented by the Project Owner in its absolute discretion;
  - (4) will be paid by the Project Owner and such costs or expenses will not:
    - (i) be a Reimbursable Cost; or
    - (ii) be aggregated into the TOC or AOC; and
  - (5) to the extent permitted by law does not, and will not, under any circumstances owe any duty of care or any other legal duty, liability or obligation to a NOP or PTV.

## 11.2 Probity

- (a) The Participants must:
- (1) ensure that the standards of probity and degree of transparency within the Alliance will satisfy the requirements of the Project Owner; and
  - (2) co-operate fully with any probity or financial advisor, auditor or investigator appointed by the Project Owner or the ALT for the purposes of clause 11.2(a).

## 12 Term

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Subject to clause 37.18, this Agreement commences on the Commencement Date and continues until:

- (a) payment is made in accordance with clause 15.3 by the Project Owner or the NOPs, as the case may be, on the Final Certificate; or
- (b) it is terminated under clause 27 or 28 or otherwise under this Agreement.

## 13 Design and construction of the Works

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### 13.1 Design development

In designing the Works under this Agreement, the Participants must ensure that the design for the Works:

- (a) is consistent with the Final Project Proposal (including clause 2 of Schedule 11);
- (b) is such that, when constructed, the Works will be fit for the Stated Purpose and of the quality and standard of work that is stated in the Final Project Proposal (including the Scope of Works), the Standards and this Agreement;
- (c) is constructible having regard to usual industry practices;
- (d) makes the optimum use of the time available contemplated by this Agreement to complete the Works;
- (e) can be constructed within the TOC and in accordance with the VfM Statement and the Alliance Objectives; and
- (f) produces a minimum whole of life cost for the Works having regard to the requirements of the VfM Statement and the various design lives of each component of the Works and the requirements of the Scope of Works.

### 13.2 Supply of design documents by the Project Owner

- (a) The Project Owner may, from time to time, acting with Diligence and in a timely manner, provide the NOPs with documentation, which is consistent with the Scope of Works, which describes the Project Owner's requirements for the design, documentation and construction of the Works (**Documentation**).
- (b) The Participants must comply with the Documentation in designing the Works.
- (c) The NOPs must not use, copy or reproduce the Documentation provided by the Project Owner for any purpose other than for the Works.

- (d) The Documentation (and any copies of it) supplied by the Project Owner remains the property of the Project Owner and must be returned by the NOPs to the Project Owner or destroyed upon written request by the Project Owner (except for one copy of the documentation, which each NOP may retain for its records, provided that documentation is kept secure in accordance with the requirements of the Project Owner).

### **13.3 Supply of design documents by the Participants**

The Participants must provide the Project Owner with any documentation relating to the Works that the Project Owner reasonably requires from time to time.

### **13.4 Standard of work**

The Participants must:

- (a) commence performance of the Works on:
  - (1) the Commencement Date; or
  - (2) such later date as is directed by the Project Owner,in accordance with this Agreement;
- (b) perform all of the Works with Diligence;
- (c) construct the Works to meet the requirements set out in:
  - (1) the Final Project Proposal (including the Scope of Works);
  - (2) the Standards; and
  - (3) this Agreement;
- (d) construct the Works to:
  - (1) achieve the VfM Statement; and
  - (2) minimise the whole of life cost for the Works having regard to the requirements of the VfM Statement;
- (e) perform the Works such that rectification work necessary to make good any Defects in the Works arising before and during the Defects Correction Period are promptly rectified to the satisfaction of the Project Owner before the end of the Defects Correction Period; and
- (f) exercise Diligence in the management and execution of all design work, design development, design review, documentation, superintendence, administration, manufacture, fabrication, supply, installation, erection, construction and testing of the Works so as to ensure that at the Date of Practical Completion, the Works will be fit for the Stated Purpose, and of the quality and standard of work that is stated in the Final Project Proposal (including the Scope of Works), the Standards and this Agreement.

### **13.5 Care of the Works and Defects Correction Period**

- (a) From the Commencement Date and until the Date of Practical Completion, the Participants are responsible for the care of the Works and the Site.
- (b) From the Commencement Date until the Date of Practical Completion, the Participants are responsible for any loss or damage (and any loss of use consequent upon such loss or damage) to:
  - (1) any property of the Project Owner, PTV, VicTrack, MTM or any third party; or

- (2) any Rail Infrastructure or Rolling Stock,  
arising out of or in connection with the performance of the Works.
- (c) After the Date of Practical Completion, until the Final Completion Date, the Participants remain responsible for:
- (1) the completion and care of outstanding works and services in respect of the Works including reinstatement works and the rectification of any Defects existing at the Date of Practical Completion or arising during the Defects Correction Period; and
- (2) any loss or damage (and any loss of use consequent upon such loss or damage) to:
- (i) the Works or the Site;
- (ii) any property of the Project Owner, PTV, VicTrack, MTM or any third party; and
- (iii) any Rail Infrastructure or Rolling Stock,  
arising out of or in connection with a Defect or the rectification of Defects or the performance of the Works.
- (d) Defects existing at the Date of Practical Completion or arising during the Defects Correction Period must be promptly rectified to the reasonable satisfaction of the Project Owner and MTM before the end of the Defects Correction Period.
- (e) The Project Owner, or the ALT after consultation with the Project Owner, may:
- (1) at any time prior to the end of the relevant Defects Correction Period, direct the Participants to attend to the rectification of any Defect in the Works; and
- (2) state a date for the commencement of the rectification of a Defect and whether there will be a separate Defects Correction Period for that Defect (which if so, will commence at 4.00pm on the date the rectification of the Defect is completed and will expire 6 Months after that date).
- (f) The Project Owner must reimburse the NOPs any Reimbursable Costs reasonably and actually incurred by the NOPs in undertaking their responsibilities for the care of the Works, rectifying those Defects and carrying out reinstatement works under this clause 13.5 in accordance with clause 20.

## 13.6 Progress

If progress is not being maintained to a level that would allow Practical Completion to occur by the Date for Practical Completion the Participants will take all measures as may be necessary and practicable (including working overtime, shift work, using additional Construction Plant or labour or other measures) to minimise any delays and to use their best endeavours to perform the Works to the stage of Practical Completion by the Date for Practical Completion.

## 14 Practical Completion

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### 14.1 Achievement of Practical Completion

The Participants must use their best endeavours to perform the Works to the stage of Practical Completion by the Date for Practical Completion.

## 14.2 Issue of Certificate of Practical Completion

- (a) By no later than 20 Business Days from the date the ALT anticipates that Practical Completion will be reached, the ALT must notify the Project Owner of the date when Practical Completion is anticipated to be reached.
- (b) When the AMT is satisfied that Practical Completion has been achieved, the AMT will deliver the Practical Completion Report to the ALT and the Project Owner, certifying that:
  - (1) the Works have achieved Practical Completion; and
  - (2) the Practical Completion Report complies with the requirements of the Agreement.
- (c) The ALT will meet as soon as practicable after receipt of the Practical Completion Report in clause 14.2(b) to consider whether Practical Completion has been achieved. As soon as the ALT decides that Practical Completion has been reached, it must notify the Project Owner of the date when Practical Completion was reached.
- (d) The Project Owner must, if it agrees that Practical Completion has been reached, within 20 Business Days after receiving the notification of Practical Completion from the ALT, issue a certificate of Practical Completion (**Certificate of Practical Completion**) to the Participants, stating the Date of Practical Completion notified by the ALT.

## 14.3 Disagreement whether Practical Completion reached

- (a) If the Project Owner does not agree that Practical Completion has been reached, it must, within 20 Business Days after receiving the notification from the ALT, notify the ALT that it disagrees and the reasons why it believes that Practical Completion has not been reached.
- (b) The ALT must then ensure that the Participants promptly address the matters specified by the Project Owner, and when those matters have been addressed, re-notify the Project Owner that the ALT has decided that Practical Completion has been reached.
- (c) The Project Owner must then re-consider whether it agrees that Practical Completion has been reached. If the Project Owner agrees that Practical Completion has been reached, clause 14.2(d) will apply. If the Project Owner does not agree that Practical Completion has been reached, clause 14.3(a) will apply.

## 14.4 Calculation of Interim Gainshare Amount or Interim Painshare Amount

As soon as practicable after the Date of Project Practical Completion, the ALT will calculate:

- (a) the Interim Gainshare Amount or Interim Painshare Amount (if any and as the case may be); and
- (b) the Performance Liability Amount (if any) for the period from the Commencement Date until the Date of Practical Completion, in accordance with the Risk or Reward Regime.

## 14.5 Certificate does not constitute approval

The issue of a Certificate of Practical Completion does not constitute approval of the Works.



## 14.6 Delay in reaching Practical Completion

- (a) If Practical Completion has not been reached by the Date for Practical Completion, then any and all losses, damages, costs and expenses suffered by the Project Owner arising out of the delay in reaching Practical Completion will be treated as Reimbursable Costs for the purposes of calculating the AOC under this Agreement. The NOPs will not be entitled to be reimbursed any Reimbursable Costs, nor paid any Corporate Overhead and Profit, under this clause 14.6 in respect of those losses, damages, costs and expenses.
- (b) Losses under clause 14.6(a) expressly include, but are not limited to:
  - (1) losses associated with temporary occupation of land that is the responsibility of the Project Owner including, for example, costs of relocating tenants or extending the relocation of tenants.

## 14.7 Ownership of Works on Practical Completion

The Participants acknowledge and agree that upon the issue of the Certificate of Practical Completion:

- (a) all title in any part of the Works comprising, or which may comprise, Rail Infrastructure reverts to VicTrack; and
- (b) all title in any part of the Works comprising, or which may comprise Road Infrastructure and non-Road Infrastructure (other than the Rail Infrastructure in clause 14.7(a)) for the purposes of the *Road Management Act 2004* (Vic) reverts to the relevant road authority.

## 14.8 Post Practical Completion Documentation

The Participants must, as soon as possible after the Date of Practical Completion, deliver the Post Practical Completion Documentation to the Project Owner.

# 15 Final reconciliation and Final Certificate

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## 15.1 Issue of Final Certificate

If the Participants have complied with all of their obligations relating to the Works, including all obligations relating to all Separable Portions and all obligations arising during the Defects Correction Periods, the ALT must issue to the Project Owner a final payment claim endorsed 'final certificate' (**Final Certificate**).

## 15.2 Contents of Final Certificate

In the Final Certificate, the ALT must certify:

- (a) that all of the Participants' obligations relating to the Works, including all Separable Portions, have been properly completed in accordance with this Agreement;
- (b) the Final Completion Date;
- (c) the calculation of any Gainshare Amount or Painshare Amount (if any and as the case may be) payable under the Risk or Reward Regime;
- (d) the calculation of any Performance Liability Amount (if any) payable under the Risk or Reward Regime; and
- (e) the amount which, in the opinion of the ALT, is finally due and payable to the NOPs by the Project Owner or from the NOPs to the Project Owner (as the case may be). In

determining the amount which is finally due and payable to the NOPs by the Project Owner or from the NOPs to the Project Owner (as the case may be), the ALT must have regard to any Reimbursable Costs which may be incurred by the Project Owner following the issue of the Final Certificate.

### 15.3 Payments under Final Certificate

If the Project Owner agrees with the contents of the Final Certificate:

- (a) the Project Owner must issue the Final Certificate to the NOPs as soon as is reasonably practicable after receipt of the Final Certificate from the ALT; and
- (b) the Project Owner or NOPs (as the case may be) must make the payments contemplated by the Final Certificate within 20 Business Days of the date that the Final Certificate is issued by the Project Owner under clause 15.3(a).

### 15.4 Disagreement over contents of Final Certificate

- (a) If the Project Owner does not agree with the contents of the Final Certificate, it must, within 20 Business Days after receiving the Final Certificate, notify the ALT which part of the contents of the Final Certificate it does not agree with and the reasons it does not agree.
- (b) The ALT must then ensure that the Participants promptly address the matters specified by the Project Owner and when those matters have been addressed, re-submit the Final Certificate to the Project Owner.
- (c) The Project Owner must then re-consider whether it agrees with the contents of the Final Certificate. If the Project Owner agrees with the contents of the Final Certificate then clause 15.3 will apply. If the Project Owner does not agree with the contents of the Final Certificate clause 15.4(a) will apply.

### 15.5 Final Certificate evidence of completion

Subject to clause 20.6, once payment has been made on the Final Certificate, the Final Certificate is evidence that the Works, including all Separable Portions, have been completed in accordance with the terms of this Agreement on the Final Completion Date (**Final Completion**) and that all payments required to be made by the Project Owner or by the NOPs (as the case may be) in respect of the Works, including all Separable Portions, have been made in full.

## 16 Adjustment Events

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### 16.1 Adjustment Events

- (a) The TOC which has been developed by the Participants and accepted by the Project Owner in accordance with the Alliance Development Agreement:
  - (1) is fixed and not subject to alteration or escalation under this Agreement except in accordance with this clause 16, 17A [REDACTED]; and
  - (2) is inclusive of all Reimbursable Costs, Corporate Overhead and Profit and Risk & Contingency Provisions.
- (b) If the ALT, having regard to the Adjustment Event Guidelines, determines that an Adjustment Event has occurred (including in accordance with clause 17.6(f)):
  - (1) the Participants must take every reasonable measure available to them to:

- (A) mitigate any adverse or prejudicial effects; and/or
  - (B) optimise any improvement or positive effects,
- of the acts, events or circumstances giving rise to or contributing to the Adjustment Event; and
- (2) the ALT may determine any reasonable adjustment to any or all of the TOC, the KRAs and the Date for Practical Completion which needs to be made and make a recommendation to the Project Owner for its approval (or otherwise) (which recommendation must include all supporting information relating to the recommendation). The Project Owner must make its determination in respect of any recommendation from the ALT under this clause 16.1(b) within a reasonable time.
- (c) The ALT, in determining any reasonable adjustment to any or all of the TOC, the KRAs and the Date for Practical Completion under clause 16.1(b), must have regard to:
    - (1) the assumptions adopted by the Participants in developing the Final Project Proposal (including the TOC and the Adjustment Event Guidelines) and accepted by the Project Owner so as to ensure that any adjustment to the TOC, the KRAs or the Date for Practical Completion is Best For Project;
    - (2) the Project Owner's timing requirements and the Date for Practical Completion being of fundamental importance in respect of the carrying out of the Project; and
    - (3) any other matters considered relevant by the ALT in making a Best For Project determination.
  - (d) If the Project Owner, in its absolute discretion, approves the ALT's recommendation under clause 16.1(b), then the Project Owner will issue a notice to the ALT approving the effect of the Adjustment Event on the TOC, the KRAs and the Date for Practical Completion (as the case may be) and the TOC, the KRAs and the Date for Practical Completion (as the case may be) will be adjusted as recommended by the ALT.
  - (e) If the Project Owner, in its absolute discretion, does not approve the ALT's recommendation under clause 16.1(b), the Project Owner will issue a notice to the ALT not approving the effect of the Adjustment Event on the TOC, the KRAs and the Date for Practical Completion (as the case may be) and providing its reasons for not approving the recommendation. The ALT must consider the reasons provided and reconsider its recommendation, and resubmit a recommendation to the Project Owner for approval (or otherwise).
  - (f) The NOPs acknowledge and agree that the Project Owner may engage an independent advisor to review and advise on any recommendation made by the ALT to the Project Owner under this clause 16.

## **16.2 Not used**

# **17 Directions and Scope Variations**

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## **17.1 Directions by the Project Owner**

- (a) The Project Owner may, subject to clause 17.1(e), direct the Participants in writing to:
  - (1) change the design, specifications or requirements of the whole or any part of the Works;
  - (2) change the Works or any part of the Works;

- (3) increase, decrease or omit any part of the Works;
- (4) change the character or quality of any material or work that will form part of the Works;
- (5) change the timing of the performance of all or any part of Works;
- (6) change the levels, lines, positions or dimensions of any part of the Works;
- (7) change the means, methods or techniques of the performance of all or any part of Works;
- (8) execute additional work, such additional work to be within the general scope of this Agreement;
- (9) demolish or remove material or work forming part of the Works no longer required by the Project Owner; or
- (10) decrease or omit any part of the Works for any purpose including engaging a third party to perform the Works independently of the Alliance;
- (11) change, alter or amend the Scope of Works; or
- (12) cancel an agreed Track Occupation if PTV advises the Project Owner that a track occupation for a State Project (as defined in the MTM Projects Agreement) must take precedence over the agreed Track Occupation and if there is an unavoidable conflict between the two and they cannot be undertaken simultaneously,

and the Participants must, subject to obtaining any necessary Authorisation or amendment to an existing Authorisation and, in the case of a Scope Variation, the Project Owner's endorsement of the Scope Variation, within a reasonable time, implement that direction.

- (b) No direction by the Project Owner will invalidate this Agreement and, unless (subject to clause 17A) the direction is a Scope Variation, will not result in a change to the TOC, the KRAs, the Date for Practical Completion or the Commercial Framework.
- (c) The Participants acknowledge and agree that an amount for directions by the Project Owner of the kind contemplated by clause 17.1(a), other than (subject to clause 17A) directions determined to be Scope Variations, is included in the Risk & Contingency Provisions component of the TOC.
- (d) Any direction given under clause 17.1(a) must clearly indicate that it is a direction given by the Project Owner under clause 17.1(a) of the Agreement. A direction under clause 17.1(a) is not required in the event that urgent works are required to be undertaken.
- (e) Except in the event that urgent works must be undertaken, the Project Owner must consult with MTM's CEO with respect to any direction proposed to be issued by the Project Owner under clause 17.1(a) that has, or may reasonably be expected to have, any effect on Rail Infrastructure or Rail Operations. MTM's CEO must consider the proposed direction in accordance with MTM's rights, entitlements and obligations under the MTM Infrastructure Lease, the MTM Franchise Agreement and the MTM Projects Agreement.

## **17.2 Directions by MTM's CEO**

- (a) Subject to clause 17.2(d), MTM's CEO may, only in respect of matters essential or critical to the safe operation or safe maintenance of Rail Infrastructure or Rail Operations, direct the Participants in writing to:
  - (1) change the design specifications or requirements of the whole or any part of the Rail Infrastructure works forming part of the Works;

- (2) change the Rail Infrastructure or any part of the Rail Infrastructure works forming part of the Works;
- (3) increase, decrease or omit any part of the Rail Infrastructure works forming part of the Works;
- (4) change the character or quality of any part of the Rail Infrastructure works forming part of the Works;
- (5) change the levels, lines, positions or dimensions of all or any part of the Rail Infrastructure works forming part of the Works;
- (6) change the timing of the performance of all or any part of the Rail Infrastructure works forming part of the Works;
- (7) change the means, methods or techniques of the performance of all or any part of the Rail Infrastructure work forming part of the Works;
- (8) execute additional Rail Infrastructure works as part of the Works; or
- (9) demolish or remove material or Rail Infrastructure work no longer required by MTM.

A direction by MTM's CEO under this clause 17.2(a) will override any inconsistent determination or direction given by the Project Owner under clause 8.1(a) or 17.1(a) or PTV's CEO under clause 8.3(a) or 17.3(a), until such conflict is resolved in accordance with clause 17.4.

- (b) No direction given by MTM's CEO will invalidate the Agreement and, unless the direction is a Scope Variation, there will be no change to the TOC, the KRAs, the Date for Practical Completion or the Commercial Framework.
- (c) Any direction given under clause 17.2(a) must clearly indicate that it is a direction given by MTM's CEO under clause 17.2(a) of the Agreement.
- (d) MTM's CEO, prior to issuing any direction under clause 17.2(a), must, after consultation with PTV's CEO:
  - (1) advise the Project Owner on the essential or critical nature of the direction on the safe operation or safe maintenance of Rail Infrastructure or Rail Operations;
  - (2) consult with and obtain the Project Owner's prior written approval of any direction proposed to be issued under clause 17.2(a) that relates to Rail Infrastructure, except in relation to matters concerning rail safety or Accreditation; and
  - (3) agree with the Project Owner the responsibility for the effect of the direction on the Commercial Framework except in relation to directions concerning rail safety or Accreditation which are required to be issued immediately, in which case MTM's CEO must consult with the Project Owner as to the responsibility for the effect of the direction on the Commercial Framework as soon as reasonably practicable.

### **17.3 Directions by PTV's CEO**

- (a) Subject to clause 7.6, PTV's CEO may direct the Participants in writing to:
  - (1) change the design specifications or requirements of the whole or any part of the Rail Infrastructure works forming part of the Works;
  - (2) change the Rail Infrastructure or any part of the Rail Infrastructure works forming part of the Works;

- (3) increase, decrease or omit any part of the Rail Infrastructure works forming part of the Works;
  - (4) change the character or quality of any part of the Rail Infrastructure works forming part of the Works;
  - (5) change the levels, lines, positions or dimensions of all or any part of the Rail Infrastructure works forming part of the Works;
  - (6) change the timing of the performance of all or any part of the Rail Infrastructure works forming part of the Works;
  - (7) change the means, methods or techniques of the performance of all or any part of the Rail Infrastructure work forming part of the Works;
  - (8) execute additional Rail Infrastructure as part of the Works; or
  - (9) demolish or remove material or Rail Infrastructure work no longer required by PTV.
- (b) No direction given by PTV's CEO will invalidate the Agreement and, unless the direction is a Scope Variation, there will be no change to the TOC, the KRAs, the Date for Practical Completion or the Commercial Framework.
  - (c) A direction by PTV's CEO under this clause 17.3(a) will override any inconsistent determination or direction given by the Project Owner under clause 8.1(a) or 17.1(a), until such conflict is resolved in accordance with clause 17.4.
  - (d) Any direction given under clause 17.3(a) must clearly indicate that it is a direction given by PTV's CEO under clause 17.3(a) of this Agreement.
  - (e) Except in the event that urgent works must be undertaken, PTV's CEO must consult with MTM's CEO with respect to any direction proposed to be issued by PTV's CEO under clause 17.3(a) that has, or may reasonably be expected to have, any effect on Rail Infrastructure or Rail Operations. MTM's CEO must consider the proposed direction in accordance with MTM's rights, entitlements and obligations under the MTM Infrastructure Lease, the MTM Franchise Agreement and the MTM Projects Agreement.

## **17.4 Inconsistency**

- (a) If it appears to the Project Owner that the exercise by:
  - (1) MTM's CEO of any of its entitlements under clause 8.2(a) or 17.2(a); or
  - (2) PTV's CEO of any of its entitlements under clause 8.3(a) or 17.3(a),
 is likely to conflict with a Determination under clauses 8.1(a) or 17.1(a), then a representative of each of the Project Owner, PTV and MTM must meet as soon as possible in order to resolve the conflict and determine what action is required (if any) by either or all of the Project Owner, PTV and MTM.
- (b) In the event that MTM's CEO believes that there is an inconsistency between a direction issued by the Project Owner under clause 17.1(a) and a direction issued by PTV's CEO under clause 17.3(a), MTM's CEO will notify the Project Owner of the possible inconsistency. If the Project Owner acknowledges that there is or may be an inconsistency as noted by MTM's CEO:
  - (1) representatives of the Project Owner, MTM and PTV will meet to consider, discuss and if possible resolve the possible inconsistency;
  - (2) if the representatives of the Project Owner, MTM and PTV have been able to resolve the possible inconsistency, the Project Owner will issue a direction under clause 17.1(a) directing the interpretation to be followed to resolve the inconsistency; and

- (3) if the representatives of the Project Owner, MTM and PTV have not been able to resolve the possible inconsistency, the Project Owner will issue a direction under clause 17.1(a) directing the interpretation to be followed to resolve the inconsistency.

## 17.5 Scope Variations recommended by ALT

(a) The ALT may, at any time until Practical Completion, recommend that the Project Owner:

- (1) change the design, specifications or requirements of the whole or any part of the Works;
- (2) change the Works or any part of the Works;
- (3) increase, decrease or omit any part of the Works;
- (4) change the character or quality of any part of the Works;
- (5) change the levels, lines, positions or dimensions of all or any part of the Works;
- (6) change the means, methods or techniques of the performance of all or any part of the Works; or
- (7) direct the execution of additional Works,

that amounts to a material change to the Works having regard to the Project Owner's requirements for the Works and the requirements of the VfM Statement.

(b) Any recommendation under clause 17.5(a) must advise of the effect (positive or negative), if any, of the recommendation on the Project Owner's requirements for the Works, the requirements of the VfM Statement, the Commercial Framework, the TOC, the Works being fit for the Stated Purpose or any Adjustment Event Guidelines and clearly indicate that it is a recommendation by the ALT to the Project Owner under clause 17.5(a).

(c) The Participants acknowledge and accept that with respect to any recommendation under clause 17.5(a) that does, or may reasonably be expected to, have any effect on operations or maintenance of Rail Infrastructure or Rail Operations, the Project Owner:

- (1) after consulting with MTM or PTV as appropriate; and
- (2) being satisfying that the financial impact of the request on the Commercial Framework is accurately reflected in detail in the request,

may determine to accept or reject the ALT's recommendation and may determine to place conditions upon its acceptance of the ALT's recommendation.

(d) If the Project Owner determines to accept an ALT recommendation under clause 17.5(c), the Project Owner will issue a direction that the ALT's recommendation be implemented, subject to any conditions placed by the Project Owner upon its acceptance of the ALT's recommendation.

(e) If the Project Owner determines not to accept the ALT's recommendation request under clause 17.5(a), the recommendation shall be withdrawn by the ALT and the Alliance shall continue to perform the Works as if the recommendation had not been made by the ALT.

## 17.6 Scope Variation

(a) A scope change (**Scope Variation**) is one or more of:

- (1) a direction issued by the Project Owner under clause 17.1(a) or 17.5(d);
- (2) a direction issued by MTM's CEO in accordance with clause 17.2(a); or

- (3) a direction issued by PTV's CEO in accordance with clause 17.3(a);
- which amounts to either:
- (4) a significant change, amendment or alteration to the Scope of Works; or
- (5) a significant change to the fundamental requirements of the Works.
- (b) The Participants acknowledge and agree that it is their expectation that Scope Variations are unlikely to occur during the Term.
- (c) If the AMT does not consider that a direction referred to in clause 17.6(a) is a Scope Variation the ALT will ensure that the direction is immediately complied with in accordance with the Agreement.
- (d) Where the AMT considers that a direction referred to in clause 17.6(a) is a Scope Variation, the AMT must, prior to implementation by the Participants of the direction, submit a scope change report (**Scope Variation Report**) to the ALT:
- (1) identifying the basis on which it considers the direction to be a Scope Variation;
  - (2) providing submissions or recommendations that it believes are appropriate to reduce and/or optimise the impact of the direction on the AOC, the Participants' performance against the KRAs and the achievement of Practical Completion by the Date for Practical Completion and compliance by the Participants with the VfM Statement and the Alliance Charter;
  - (3) subject to clause 17.6(d)(4), providing submissions or recommendations on any alteration to the TOC, the KRAs and the Date for Practical Completion (as the case may be) which are required as a result of the direction; and
  - (4) if the AMT considers that the direction is a Scope Variation referred to in clause 17A, providing submissions or recommendations as to the amount of the relevant Scope Variation Allowance that will be used as a result of the direction.
- (e) The ALT will consider any Scope Variation Report submitted to it under clause 17.6(c) and determine whether the direction the subject of the Scope Variation Report is a Scope Variation having regard to:
- (1) the Works and the assumptions adopted by the Participants in developing the Final Project Proposal; and
  - (2) where relevant, the Adjustment Event Guidelines.
- (f) If the ALT determines that a direction the subject of the Scope Variation Report is a Scope Variation, the ALT must submit the Scope Variation Report to the Project Owner and ensure that the direction is not performed until the Project Owner has determined whether an Adjustment Event or Scope Variation has occurred in accordance with clause 16 or clause 17A(b), as applicable.
- (g) Notwithstanding clause 17.6(f):
- (1) A direction referred to in clause 17.6(a) implemented by the Participants prior to the Project Owner determining whether an Adjustment Event or Scope Variation has occurred in accordance with clause 16 or clause 17A(b), as applicable, does not at any time entitle the Participants to an alteration of the TOC, the KRAs or the Date for Practical Completion and will preclude the Participants from making any claim under this Agreement for an alteration of the TOC, the KRAs or the Date for Practical Completion, except in circumstances where the Project Owner agrees to consider the claim or agrees to alter any or all of the TOC, the KRAs or the Date for Practical Completion; and
  - (2) the Project Owner may direct immediate compliance with a direction notwithstanding that the ALT may believe that it is a Scope Variation, in which



case the requirements of clause 16 or clause 17A will, as necessary or required, apply.

## 17A Scope Variation Allowances

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- (a) The TOC includes allowances in respect of specified Scope Variations as listed in Schedule 11 (**Scope Variation Allowances**).
- (b) In respect of Scope Variations referred to in clause 17A(a), in addition to the process set out in clause 17.6:
  - (1) the ALT must make a recommendation to the Project Owner (which recommendation must include all relevant supporting information) as to the amount of the relevant Scope Variation Allowance that will be used to perform that Scope Variation;
  - (2) the ALT, in making its recommendation under clause 17A(b)(1), must have regard to any matters considered relevant by the ALT in making a Best For Project determination;
  - (3) if the Project Owner, in its absolute discretion, determines that a Scope Variation has occurred and approves the amount recommended by the ALT under clause 17A(b)(1), then the Project Owner will issue a notice to the ALT approving that amount;
  - (4) if the Project Owner, in its absolute discretion, determines that a Scope Variation has not occurred, or does not approve the amount recommended by the ALT under clause 17A(b)(1), then the Project Owner will issue a notice to the ALT setting out its determination and providing reasons for its determination. The ALT must consider the reasons provided, reconsider its recommendation, and resubmit a recommendation to the Project Owner under clause 17A(b)(1); and
  - (5) the Project Owner must make its determination in respect of any recommendation from the ALT under this clause 17A(b) within a reasonable time.
- (c) Unless the Project Owner determines that a Scope Variation referred to in clause 17A(a) has been directed, the whole of the Scope Variation Allowance applicable to that Scope Variation must be deducted from the TOC in accordance with clause 3(a) of Schedule 9.
- (d) Within 60 Business Days after the Date of Project Practical Completion, in respect of each Scope Variation Allowance, the ALT must calculate the sum of all amounts (if any) approved by the Project Owner under clause 17A(b) in respect of Scope Variations the subject of that Scope Variation Allowance (**Scope Variation Sum**). If the Scope Variation Sum:
  - (1) is less than the relevant Scope Variation Allowance, the part of the Scope Variation Allowance in excess of that Scope Variation Sum must be deducted from the TOC in accordance with clause 3(a) of Schedule 9;
  - (2) is equal to the relevant Scope Variation Allowance, the TOC will not be adjusted in respect of that Scope Variation Allowance; or
  - (3) is greater than the relevant Scope Variation Allowance, the part of that Scope Variation Sum in excess of the Scope Variation Allowance will be added to the TOC, in accordance with clause 3(a) of Schedule 9.
- (e) Nothing in this clause 17A affects the ability of the ALT to recommend, or the Project Owner to approve, any alteration to the KRAs and the Date for Practical Completion in accordance with clause 16 in respect of a Scope Variation the subject of this clause 17A.

**18.1 Possession of each Site**

- (a) Subject to clauses 18.5 and 18.6, the Participants must provide access to or occupation of any part of the Site, or any other lands in the ordinary care, custody or control of a Participant, as is necessary or appropriate for the performance of the Works in accordance with the procedures set out in the Rail Access Management Plan or as determined by the Project Owner.
- (b) Subject to clauses 18.5 and 18.6, to the extent that the participants do not have rights of access to the Site or any other land as is necessary or appropriate for the performance of the Works, the Participants will:
- (1) arrange such access as is necessary or appropriate for the performance of the Works on a Best For Project basis; and
  - (2) do all things which may be necessary to obtain such access including entering into an agreement governing the basis upon which such access will be granted.

The NOPs acknowledge and accept that the Project Owner or PTV may elect to arrange such access prior to the Commencement Date and the NOPs will accept, and must comply with, such conditions of access arranged by the Project Owner or PTV as the case may be, including conditions of licence agreements for temporary occupation of land.

- (c) Subject to the Participants complying with their insurance obligations, the Participants must commence work on each Site within a reasonable time after receiving the relevant Authorisations necessary for construction.
- (d) The Participants must take all reasonable precautions to ensure that the Works will cause as little disturbance as possible (having regard to the nature of the Works) to the general public, the Project Owner, the Project Owner's employees and other contractors and service providers engaged by the Project Owner.

**18.2 Access for the Project Owner and others**

- (a) The Participants acknowledge and agree that the Participants are not entitled to exclusive access to the Site while performing the Works.
- (b) The Project Owner, PTV, VicTrack, MTM, any Authority, any other person nominated in writing by the Project Owner or PTV, and any of their employees, agents and consultants:
- (1) may, at any time, have access to any part of any Site for any purpose (after notification of the areas to be visited); and
  - (2) must, and must ensure that its employees, agents and consultants, comply with the relevant Site procedures, security requirements and health, safety and Environmental conditions.

- (c) At all reasonable times, the Participants will give the persons described in clause 18.2(b) access to the Works at any place where that work is being carried out or Materials or Construction Plant are being prepared or stored.

### **18.3 Cleaning up**

- (a) The Participants must keep each Site and the Works clean and tidy and must regularly, and as may be required from time to time by the Project Owner, remove rubbish and surplus material.
- (b) The Participants must remove the Construction Plant, temporary works, surplus material and rubbish from each Site within a reasonable time, subject to:
  - (1) the Project Owner, PTV or MTM as the case may be, permitting the Participants to leave anything (other than surplus material and rubbish) on Site until the expiry of the last of the Defects Correction Periods; and
  - (2) the provisions of clause 29, in the event of termination of the Agreement by the Project Owner.

### **18.4 Other contractors**

- (a) The Participants acknowledge that the Project Owner, PTV or MTM may arrange for other contractors to execute works or services on or near a Site concurrently with the performance of the Works.
- (b) The Participants shall carry out and complete the Works notwithstanding the presence of other contractors on and near the Site.
- (c) Without limiting any other obligation of the Participants under this Agreement, the Participants must:
  - (1) at all reasonable times allow access to any part of the Site to the other contractors, including any contractor carrying out Related Works;
  - (2) make available for use by the other contractors all facilities which have otherwise been provided by the Participants in connection with the Works;
  - (3) cooperate with the other contractors to ensure the coordination of the works or services of the other contractors with the performance of the Works by the Participants and compliance with the Participants' obligations under this Agreement;
  - (4) provide to the other contractors, and ensure that all other contractors satisfactorily complete, a site induction program, before commencing work on the Site or in connection with the Works, having regard to each other contractors' requirements for access to a Site to carry out work;
  - (5) avoid interference with or disruption to or delay of the work of the other contractors; and
  - (6) facilitate the works or services of the other contractors.
- (d) If the execution of any part of the Works is dependent upon the quality and completeness of work performed by other contractors, the Participants shall inspect the other contractors' work and immediately report all defects (if any) therein to the Project Owner which, in the opinion of the Participants, render such work unsuitable for the proper execution of the Works.
- (e) The Participants shall:

- (1) rectify any damage to the Works caused by the Participants failing to adequately protect the Works or failing to co-ordinate with the work of other contractors; and
- (2) rectify any damage (howsoever caused) to the work of other contractors caused by the Participants or any Subcontractor.

#### **18.4A Coordination with specified contractors**

- (a) Without limiting clause 18.4, the Project Owner may notify the Participants, by written notice under this clause 18.4A, of specified contractors engaged by the Project Owner in respect of which it requires compliance with this clause 18.4A.
- (b) As soon as practicable after receiving notice in respect of specified contractors under clause 18.4A(a), the Participants must:
  - (1) arrange for the AMT to meet with the specified contractors;
  - (2) form a coordination committee, in relation to which the Participants must seek to involve the relevant personnel from the specified contractors, to manage coordination between the Works and the works of the specified contractors (**Joint Coordination Committee**);
  - (3) appoint an Alliance representative to participate on the Joint Coordination Committee in relation to each Key Project Interface; and
  - (4) provide the Project Owner with the option of appointing a representative to the Joint Coordination Committee.
- (c) The Participants, in participating on the Joint Coordination Committee, must:
  - (1) determine a process for governance of the JCC, including a dispute resolution process, and amend such process as appropriate from time to time;
  - (2) determine a process for ongoing management of the Key Project Interfaces, and amend such process as appropriate from time to time;
  - (3) ensure that the Alliance representative in respect of each Key Project Interface participates in the process determined or amended under clause 18.4A(c)(1); and
  - (4) regardless of whether the Project Owner has appointed a representative to the Joint Coordination Committee, ensure that the Project Owner is kept informed of the process determined or amended under clause 18.4A(c)(1) such that it has the opportunity to participate in the Joint Coordination Committee at all times.
- (d) The Participants must fully co-operate, liaise and co-ordinate the Works with all specified contractors notified to the Participants under clause 18.4A(a), so as to:
  - (1) seek to identify better value for money outcomes which may arise from adopting or adapting, in the performance of the Works, an approach, solution or concept used by or contemplated by a specified contractor; and
  - (2) share any approaches, solutions or concepts used or contemplated in the performance of the Works with the specified contractors, to allow the specified contractors to identify better value for money outcomes which may arise from adopting or adapting such approach, solution or concept in the performance of the works carried out or to be carried out by the specified contractors.

#### **18.5 MTM Track Occupations**

- (a) The Participants acknowledge and agree that:

- (1) MTM is committed to granting Track Occupations in accordance with the Rail Access Management Plan;
- (2) MTM may cancel an agreed Track Occupation if such cancellation arises as a result of an MTM Force Majeure Event, an MTM Emergency Event or a failure by the Participants (other than MTM) to comply with the Rail Access Management Plan;
- (3) if a Participant requires a Track Occupation or access to, or occupation of, any part of the Site which is controlled by MTM for the purposes of undertaking the Works, the Participant will make a request to MTM in accordance with the Rail Access Management Plan;
- (4) if MTM grants any request under clause 18.5(a)(3), the Track Occupation shall be conducted in accordance with the requirements of the Rail Access Management Plan as may be varied with the approval of the ALT (although the Participants acknowledge and agree that that part of the Rail Access Management Plan comprising the MTM Occupations Protocol may not be varied without MTM's consent);
- (5) MTM will advise the Participants as soon as reasonably practicable, if it is unable to grant any request under clause 18.5(a)(3), or if any Track Occupation is cancelled in accordance with clause 18.5(a)(2) or modified for any reason. In these circumstances, the Participants will work together to identify and obtain such reasonable alternative Track Occupations as may be available; and
- (6) any cancellation of an agreed Track Occupation in accordance with clause 18.5(a)(2) will not, of itself, be considered a Wilful Default or an Adjustment Event for the purposes of the Agreement, but may be taken into account in the determination of whether an Adjustment Event within the meaning of paragraph 2 of the definition of Adjustment Event has occurred.

## **18.6 Site mobilisation and establishment**

Unless otherwise directed by the Project Owner, the Participants will not mobilise resources or establish any accommodation, facilities or presence on any part of the Site before the later of the date determined by the Project Owner in clause 13.4(a) or the date (if any) identified in the Final Project Proposal.

## **18.7 Continuing Rail Operations**

- (a) In performing the Works, the Participants must:
  - (1) to the extent practicable in the context of the performance of the Works, minimise disruptions to Rail Operations;
  - (2) work closely with MTM to prevent if possible, or minimise if not possible, any unplanned impact on Rail Infrastructure or Rail Operations;
  - (3) ensure that the Participants do not perform any action or allow any omission that in any way has the potential to prejudice or impact upon MTM's or the Project Owner's compliance with any Statutory Requirements relating to Rail Infrastructure or Rail Operations; and
  - (4) immediately inform MTM, PTV and the Project Owner of any Works that have the potential to create any unplanned impact upon Rail Infrastructure or Rail Operations.

## **18.8 Continuing road operations**

- (a) In performing the Works, the Participants must:

- (1) work to prevent if possible, or minimise if not possible, any unplanned impact on the road network or road operations; and
- (2) immediately inform the relevant road authority or infrastructure manager (as those terms are defined in the *Road Management Act 2004 (Vic)*) of any Works that have the potential to create any unplanned impact upon a road network or road operations.

## 19 Performance of the Works

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### 19.1 Subcontracts

- (a) Subcontracts may only be entered into by any or all of the Participants on a Best For Project basis and otherwise in accordance with the Contracting Strategy.
- (b) Any Participant entering into a Subcontract must do so in its own right as principal and as agent for and on behalf of the Participants, and, where the work relates to Rail Infrastructure, as agent for VicTrack, for the purposes of the Agreement.

### 19.2 Subcontracts with associated person needs ALT approval

- (a) The Participants recognise that difficulties may arise in the proper calculation of Reimbursable Costs if one or more of the Participants enters into a contract, arrangement or understanding related to this Agreement with a person that is in any way related to or associated with the Participant concerned.
- (b) The Participants agree that before any of them enters into any contract, arrangement or understanding with any person which is in any way related to or associated with the Participant and the Works, they must first seek the approval of the ALT to that contract, arrangement or understanding.

### 19.3 Compliance with Statutory Requirements

- (a) The Participants must comply with all Statutory Requirements that affect or relate to the performance of the Works, including obtaining and complying with all Authorisations necessary to perform each particular portion of the Works, prior to undertaking that particular portion of the Works.
- (b) Notwithstanding clause 5.1 but subject to any determination to the contrary made by the Project Owner under clause 5.3(d), a failure by a Participant to comply with the requirements of clause 19.3(a) confers on the other Participants an enforceable right at law or in equity to seek any one of or a combination of specific performance, injunction or damages and, to the extent that any right under an Act of Parliament otherwise may be excluded by this Agreement, under that Act of Parliament.

### 19.4 Not used

### 19.5 Protection of people and property

- (a) Without limiting any other obligation of the Participants under this Agreement, the Participants are committed to protecting both people and property when performing the Works, and must take all action to ensure this commitment is met including:
  - (1) implementing and complying with the Health and Safety Management Plan included as part of the Project Management System;

- (2) providing all Construction Plant and Materials, procedures and training and taking all measures necessary to protect people and property;
  - (3) avoiding unnecessary interference with the passage of people and vehicles;
  - (4) avoiding damage, obstruction or other interference with any utility service or other similar services to a Site;
  - (5) minimising the effect of the Works on the aesthetic qualities of the Environment and social activities of local community members;
  - (6) eliminating nuisance including implementing appropriate dust control measures and avoiding unnecessary noise and disturbance;
  - (7) preventing unlawful Environmental damage or Pollution; and
  - (8) do all things necessary to assist MTM to comply with its obligations under the Rail Safety National Law.
- (b) The Participants' responsibilities include the provision of barricades, guards, fencing, temporary roads, warning signs, lighting, traffic flagging, safety helmets, training of personnel and clothing, removal of obstructions and protection of services of the kind referred to in clause 19.5(a).

## **19.6 Stakeholder and community relations**

- (a) Without limiting any other obligation of the Participants under this Agreement, the Participants are committed to developing sensitive and responsive stakeholder consultation and communication practices.
- (b) The Participants must immediately inform the ALT and the Project Owner of any local or broader community issue which relates to the performance of the Works and must promptly follow any direction from the Project Owner in respect of that issue.
- (c) The Participants must take all steps necessary to meet the Project Owner's obligations and commitments to the local community and stakeholders as they relate to the performance of the Works.

## **19.7 Purchase of Materials and Construction Plant**

- (a) Any Materials and Construction Plant necessary for the Works must be purchased on a Best For Project basis.
- (b) If a NOP acquires Materials, it must ensure that:
  - (1) unless determined by the Project Owner, all Materials are new and of merchantable quality, of correct design and workmanship as specified in the Scope of Works, or if not so specified, suitable for the Stated Purpose;
  - (2) suitable guarantees and warranties, to the satisfaction of the Project Owner, are obtained in the name of MTM, PTV or VicTrack, as the case may be, from the suppliers of the Materials;
  - (3) the Project Owner, or the Project Owner as agent for VicTrack or for the relevant road authority as the case may be, obtains unencumbered title to those Materials upon payment for those Materials by the Project Owner through the Reimbursable Cost reimbursement principle set out in clause 20.1; and
  - (4) it maintains an up to date register of all assets including a register of all express and implied warranties pertaining to those Materials as provided by the relevant supplier or prescribed by a Statutory Requirement.

- (c) Any surplus Materials and all Construction Plant that have been paid for by the Project Owner as a Reimbursable Cost must be disposed of at the direction of the Project Owner and the Project Owner is entitled to the proceeds of that disposal and the AOC must be reduced by the sum of the proceeds from that disposal.

## 19.8 Salvaged Materials

- (a) The AMT must review the opportunities available to salvage Materials or Construction Plant from the Site and present these opportunities to the ALT for its consideration. If the ALT determines that any Materials or Construction Plant with a salvageable or inherent value is to be removed, relocated or salvaged from the Site or Rail Infrastructure then, subject to all appropriate approvals being obtained, the ALT shall direct the AMT to relocate or salvage the material, plant or equipment.
- (b) Ownership of and title in any materials, plant or equipment with a salvageable or inherent value removed, relocated or salvaged from Rail Infrastructure remains with VicTrack and the value of such removed, relocated or salvaged materials, plant or equipment will only form part of the Commercial Framework on the Project Owner's determination.
- (c) If salvageable materials are to form part of the Commercial Framework in accordance with clause 19.8(b), then the commercial benefit received by the Alliance from such relocation or salvage will either reduce or be credited against the AOC incurred in performing the Works.

## 19.9 Utility Services

The Participants must provide and maintain all Utility Services necessary to perform the Works and comply with the requirements of any Authority or entity that provides a Utility Service.

## 19.10 Project Management System

- (a) The Participants must:
  - (1) prepare a project management system which contains the systems and plans, and complies with the requirements, set out in Schedule 12;
  - (2) provide each system and plan referred to in clause 19.10(a)(1) to the ALT or the Project Owner, as the case may be in accordance with the Governance Plan, within 20 Business Days of the date of this Agreement; and
  - (3) obtain approval (which approval must not be unreasonably withheld) in respect of each system and plan from the Project Owner or the ALT, as the case may be, except to the extent that the requirement for such approval is waived by the Project Owner or the ALT, as the case may be.
- (b) Until the Participants have prepared a set of systems and plans satisfying the requirements of clause 19.10(a) (**Project Management System**), Works must not commence on Site.
- (c) If the Project Owner or the ALT does not approve a system or plan under the Project Management System, the Project Owner or the ALT, as the case may be, must provide reasons for such decision to not approve. The Participants will amend the relevant system or plan to address the Project Owner's or ALT's reasons and resubmit the relevant system or plan for approval.
- (d) The Participants must implement and comply with the Project Management System in performing the Works, except where non-compliance is directed by the Project Owner or the ALT in advance of such non-compliance.
- (e) The Participants must update and revise the Project Management System when necessary to do so as a result of any change in equipment, systems or procedures in



performing the Works or when directed by the ALT. All updates and revisions to the Project Management System must be approved by the Project Owner or the ALT in accordance with the Governance Plan.

## 19.11 Protection of Aboriginal Heritage and Aboriginal rights

- (a) It is of critical importance to the Participants that the Participants have a very good working relationship with Aboriginal people and the organisations which represent them. Accordingly, consistent with the cultural heritage management plan included in the Environmental Management Plan under the Project Management System, it is an objective of the Project Owner to ensure that nothing that any of the Participants may do or omit to do in performing the Works harms that relationship.
- (b) The Participants too are committed to the protection of Aboriginal Heritage and Aboriginal rights and must ensure that they, their employees, agents, Subcontractors, consultants and suppliers comply with:
  - (1) all applicable Statutory Requirements relating to Aboriginal Heritage and Native Title Laws;
  - (2) any agreements or arrangements between the Project Owner and Aboriginal people in relation to Aboriginal Heritage;
  - (3) the Project Owner's instructions reasonably required to enable the Project Owner to comply with any Statutory Requirements, agreements, arrangements or requirements of any other Authorisation relating to Aboriginal Heritage and Native Title Laws; and
  - (4) the cultural heritage management plan included in the Environmental Management Plan under the Project Management System.
- (c) The Participants must ensure that:
  - (1) they do not enter indigenous and cultural heritage sites or disturb, interfere with or remove anything from such sites or their vicinity except in accordance with the cultural heritage management plan included in the Environmental Management Plan under the Project Management System, or with the prior written approval of the Project Owner; and
  - (2) if any indigenous or cultural heritage site is identified on the Site, all activities which could impact on such site will immediately cease.
- (d) The Participants must immediately inform the Project Owner of any claim received under the *Native Title Act* 1993 (Cth) and then promptly follow any directions from the Project Owner.

## 19.12 Industrial relations

- (a) The Participants acknowledge and agree that a Workplace Relations Management Plan in relation to the Works and the Project will be prepared by the Participants and included in the Project Management System and which must comply with relevant Statutory Requirements, codes of practice and guidelines. The Participants must implement and comply with the Workplace Relations Management plan included as part of the Project Management System in performing the Works.
- (b) The NOPs acknowledge and agree that they must be, and must ensure that any Subcontractors engaged in respect of the performance of the Works under this Agreement are, accredited under the Australian Government Building and Construction OHS Accreditation Scheme established by section 35 of the *Fair Work (Building Industry) Act 2012* (Cth), at all times that they or those Subcontractors (as applicable) are performing the Works under this Agreement.

### 19.13 Principal contractor

- (a) John Holland (the **Principal Contractor**) is:
  - (1) appointed as the principal contractor in respect of the Site for the purposes of the *Occupational Health and Safety Regulations 2007 (Vic)* (**OH&S Regulations**); and
  - (2) given all necessary authority to allow it to discharge the responsibilities imposed on a principal contractor by the OH&S Regulations.
- (b) The Principal Contractor will complete all forms and take any other action required to accept its appointment.
- (c) The Principal Contractor must:
  - (1) discharge and perform its responsibilities and functions as a principal contractor in respect of the performance of the Works under the OH&S Regulations;
  - (2) immediately inform the ALT of all incidents involving injury to any employee or agent of any Participant or Subcontractor arising during performance of the Works; and
  - (3) provide the ALT and the Alliance Manager with a copy of any document, notice or report that it, as Principal Contractor, is required to author or receive.
- (d) Each Participant will, when accessing the Site:
  - (1) comply with directions given by the Principal Contractor in its capacity as principal contractor under the OH&S Regulations; and
  - (2) ensure its Related Bodies Corporate do likewise.

### 19.14 Incident protocol

- (a) The Emergency Response and Incident Management Plan included in the Project Management System must be implemented in a way which aligns with MTM's incident management plans.

### 19.15 Rail safety

- (a) The Participants must strictly comply with the requirements of the Rail Safety National Law (and the regulations and codes of practice made under or in connection with the Rail Safety National Law) and all other applicable rail safety Statutory Requirements to ensure that the highest standards of rail safety are maintained at all times during the performance of the Works.
- (b) In addition to all other obligations under this clause 19.15, the Participants must proactively work to ensure that the safety of Rail Operations is protected at all times including by:
  - (1) complying with the requirements of MTM's Accreditation;
  - (2) complying with the requirements of the MTM Infrastructure Lease, the MTM Franchise Agreement, and the MTM Projects Agreement to the extent necessary or relevant to perform the Works;
  - (3) complying with the reasonable, proper and lawful instructions, directions from MTM's CEO, requirements, policies, procedures and practices of MTM relating to rail safety issued from time to time and the procedures and protocols set out in the Rail Access Management Plan; and

- (4) except as required by law, not do, or omit to do, anything which may cause the Accreditation of MTM, or of any other Rail Transport Operator in respect of the Project, to be suspended or cancelled.
- (c) Unless MTM or PTV directs otherwise, the Participants must, or must procure the appropriate Participant to:
- (1) identify and inquire into:
    - (i) any activity performed in respect of the Works which may give rise to health and safety risks for MTM; and
    - (ii) any accidents or other incidents involving any (or any risk of) loss, injury or damage to persons (including death) or property of any kind, which occurs on or about Land (as defined in the MTM Infrastructure Lease) or Rail Infrastructure in connection with the Works or as a result of or in connection with the Participants' performance or failing to perform any obligations under the Agreement;
  - (2) in relation to the obligation in clause 19.15(c)(1)(i), give MTM and PTV written notice of each activity as soon as reasonably practicable after it is identified and in the case of the matters referred to in clause 19.15(c)(1)(ii), give MTM and PTV a detailed written factual report of such matters as soon as reasonably practicable after such accident or incident occurs; and
  - (3) give MTM or PTV such assistance, information and documentation as may be required to enable it to comply with the Rail Safety National Law.
- (d) The Participants must, to the extent that MTM or the Project Owner reasonably requires, liaise, co-operate and use their best endeavours (including providing such information and documentation required by MTM and any Authority from time to time responsible for Accreditation):
- (1) to assist MTM to obtain or maintain any Accreditation, or modify its Accreditation, to the extent necessary for the performance of or as a result of the Works;
  - (2) to assist MTM or any other relevant Rail Transport Operators to:
    - (i) prepare Safety Management Documentation in relation to the Works and the Project; and
    - (ii) manage changes associated with the Works and the Project as relevant to the Safety Management System;
  - (3) to provide the information, advice and other support in relation to the Works as required by MTM or any other relevant Rail Transport Operator in order to amend its Safety Management Systems, or by the Project Owner in order to facilitate any Rail Transport Operator amending its Safety Management System;
  - (4) to make available all personnel assisting in preparing the Safety Management Documentation to attend Safety Management System meetings or workshops as arranged from time to time; and
  - (5) to provide any additional documentation or information in relation to the Safety Management Documentation as may be reasonably required by the Project Owner or MTM in order to facilitate MTM or a relevant Rail Transport Operator amending its Safety Management Systems,

until MTM or the relevant Rail Transport Operator, as applicable, has completed all activities associated with amending its Safety Management System as a consequence of the performance of the Works and the Safety Management System has been accepted by the Safety Regulator and the Project Owner.

(e) Each Participant must provide the Project Owner with a copy of any notice, report and other correspondence given or received by the Participant under or in connection with:

- (1) the Rail Safety National Law;
- (2) the Rail Safety National Regulations; or
- (3) any Accreditation held by a Participant,

in connection with the Project, or which may adversely affect the ability of any Participant to perform the Works, as soon as possible, but in any event no later than 5 Business Days after such notice, report or other correspondence is given or received by the Participant.

(f) The Participants acknowledge and agree that for the purposes of the Rail Safety National Law and to the extent it applies to that part of the Works which involves the performance of Railway Operations (as defined in the Rail Safety National Law), such work is being performed for and on behalf of MTM as an accredited Rail Transport Operator in respect of the relevant Rail Infrastructure (as defined in the Rail Safety National Law).

### **19.16 Road Management**

(a) For the purposes of the *Road Management Act 2004 (Vic)* the body of Participants are the "works manager" and the "infrastructure manager" for the performance of the Works.

(b) The Participants must perform and satisfy the obligations placed upon a works manager and infrastructure manager by the *Road Management Act 2004 (Vic)*. In particular the Participants must:

- (1) install and conduct works applying good engineering practice and relevant industry standards;
- (2) comply with any requirements in relation to the safety of road users and with section 99A of the Road Safety Act;
- (3) if practicable, avoid excavating or breaking the surface of the roadway, and where it is necessary to do so, minimise the inconvenience to road users and reinstate the roadway to its pre-works state;
- (4) give notice of proposed works to the relevant coordinating road authority and to any other infrastructure or works manager which could be affected by the performance of the Works;
- (5) consult occupiers, or owners or other persons who are likely to be significantly affected by the performance of the Works;
- (6) obtain consent to the performance of the Works from the relevant road authority in certain circumstances;
- (7) take all reasonable measures to minimise disruption to traffic, to ensure the safety of works for road users and adjoining property and to make adequate provision for people with disabilities; and
- (8) reinstate the road as promptly as practicable after completion of the Works, as nearly as is reasonably practicable to an equivalent standard of quality and design and so as to ensure that any feature to assist persons with a disability is restored.

(c) In performing functions and obligations as a works manager and infrastructure manager the Participants acknowledge and accept that the primary purpose of a road is use by members of the public and authorised uses must be managed as far as is reasonably practicable in such a way as to minimise any adverse impacts on the primary purpose so as to:

- (1) minimise any damage to roads and Road Infrastructure;
  - (2) ensure that any Works necessary for the provision of non-road infrastructure are conducted as quickly as practicable;
  - (3) minimise any disruption to road users;
  - (4) minimise any risk to the safety and property of road users and the public generally;
  - (5) facilitate the design and installation of infrastructure which minimises any risk to the safety of road users;
  - (6) ensure that the road and any other infrastructure is reinstated as nearly as practicable to the condition existing before the Works were performed; and
  - (7) protect and preserve existing significant road side vegetation and sites with biological significance within the road reserve.
- (d) The Participants must have regard to the principles in clause 19.16(c) in performing the Works.

### **19.17 Protection of the Environment**

- (a) The Participants are committed to achieving the highest standard of environmental practices in performing the Works.
- (b) The Participants will proactively work to minimise the impact of the performance of the Works on the environment including by:
  - (1) providing appropriate work methods and equipment;
  - (2) providing and maintaining systems, methods and techniques of work, and Construction Plant, that have a minimal impact on the environment and do not expose the environment to any hazard that is within the Participants' control;
  - (3) developing and complying with procedures for dealing with environmental hazards or emergencies (or potential environmental hazards or emergencies) including procedures for interacting with the EPA or other relevant Government Agencies;
  - (4) complying with the Construction and Environmental Management Plan included in the Project Management System.

### **19.18 National Greenhouse and Energy Reporting Act 2007 (Cth)**

The Participants acknowledge and agree that:

- (a) each Participant will, to the extent required by law, comply with reporting responsibilities under the *National Greenhouse and Energy Reporting Act 2007 (Cth)* or similar legislation;
- (b) the Participants will, on a quarterly basis, and in accordance with this Agreement, provide to each other all data and information necessary to verify the greenhouse gas emissions associated with the Project, including itemised fuel used on any Site, itemised quantity and types of materials used on any Site, including recycled materials and itemised quantities of energy use (electricity and gas) including the proportion (if any) of renewable sources;
- (c) annually, at a time nominated by the Project Owner, the Participants will supply the Project Owner with such details that the Project Owner requires in relation to emissions of Greenhouse Gases, consumption of energy, and production of energy as referred to in:

- (1) the *National Greenhouse and Energy Reporting Act 2007* (Cth);
- (2) an act of the Australian Parliament which is in substance a renaming, successor or replacement of any of the foregoing act of the Australian Parliament;
- (3) a law of the Australian Parliament which has the objective of regulating, limiting, reducing, controlling, offsetting or mitigating the emission of Greenhouse Gas and imposes, creates or results in a cost on the emission of Greenhouse Gas or is intended to create incentives or price signals to reduce Greenhouse Gas emissions; or
- (4) any other primary or delegated law which is primarily concerned with emission of Greenhouse Gas, renewable energy, or energy efficiency,

with respect to the performance of the Works;

- (d) the Participants will assist the Project Owner to fulfil the Project Owner's or an Alternative Liabile Entity's reporting obligations under any of the legislation listed in this clause 19.18 each year, in the manner specified in this clause 19.18 insofar as those matters relate to the performance of the Works; and
- (e) the Project Owner is exclusively entitled to the legal and beneficial ownership of any Environmental Credits arising from the Project.

### **19.19 Benchmark performance of the Participants**

- (a) The Participants acknowledge and agree that it is the fundamental obligation of the Participants to demonstrate, ensure and deliver value for money in carrying out the Project and performing the Works.
- (b) The Participants, to effectively demonstrate that value for money outcomes are and will be achieved under this Agreement, have agreed that the Project Owner may benchmark the performance of the Participants against:
  - (1) the performance of other alliances delivering other works or projects similar to the Works and the Project;
  - (2) the performance of similar projects; or
  - (3) the performance of other contractors prequalified at the same levels as the NOPs under the Project Owner's Prequalification Scheme and the National Prequalification Scheme for Civil (Road and Bridge) Construction Contracts (as amended from time to time).
- (c) The Participants agree that, for the purposes of benchmarking the performance of the Participants, they will, in a manner consistent with the Alliance Charter, fully disclose all information relating to the actual outturn performance of all aspects of this Agreement, other than that which the ALT determines, in consultation with the Project Owner, is genuinely commercial in confidence or financially sensitive (**Sensitive Information**). Where the ALT determines, in consultation with the Project Owner, that information is Sensitive Information, the ALT will determine an acceptable and appropriate manner to mask and/or protect the commercial in confidence or financially sensitive nature of the Sensitive Information but will still be obliged to share the Sensitive Information for the purposes of benchmarking the actual outturn performance of all aspects of this Agreement.
- (d) Nothing in clauses 19.19(a), 19.19(b) and 19.19(c) will oblige a Participant to make a disclosure of information where the ALT determines that to do so would, or could potentially, involve a breach of a Statutory Requirement, a breach of recognised best practice corporate governance guidelines or a Participant's existing confidentiality obligations.

- (e) In the event that an ALT representative seeks to invoke and rely upon the exemption from disclosure set out in clause 19.19(d), the ALT representative must notify the other representatives of the ALT of:
- (1) the nature of the information which the ALT representative intends not to disclose; and
  - (2) the genuine reasons for non-disclosure,
- and the ALT will determine whether the exemption from disclosure set out in clause 19.19(d) will apply to the information.

## **19.20 Alliance exchange**

- (a) The Project Owner may, at any time prior to the Final Completion Date, direct the ALT to attend an alliance exchange to be attended by the ALT representatives of some or all of PTV's or the Project Owner's other alliances together with nominated invitees by the Project Owner, which may include alliance leadership team representatives from alliances sponsored by parties other than PTV.
- (b) The Project Owner's expectation of the alliance exchange is to enable:
- (1) alliance contracting best practice methodologies to be identified, shared and understood;
  - (2) sharing of expertise in respect of health and safety, including innovations and incident management methodologies;
  - (3) the Project Owner to be satisfied that the behaviours, standards and governance of its alliances are equal to other alliances developed or being developed across Australasia; and
  - (4) the Project Owner to benchmark the performance of its alliances against each other and against other alliances developed or being developed across Australasia to the extent that it is practicable to do so.
- (c) The NOPs and PTV agree that they will attend the alliance exchange and participate in a manner consistent with the Alliance Principles so as to fully, frankly and honestly disclose all information or lessons learned relating to the Alliance or the Works other than that which the ALT determines is commercial-in-confidence or financially sensitive. Where the ALT determines, in consultation with the Project Owner, that information is commercial-in-confidence or financially sensitive the ALT shall determine an acceptable and appropriate manner to mask and/or protect the commercial-in-confidence or financially sensitive nature of the information but will still be obliged to share the information for the purposes of benchmarking the AOC performance of all aspects of the Alliance.
- (d) Nothing in this clause 19.20 shall compel a Participant to make a disclosure of information where the ALT determines that to do so would, or could potentially, involve a breach of a Statutory Requirement, a breach of recognised best practice corporate governance guidelines or a breach of a Participant's existing confidentiality obligations.

## **20 Payments**

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### **20.1 General**

Unless otherwise expressly provided in this Agreement, no matter what events, circumstances, contingencies, conditions (Latent Conditions or otherwise), or degree of difficulty is encountered by the Participants in performing the Works:

- (a) the NOPs' entitlement, and only entitlement, to payment by the Project Owner for the Works is for:

- (1) reimbursement of Reimbursable Costs reasonably and actually incurred by the NOPs; plus
  - (2) Corporate Overhead and Profit; plus
  - (3) the Gainshare Amount (if any) if, under the Risk or Reward Regime, a Gainshare Amount is payable; and
- (b) PTV's entitlement, and only entitlement, to payment by the Project Owner for the Works is for reimbursement of Reimbursable Costs reasonably and actually incurred by PTV.

## **20.2 Acknowledgement**

The NOPs and PTV acknowledge that the Project Owner has entered into this Agreement in reliance on representations by the NOPs that, other than as expressly provided for in Schedule 6, the Reimbursable Costs do not include any element of profit, mark up or overhead component to the NOPs, PTV or any Related Body Corporate of the NOPs.

## **20.3 Procedure for payment**

The procedure for payment which will govern:

- (a) reimbursement of Reimbursable Costs reasonably and actually incurred by the NOPs or PTV;
- (b) subject to clause 20.8, payment by the Project Owner to the NOPs of the Corporate Overhead and Profit;
- (c) payment by the Project Owner to the NOPs of the Gainshare Amount or payment by the NOPs to the Project Owner of the Painshare Amount (if any and as the case may be); and
- (d) payment by the NOPs to the Project Owner of the Performance Liability Amount (if any), is set out in Schedule 9.

## **20.4 Payment not evidence**

Payment of moneys is not evidence of the value of the Works, or that the Works have been executed satisfactorily, or an admission of liability, but is payment on account only.

## **20.5 Owner Participant's Reimbursable Costs**

- (a) On a date agreed by the ALT, the Owner Participant will prepare and submit to the Alliance Manager a payment statement incorporating an account of costs including all supporting documentation identifying the sum of the actual Reimbursable Costs incurred by the Owner Participant in performing the Works during the period of the payment statement.
- (b) The Alliance Manager will:
  - (1) review the actual Reimbursable Costs incurred by the Owner Participant and if the Alliance Manager determines that:
    - (i) they are true and correct, recommend these amounts to the ALT;
    - (ii) additional supporting documentation is necessary, request the ALT to request that the Owner Participant provide such reasonable supporting documentation within a reasonable time; and
  - (2) ensure that the actual Reimbursable Costs incurred by the Owner Participant are accounted for and form part of AOC.



Any supporting documentation requested by the ALT under clause 20.5(b)(1)(ii) must be provided by the Owner Participant within a reasonable time having regard to the nature of the request and the circumstances of the review and the request.

## **20.6 Overpayments and underpayments**

- (a) If, on completion of any inspection and audit it is discovered that the total payments made to the NOPs or PTV are greater than the NOPs' or PTV's entitlement to payment under this Agreement, the Project Owner may either:
- (1) deduct an amount equal to the excess from moneys due or becoming due to the NOPs or PTV, as applicable, under or in connection with this Agreement; or
  - (2) require the NOPs or PTV, as applicable, to reimburse the excess to the Project Owner.
- (b) If, on completion of any inspection and audit it is discovered that the total payments made to the NOPs or PTV are less than the NOPs' or PTV's entitlement to payment under this Agreement, the NOPs or PTV, as applicable, may require the Project Owner to pay any shortfall to the NOPs or PTV, as applicable.
- (c) This clause 20.6 applies:
- (1) even if the Final Certificate has been issued under clause 15 or this Agreement has terminated; and
  - (2) whether the inspection and audit was carried out under clause 21.4, or otherwise.
- (d) If the Project Owner, PTV or the NOPs are required to make a payment under this clause 20.6, they must make that payment within 20 Business Days of a request for payment being made.
- (e) Notwithstanding clause 5.1:
- (1) the Project Owner may commence proceedings against the NOPs to recover any amount payable to it under this clause 20.6 not paid on time; and
  - (2) the NOPs may commence proceedings against the Project Owner to recover any amount payable to them under this clause 20.6 not paid on time.

## **20.7 Other proceeds**

If any monetary amount is recovered by a Participant from a third party as a result of a right of indemnity arising under any insurance policy or any other right in favour of that Participant in connection with the Works, the Participant will account to the Alliance for such amount, and that amount will be credited against the AOC.

## **20.8 Suspension of payment of Corporate Overhead and Profit**

- (a) If [REDACTED], following receipt of a Monthly earned value report under clause 21.1(a)(5), a recommendation from the ALT or otherwise, that the AOC of performing the Works under this Agreement will exceed the TOC, then the Project Owner may immediately, by notice in writing to the NOPs, suspend the payment of, but not the entitlement to, Corporate Overhead and Profit (excluding MTM RTO Role Corporate Overhead and Profit) to the NOPs to the extent necessary to cover the NOPs' potential liability to pay any Painshare Amount under Schedule 8.
- (b) The suspension of payment of Corporate Overhead and Profit (excluding MTM RTO Role Corporate Overhead and Profit) to the NOPs under clause 20.8(a) will be effective for the period commencing on the date specified by the Project Owner, and ending on the Final Completion Date.

- (c) If the Project Owner suspends the payment of Corporate Overhead and Profit (excluding MTM RTO Role Corporate Overhead and Profit) to the NOPs under clause 20.8(a), then the amount of any Corporate Overhead and Profit to which the NOPs are entitled for the period:
- (1) from the date of suspension of payment by the Project Owner until the Date of Practical Completion will be considered to have been paid to the NOPs for the purposes of calculating any Interim Gainshare Amount or Interim Painshare Amount (if any and as the case may be) under the Risk or Reward Regime as at the Date of Practical Completion; and
  - (2) from the date of suspension of payment by the Project Owner until the Final Completion Date will:
    - (A) be considered to have been paid to the NOPs for the purposes of calculating any Gainshare Amount or Painshare Amount (if any and as the case may be) under the Risk or Reward Regime as at the Final Completion Date; and
    - (B) be included by the Participants in the Final Certificate as an amount payable by the Project Owner to the NOPs.

## **20.9 Payment of Subcontractors**

- (a) If a NOP informs the Project Owner, or the Project Owner becomes aware that a NOP has failed to pay an amount that is due and payable to a Subcontractor, the Project Owner may pay the Subcontractor directly and the amount paid will be a Reimbursable Cost for the purposes of calculating the AOC under this Agreement. The NOPs will not be entitled to be reimbursed any Reimbursable Costs, nor paid any Corporate Overhead and Profit, under this clause 20.9(a) in respect of that amount.
- (b) If the Project Owner pays a Subcontractor directly, it is not liable to pay the NOP for the work performed by the Subcontractor the subject of the payment.

## **20.10 Building and Construction Industry Security of Payment Act 2002 (Vic)**

- (a) The NOPs must:
  - (1) promptly give the Project Owner a copy of any notice that a NOP receives from a Subcontractor; and
  - (2) ensure that each Subcontractor promptly gives the Project Owner and the NOPs a copy of any notice that the Subcontractor receives from another party, under any section of the SoP Act.
- (b) If the Project Owner becomes aware that the Subcontractor is entitled to suspend any works or services (which forms part of the Works) under any section of the SoP Act, the Project Owner may (at its absolute discretion) pay the Subcontractor such money as is or may be owing to the Subcontractor in respect of works or services forming part of the Works. Any amount paid by the Project Owner will be a Reimbursable Cost and the Project Owner is not liable to pay the NOP for the work performed by the Subcontractor the subject of the payment.
- (c) For the purposes of this clause 20.10, a reference to:
  - (1) a Subcontractor includes any person engaged by a NOP, its subcontractors or any other person to carry out works or services which form part of the Works; and
  - (2) works or services refers to all or any part of the Works a NOP is or may be required to execute or provide under this Agreement and includes equipment, services (including design work), Materials and Construction Plant.

## 20.11 Unfixed Materials

- (a) Title to all unfixed Materials and equipment on Site that will form part of the Works supplied directly by a Participant, and not a Subcontractor or supplier, the value of which is included in a monthly payment claim, shall, upon payment, immediately pass to:
- (1) the Project Owner as agent on behalf of VicTrack, if the unfixed Materials and equipment forms part of the Rail Infrastructure; and
  - (2) the Project Owner or the relevant road authority, as the case may be, if the unfixed Materials and equipment forms part of Road Infrastructure,
- unencumbered and free of any security interests held or claimed by any third parties.
- (b) Without limiting clause 19.7, the Project Owner will not pay for any Materials off-Site unless it is satisfied that the unfixed Materials and equipment are properly stored, labelled and identified as the property of the Project Owner, and:
- (1) the Project Owner is satisfied that the unencumbered title to those Materials will pass on payment and the Project Owner is satisfied that the Materials are protected and insured to the Project Owner's satisfaction; or
  - (2) the Materials are delivered to a Site and the terms of the supply of the Materials are that unencumbered title to those Materials passes in accordance with clause 20.11(a) or to the NOPs on delivery.
- (c) If a Participant wishes to be paid for materials or equipment not incorporated into the Works which are supplied by a Subcontractor the Participant must obtain from the Subcontractor security in the form of an unconditional bank undertaking in favour of the Project Owner equal to the amount claimed for the materials. Security provided will be released upon delivery of the relevant Materials to the Site and the Subcontractor providing evidence and documentation which establishes that unencumbered ownership has passed to the Project Owner.

### 20.11A Subcontracts – moneys received or retained

- (a) The Participants must ensure that each Subcontract valued in excess of the amount stated in Schedule 1 contains terms which require that:
- (1) if a Participant receives or retains from a Subcontractor security in cash, or converts security to cash; or
  - (2) if a Participant receives payment under the Agreement for, or on account of, work done or materials, plant, equipment or other goods supplied by a Subcontractor and does not pay that Subcontractor the whole amount the Participant received or to which the Subcontractor is entitled,
- the Participant must hold the cash under clause 20.11A(a)(1) or the difference under clause 20.11A(a)(2) in a joint account in the name of the Participant and the Project Owner in a bank determined by the Project Owner.
- (b) In respect of moneys received or retained under clause 20.11A(a), the Participant must:
- (1) deposit all moneys into a joint account in the name of the NOPs and the Project Owner in a bank determined by the Project Owner no later than the next Business Day after receipt;
  - (2) hold such moneys on trust for the Project Owner until it is paid to the Subcontractor (subject to the Participant's rights under any Subcontract to make demands against that money); and
  - (3) maintain proper records to account for that money and make them available to the Project Owner or the Subcontractor on request,

and any interest earned by the trust account is owned by the Project Owner.

## 20.12 Goods and Services Tax (GST Exclusive Prices)

- (a) Any reference in this clause to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made under or in connection with this Agreement does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause.
- (c) Any amount referred to in this Agreement (other than an amount referred to in clause 20.12(h)) which is relevant in determining a payment to be made by one of the Participants to another is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a Participant (**Supplier**) under or in connection with this Agreement, the consideration to be provided under this Agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The recipient must pay the additional amount payable under clause 20.12(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 20.12(d) or at such other time as the parties agree.
- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Agreement the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 20.12(e), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (h) If a Participant is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Participant being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and, then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST under clause 20.12(d).
- (i) The Participants, through the AMT must, as soon as practicable after the date of this Agreement, develop and implement a system to manage the GST implications of the Works.

## 20.13 Customs duty

- (a) The Owner Participant intends to minimise any customs import duty exposure on the acquisition of equipment for the Works through the EPBS. Specifically, the EPBS application will capture equipment imported by the NOPs on the Owner Participant's behalf, as well as purchases from contractors of goods manufactured overseas.
- (b) The Owner Participant will, as between the Participants, be the owner, for the purposes of the *Customs Tariff Act 1995* (Cth) of all imported plant, materials, equipment, components or technology.
- (c) When purchasing equipment to perform the Works, the NOPs or those for whom they are responsible must pass through to the Owner Participant in full any customs duty savings

obtained or achieved. The passing on of these savings will be in the form of a reduction in the Reimbursable Cost of goods supplied, a cash rebate of actual customs duty savings or a reduction of the TOC.

- (d) The NOPs will assist in the reduction of customs duty under any EPBS application lodged, including where appropriate, co-operation with the Owner Participant's nominated advisors (including its custom brokers).
- (e) The Participants will take all steps necessary and provide any information or assistance required by the Owner Participant, including such activities as providing goods lists and import schedules for imported goods prior to export from their country of origin, to seek and obtain any exemption or concession or minimisation of customs duty available to Owner Participant under the *Customs Tariff Act 1995* (Cth).

## 21 Reports, records, access and audit

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### 21.1 Reports

- (a) The Participants must ensure that the Alliance Manager (using the AMT) prepares and provides to the Project Owner:
  - (1) after approval by the ALT; and
  - (2) in a format and at times which are acceptable to the Project Owner,reports which, at a minimum, address:
  - (3) work status;
  - (4) KRA performance;
  - (5) Monthly earned value, including:
    - (i) a reconciliation, as at the date of the report, of the AOC of performing the Works against the TOC;
    - (ii) any innovations or breakthroughs which have been made or opportunities which have been realised by the Participants in performing the Works and any innovations or breakthroughs or opportunities which are forecast to be made or realised by the Participants (including as set out in the Alliance Risk and Opportunity Provisions);
    - (iii) the Participants' risk management performance in performing the Works as against the Risk & Contingency Provisions; and
    - (iv) any material errors or mistakes which have been made in the development of the TOC and identified by the Participants;
  - (6) Monthly cash flow statements covering a 12 Month forward rolling period;
  - (7) key technical and non-technical issues, recommended actions and the status of previous recommendations on key technical and non-technical issues;
  - (8) employment status, including numbers of direct and indirect employees, construction labour, apprentices and indigenous employees;
  - (9) compliance with the Draft LID Plan or Final LID Plan (as applicable) in accordance with clause 32.1(b)(4); and

- (10) any other information required by the Project Owner necessary to validate compliance with the Agreement.
- (b) The Participants will provide the Project Owner an annual project report and an annual project plan at times, and incorporating requirements, advised by the Project Owner.
- (c) The Participants:
  - (1) must progressively during the performance of the Works collect and report to the Project Owner the documentation that may be required by the Project Owner for the preparation of the Value for Money Report; and
  - (2) acknowledge that as a precondition to Practical Completion, the NOPs must provide the Project Owner with all documentation required by the Project Owner to develop the Value for Money Report; and
  - (3) acknowledge that as a precondition to Final Completion, the NOPs must provide the Project Owner with all documentation required by the Project Owner to finalise the Value for Money Report.

## **21.2 Records**

The Participants must maintain for the Relevant Period, a complete set of:

- (a) all records which show how the TOC was calculated and how any Adjustment Events were valued for the purposes of clause 16;
- (b) all purchase orders, invoices, accounts, records and bank statements (to the extent they relate to the Works) under good and accepted accounting principles showing all of the Reimbursable Costs reasonably and actually incurred in the performance of the Works; and
- (c) all correspondence, tenders, Subcontracts, minutes of meetings, notes, reports, drawings, as-constructed information and all other documentation associated with the Works.

## **21.3 Access**

The Participant who holds the original of any of the records referred to in clause 21.2 must:

- (a) keep them for the Relevant Period;
- (b) on request, make them available to any other Participant and that Participant's nominated auditor; and
- (c) ensure that any electronic records are properly and accurately created and managed and transmitted via the Project Owner's nominated document management, storage and sharing system, and maintained on an open book basis.

## **21.4 Audit**

- (a) Subject to clause 21.4(b) and clause 37.17, any Participant or its nominated auditor may inspect and audit documentation referred to in clause 21.1(b):
  - (1) at the times identified in the audit plan to be developed by the Participants promptly after the date of this Agreement and approved by the ALT; or
  - (2) at any other time as agreed by the ALT.
- (b) The Project Owner or its nominated auditor may inspect and audit documentation referred to in clause 21.1(b) at any time determined by the Project Owner.

- (c) The Participants must provide all reasonable assistance requested by the Project Owner for the purposes of inspecting or auditing documentation referred to in clause 21.2.
- (d) A Participant must provide each other Participant with proper access to their personnel and facilities to enable any Participant or its nominated auditor to undertake any inspection and audit of the kind set out in this clause 21.4.
- (e) Subject to clause 21.4(f), all inspection and audit costs must be paid by the Participant undertaking the inspection and audit and are not Reimbursable Costs.
- (f) If an inspection and audit under this clause reveals that the other Participant is in Default (as that term is defined in clause 28.1), then without limiting any other rights and obligations of a Participant, the Participant in Default is responsible for all costs incurred by the Participant undertaking the inspection and audit and those costs are not Reimbursable Costs.
- (g) Any records provided to the Project Owner or the Auditor-General of the State of Victoria, or to any person nominated by the Project Owner or the Auditor-General of the State of Victoria, for the purposes of any audit, inspection or investigation shall be treated as confidential.
- (h) The Participants acknowledge that:
  - (1) the Project Owner and PTV do not assume or owe any duty of care to the Alliance to review documentation for errors, omissions or compliance with the requirements of the Agreement or with Statutory Requirements; and
  - (2) an inspection or audit of documentation will not:
    - (i) limit or relieve the Participants of any obligation or liability under the Agreement;
    - (ii) limit any right of the Project Owner under the Agreement;
    - (iii) constitute acceptance by the Project Owner of the performance of the Participants' obligations under the Agreement; or
    - (iv) be considered as a representation or acknowledgement by the Project Owner of that document's compliance with the Agreement.

## **21.5 Auditor-General of State of Victoria**

For the purposes of this clause 21.4, all of the references to the nominated auditor of the Project Owner (whether as the client or as the Owner Participant) will include the Auditor-General of the State of Victoria.

## **22 Insurances**

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### **22.1 Insurances to be maintained by the Owner Participant**

- (a) The Owner Participant must effect and maintain the insurance policies set out in clause 1 of Schedule 10.
- (b) The NOPs and PTV acknowledge and agree that when the Owner Participant has taken out the insurance policies set out in clauses 1.1, 1.2 and 1.3 of Schedule 10, the NOPs and PTV will accept those insurance policies in full satisfaction of the Owner Participant's obligations to insure as imposed by clause 22.1(a) (as it relates to the insurance policies set out in clauses 1.1, 1.2 and 1.3 of Schedule 10).

## **22.2 Acknowledgement and other insurances**

It is acknowledged that the purpose of the insurances referred to in clauses 1.1, 1.2 and 1.3 of Schedule 10 is to reduce the overall cost relating to insurance associated with the Project. The NOPs and PTV are free to maintain any other insurances they consider necessary in respect of the Project and the Works. The costs of those additional insurances (with the exception of the insurances referred to in clause 22.3) will not be treated as a Reimbursable Cost reimbursable by the Project Owner under this Agreement.

## **22.3 Insurances to be maintained by the NOPs and PTV**

The NOPs and PTV must effect and maintain the insurance policies set out in clause 2 of Schedule 10.

## **22.4 Commencement and duration of insurance**

Unless expressly provided for elsewhere in this Agreement, on or prior to the Commencement Date, each Participant must take out and maintain, or cause to be effected and maintained, for the period for which a claim could be made, the insurances allocated to it in this clause 22.

# **23 Insurance – general**

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## **23.1 Claims procedures**

- (a) The NOPs or PTV, as applicable, must immediately notify the Owner Participant in writing of any occurrence or incident that may, however remotely, give rise to a claim under an insurance policy taken out by the Owner Participant or of any other matter or thing for which those policies require notice to be given. A notice must include reasonable particulars of the occurrence, incident, matter or thing.
- (b) Claims made against insurance policies taken out by the Owner Participant must be submitted to the Owner Participant for lodgement by the Owner Participant with its insurer.
- (c) The Owner Participant may engage any legal advisor, insurance broker or loss adjuster it considers appropriate to assist the Owner Participant in relation to a claim under an insurance policy taken out by the Owner Participant under this Agreement. Subject to clause 23.1(d), the NOPs acknowledge and agree that the Owner Participant may, in its absolute discretion, settle, address, compromise, resolve or deal with any claim made against an insurance policy taken out by the Owner Participant in any manner it considers appropriate.
- (d) The Owner Participant must consult with the NOPs and PTV in respect of, and keep the NOPs and PTV informed of the progress of, any claim under an insurance policy taken out by the Owner Participant under this Agreement (including consulting with the NOPs and PTV prior to settling, addressing, compromising, resolving or otherwise dealing with any claim under clause 23.1(c)).
- (e) The NOPs and PTV must give all assistance and provide all information to the Owner Participant and the Owner Participant's insurer, legal advisor, insurance broker and loss adjuster as may be reasonably practicable in all the circumstances.
- (f) If an event occurs which in the opinion of a reasonable person in the position of a NOP might give rise to a claim involving the Owner Participant under any policy of insurance required to be taken out by the NOPs in accordance with clause 22.3, that NOP must notify the Owner Participant in writing and must ensure that the Owner Participant is kept fully informed of subsequent action or developments concerning the claim.



## **23.2 Participants' responsibilities**

At all times the Participants (to the extent applicable) are responsible for complying with the terms and conditions of the policies taken out under this Agreement and must ensure that their employees, Subcontractors and Subcontractors' employees are made aware of, and comply with, those terms and conditions.

## **23.3 Obligation to notify and assist**

- (a) Each Participant must immediately notify in writing the other Participants of any relevant changes to the terms and conditions of the insurance policies it is required to maintain under this Agreement including changes to the available coverage or limits, but only to the extent that the relevant Participant's insurance policy does not comply with the insurance requirements specified in this Agreement.
- (b) The NOPs and PTV must provide the Owner Participant with all reasonable assistance and all information reasonably required by the Owner Participant within the timeframes and in the format specified by the Owner Participant to enable the Owner Participant to obtain, effect and maintain the policies referred to in clause 22.1.

## **23.4 Payment of excesses**

- (a) Each NOP is responsible for the payment of the excesses applicable to those policies effected by that NOP under clause 22.3 and which will be treated as a Reimbursable Cost. The payment of any excess in accordance with this clause will not alter or lead to a change to the TOC.
- (b) PTV is responsible for the payment of the excesses applicable to those policies effected by PTV under clause 22.3 and which will be treated as a Reimbursable Cost. The payment of any excess in accordance with this clause will not alter or lead to a change to the TOC.
- (c) The Owner Participant is responsible for the payment of the excesses applicable to those policies effected by the Owner Participant under clause 22.1 and which will be treated as a Reimbursable Cost for the purposes of calculating the AOC under this Agreement. The payment of any excess in accordance with this clause 23.4(c) will not alter or lead to a change to the TOC. The NOPs will not be entitled to be reimbursed any Reimbursable Costs, nor paid any Corporate Overhead and Profit, under this clause 23.4(c).

## **23.5 Proof of insurance and inspection of insurance policy certificates**

- (a) Each Participant must make available for inspection by the other Participants certificates of currency for insurance required by this Agreement to be taken out by that Participant and any Subcontractors engaged by that Participant.
- (b) Whenever requested by a Participant, the other Participants must produce certificates of currency to the satisfaction of the requesting Participant of the insurance taken out under this Agreement.
- (c) To comply with this clause 23.5, a Participant is not required to do any act or thing which may constitute a breach of the insurance policy.

## **23.6 Project Owner to be informed of notices**

- (a) Each NOP must ensure that every insurance policy taken out by it under this Agreement includes a provision that requires the NOP, whenever the insurer gives to or serves upon the NOP or Subcontractor a notice of cancellation or any other notice under or in relation to the policy of insurance, as soon as possible, to inform the Project Owner in writing that the notice has been given to or served upon that NOP or Subcontractor.

- (b) PTV must ensure that every insurance policy taken out by it under this Agreement includes a provision that requires PTV, whenever the insurer gives to or serves upon PTV a notice of cancellation or any other notice under or in relation to the policy of insurance, as soon as possible, to inform the Project Owner in writing that the notice has been given to or served upon PTV.

### **23.7 Notice is notice by all insureds**

Each NOP and PTV must ensure that every insurance policy taken out by it under this Agreement contains a provision that provides that a notice of the occurrence of an event out of which the particular insured giving the notice alleges it has suffered, or could suffer, loss or damage or incur a liability must be accepted by the insurer as a notice of the occurrence given by all the insureds.

### **23.8 Obligations to remain unchanged**

Taking out and keeping in force insurance required by this Agreement does not in any way limit the liabilities, responsibilities and obligations of the Participants under other provisions of this Agreement.

### **23.9 Non-compliance**

Notwithstanding clause 5.1, if any Participant does not follow a written request from another Participant to fulfil and comply with its obligations under clauses 22 and 23, the Participant making the request may take action it considers appropriate to ensure that the non-compliant Participant complies.

### **23.10 Pass through of insurance payouts**

- (a) Subject to clause 23.10(b), to the extent that a NOP receives payment under an insurance policy that reimburses any amounts that were reimbursed or are reimbursable under this Agreement, then the NOP must, within 20 Business Days of receipt of that payment, pass on full payment to the Owner Participant and the AOC will be reduced by the amount of any payment made by a NOP to the Owner Participant under this clause 23.10(a). If a Gainshare Amount has been paid to the NOPs or a Painshare Amount has been paid by the NOPs, then clause 20.6 applies in respect of any underpayment or overpayment determined to have been made after recalculation of the Gainshare Amount or Painshare Amount (if any and as the case may be) on the basis of the adjusted AOC.
- (b) Notwithstanding that a NOP may have lodged a claim under an insurance policy required to be effected and maintained by the Owner Participant, the Owner Participant may require its insurer to make payment directly to the Owner Participant in respect of any claim for loss or damage to the Works.
- (c) Notwithstanding clause 5.1, the Owner Participant may commence proceedings to recover any amounts payable to it under clause 23.10(a) if that amount is not paid by the NOPs within the time period referred to in clause 23.10(a).
- (d) To the extent that the Owner Participant receives payment under an insurance policy that reimburses any amounts that were or are treated as Reimbursable Costs for the purposes of calculating the AOC under this Agreement, then the AOC will be reduced by those amounts. If a Gainshare Amount has been paid to the NOPs or a Painshare Amount has been paid by the NOPs, then clause 20.6 applies in respect of any underpayment or overpayment determined to have been made after recalculation of the Gainshare Amount or Painshare Amount (if any and as the case may be) on the basis of the adjusted AOC.

### 24.1 Non-compliance with insurance requirements

- (a) Each of the NOPs indemnifies and must keep indemnified the Owner Participant and the directors, officers, employees and agents of the Owner Participant against losses, damages or claims suffered by the Owner Participant and the directors, officers, employees and agents of the Owner Participant as a consequence of non-compliance by the NOP with:
- (1) the terms and conditions of clauses 22 and 23 (including any failure of the NOP to take out and maintain any of the insurances required to be taken out and maintained by the NOP under this Agreement); or
  - (2) the terms and conditions of the insurance policies required to be taken out and maintained by the Participants under this Agreement (including any act or omission of the NOP which causes an insurance policy required to be taken out and maintained by the Participants under this Agreement to not respond to any claim in respect of this Agreement).
- (b) The Owner Participant indemnifies and must keep indemnified each of the NOPs and the directors, officers, employees and agents of each of the NOPs against losses, damages or claims suffered by the relevant NOP and the directors, officers, employees and agents of the relevant NOP as a consequence of non-compliance by the Owner Participant with:
- (1) the terms and conditions of clauses 22 and 23 (including any failure of the Owner Participant to take out and maintain any of the insurances required to be taken out and maintained by the Owner Participant under this Agreement); or
  - (2) the terms and conditions of the insurance policies required to be taken out and maintained by the Participants under this Agreement (including any act or omission of the Owner Participant which causes an insurance policy required to be taken out and maintained by the Participants under this Agreement to not respond to any claim in respect of this Agreement).
- (c) Each of the NOPs indemnifies and must keep indemnified PTV and the directors, officers, employees and agents of PTV against losses, damages or claims suffered by PTV and the directors, officers, employees and agents of PTV as a consequence of non-compliance by the NOP with:
- (1) the terms and conditions of clauses 22 and 23 (including any failure of the NOP to take out and maintain any of the insurances required to be taken out and maintained by the NOP under this Agreement); or
  - (2) the terms and conditions of the insurance policies required to be taken out and maintained by the Participants under this Agreement (including any act or omission of the NOP which causes an insurance policy required to be taken out and maintained by the Participants under this Agreement to not respond to any claim in respect of this Agreement).
- (d) PTV indemnifies and must keep indemnified each of the NOPs and the directors, officers, employees and agents of each of the NOPs against losses, damages or claims suffered by the relevant NOP and the directors, officers, employees and agents of the relevant NOP as a consequence of non-compliance by PTV with:
- (1) the terms and conditions of clauses 22 and 23 (including any failure of PTV to take out and maintain any of the insurances required to be taken out and maintained by PTV under this Agreement); or
  - (2) the terms and conditions of the insurance policies required to be taken out and maintained by the Participants under this Agreement (including any act or omission of PTV which causes an insurance policy required to be taken out and

maintained by the Participants under this Agreement to not respond to any claim in respect of this Agreement).

## **24.2 Wilful Default**

- (a) Each of the NOPs indemnify and must keep indemnified the other Participants and the directors, officers, employees and agents of other Participants against losses, damages or claims suffered by the other Participants and the directors, officers, employees and agents of the other Participants as a consequence of or arising from any Wilful Default by the NOP.
- (b) The Owner Participant indemnifies and must keep indemnified the NOPs and the directors, officers, employees and agents of the NOPs against losses, damages or claims suffered by the NOPs and the directors, officers, employees and agents of the NOPs as a consequence of or arising from any Wilful Default by the Owner Participant.
- (c) PTV indemnifies and must keep indemnified the NOPs and the directors, officers, employees and agents of the NOPs against losses, damages or claims suffered by the NOPs and the directors, officers, employees and agents of the NOPs as a consequence of or arising from any Wilful Default by PTV.

## **24.3 Proportionate liability**

- (a) The liability of the NOPs to the Owner Participant and the directors, officers, employees and agents of the Owner Participant under the indemnities contained in clauses 24.1(a) and 24.2(a) is reduced proportionately to the extent that an act or omission of the Owner Participant, its directors, officers, employees, agents, contractors or Subcontractors (other than the NOPs and their subcontractors and agents) has contributed to the loss, damage or claim.
- (b) The liability of the NOPs to PTV and the directors, officers, employees and agents of PTV under the indemnities contained in clauses 24.1(c) and 24.2(a) is reduced proportionately to the extent that an act or omission of PTV, its directors, officers, employees, agents, contractors or Subcontractors (other than the NOPs and their subcontractors and agents) has contributed to the loss, damage or claim.
- (c) The liability of the Owner Participant to the NOPs and the directors, officers, employees and agents of the NOPs under the indemnities contained in clauses 24.1(b) and 24.2(b) is reduced proportionately to the extent that an act or omission of a NOP, its directors, officers, employees, agents, contractors or Subcontractors has contributed to the loss, damage or claim.
- (d) The liability of PTV to the NOPs and the directors, officers, employees and agents of the NOPs under the indemnities contained in clauses 24.1(d) and 24.2(c) is reduced proportionately to the extent that an act or omission of a NOP, its directors, officers, employees, agents, contractors or Subcontractors has contributed to the loss, damage or claim.

## **24.4 Insurance obligations are primary**

- (a) The insurances required to be taken out and maintained by the Participants under this Agreement are primary and not secondary to the indemnities referred to in this clause 24. However, a Participant is not obliged to make a claim or institute proceedings against any insurer under those insurances before enforcing any of its rights or remedies under the indemnities referred to in this Agreement, or generally. In addition, the Participants acknowledge that if a claim is made under any of those insurances by a Participant, it is their intention that the insurer cannot require the Participant to exhaust any indemnities referred to in this Agreement before the insurer considers or meets the relevant claim.
- (b) The Participants acknowledge that regardless of whether the insurances required to be taken out and maintained by the Participants under this Agreement respond or not, and regardless of the reason why those insurances respond or fail to respond, the

Participants are not released (in whole or in part), from any of their obligations under the indemnities referred to in this Agreement, or generally.

## 25 Consequential Loss

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- (a) Subject to clause 25(b), no Participant will be liable to another Participant for any Consequential Loss sustained by a Participant, whether caused by that Participant's breach of this Agreement, negligence or otherwise.
- (b) A Participant will be liable for Consequential Loss to the extent that such Consequential Loss is covered and is recoverable under a policy of insurance taken out under this Agreement.

## 26 Suspension

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### 26.1 Suspension by the Participants

The Participants may only suspend the whole or any part of the Works with prior written agreement from the Project Owner unless:

- (a) there is a real risk of injury to persons, or damage to the Environment in breach of any law or Statutory Requirement; or
- (b) the suspension is necessary to prevent unsafe Rail Infrastructure operations at an interface between Rail Infrastructure and the relevant Works.

### 26.2 Suspension by the Project Owner

Without limiting clause 26.5, if the Project Owner thinks that suspension of the whole or part of the Works is necessary or appropriate for any reason, the Project Owner may direct the Participants in writing to immediately suspend the progress of the whole or part of the Works for the period specified by the Project Owner in writing, and the Participants must promptly suspend the Works.

### 26.3 Suspension Costs

- (a) If the Project Owner directs suspension (other than as a result of a breach of this Agreement by a NOP, where the suspension is necessary to ensure that the Works comply with the requirements of this Agreement or in the circumstances set out in clause 26.5), or where the Participants suspend the whole or any part of the Works in circumstances contemplated in clause 26.1, the Project Owner must continue to pay any Reimbursable Costs reasonably and actually incurred during the period of suspension and any Corporate Overhead and Profit in respect of those costs. Any Reimbursable Costs paid by the Project Owner in respect of the period of suspension will be known as "Suspension Costs".
- (b) If the Project Owner directs suspension (other than as a result of a breach of this Agreement by a NOP, where the suspension is necessary to ensure that the Works comply with the requirements of this Agreement or in the circumstances set out in clause 26.5), then the suspension will be an Adjustment Event for the purposes of clause 16 and clause 16 will apply in respect of the treatment of any Suspension Costs arising from that suspension.
- (c) The Participants must endeavour to mitigate any Reimbursable Costs incurred during the period of suspension.

## 26.4 Recommencement

When the Project Owner becomes aware that the reason for suspension no longer exists, the Project Owner must direct the Participants to recommence the whole or the relevant part of the Works and the Participants must recommence the Works at the time directed by the Project Owner or, if no time is stated, within a reasonable time after the direction.

## 26.5 Suspension by the Project Owner by reason of cost overrun or delay in completion

(a) If, following receipt of a Monthly report under clause 21 or otherwise, the Project Owner determines that:

- (1) the AOC of performing the Works under this Agreement will or is likely to exceed the TOC by an amount in excess of 100% of the aggregate of all NOP Risk Caps; or
- (2) the Date of Practical Completion will or is likely to be delayed by more than 20 Business Days after the Date for Practical Completion,

then the Project Owner may direct the Participants in writing to immediately suspend the progress of the whole or part of the Works for the period specified by the Project Owner in writing and the Participants must promptly suspend the Works.

(b) If the Project Owner suspends the whole or any part of the Works under clause 26.5(a), then:

- (1) the Project Owner will be free to continue with the Works on any basis that the Project Owner may decide;
- (2) the NOPs must do all things necessary to ensure that the Project Owner is free to continue with the Works within the time period prescribed by the Project Owner;
- (3) subject to clauses 26.5(b)(4) and 26.5(c), any costs incurred by the NOPs during the period of suspension will not be Reimbursable Costs and the NOPs will not be entitled to any Corporate Overhead and Profit;
- (4) the NOPs will be entitled to any Reimbursable Costs that the NOPs have already committed to incur, in the reasonable expectation of completing the Works, prior to the Project Owner's direction under clause 26.5(a);
- (5) PTV will be entitled to any Reimbursable Costs that PTV has already committed to incur, in contemplation of the Works being completed, prior to the Project Owner's direction under clause 26.5(a); and
- (6) any Painshare Amount or Gainshare Amount (if any and as the case may be) will be calculated under the Risk or Reward Regime as if:
  - (A) any costs incurred by the Project Owner in continuing with the Works under this clause 26.5 were Reimbursable Costs incurred by the NOPs, except to the extent that such costs are not reasonably incurred; and
  - (B) the NOPs were paid Corporate Overhead and Profit in respect of those costs,

for the purposes of the calculation of the AOC and the NOPs will be responsible for the payment of any Painshare Amount which is calculated under the Risk or Reward Regime, notwithstanding any suspension under this clause 26.5.

(c) If, in the exercise of its rights under this clause 26.5(b), the Project Owner requires the NOPs to demobilise from the Site, the NOPs will be entitled to any Reimbursable Costs incurred in respect of such demobilisation.

- (d) If the Project Owner, in exercising its rights under clause 26.5(b)(1) to continue with the Works and the Project on a basis determined by the Project Owner, elects to terminate the Agreement such termination will be a termination by agreement and not a termination for convenience in accordance with clause 27.1 and clause 27.2 will not apply. If the Project Owner, in the exercise of its rights under clause 26.5(b)(1), elects to terminate the Agreement by agreement in accordance with this clause 26.5(d), the NOPs' entitlements to Reimbursable Costs will be limited to any amounts referred to in clauses 1(b)(1) to 1(b)(5) of Schedule 14, less any amounts referred to in clause 1(b)(6) of Schedule 14, and excluding any Gainshare Amounts.
- (e) Other than payment entitlements under clause 26.5(d) (if any), the NOPs and PTV will not otherwise be entitled to, and release and discharge the Project Owner from any loss arising out of or in connection with the Agreement and the Works, the termination or purported termination by the Project Owner in accordance with clause 26.5(d) exercising its rights under clause 26.5(b)(1) (or the effects of the termination or purported termination), which the NOPs and PTV would have had but for its release in this clause 26.5(e) save and except for any entitlement to be indemnified by the Project Owner in accordance with clause 24.1(b) or 24.2(b).

## 27 No fault termination

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### 27.1 No fault termination

The Project Owner may terminate this Agreement at any time by serving a notice in writing on the NOPs.

### 27.2 Termination payment

- (a) If the Project Owner elects to terminate this Agreement under clause 27.1, subject to the Project Owner's rights under or in connection with this Agreement, the Project Owner must pay the NOPs and PTV, or PTV or the NOPs must pay the Project Owner (as the case may be), an amount calculated or decided under Schedule 14. The Participants must take all reasonable steps to minimise and mitigate any costs incurred by them arising from termination of this Agreement under clause 27.1.
- (b) Upon payment of any termination payment by the Project Owner to the NOPs or the NOPs to the Project Owner (as the case may be) under this clause 27.2, the Project Owner and the NOPs must enter into a deed of release under which, subject to clause 37.18 which survives termination of this Agreement:
  - (1) each of the Project Owner and the NOPs agree that all payments required to be made by the Project Owner or by the NOPs (as the case may be) in respect of this Agreement have been made in full; and
  - (2) subject to clause 23.10, the NOPs release the Project Owner, and the Project Owner releases the NOPs, from any claims arising out of or in connection with this Agreement.

## 28 Termination for Default and repudiation

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### 28.1 Events of Default

Subject to clause 28.3, if any of the NOPs (**Defaulting NOP**):

- (a) commits a Wilful Default;

- (b) commits any material breach of clauses 21.3, 21.4, 24, 30.1 or 37.13, of this Agreement, whether or not amounting to a Wilful Default; or
- (c) is the subject of an Insolvency Event,  
(each a **Default**),  
then:
- (d) the Project Owner may give notice to the Defaulting NOP of:
  - (1) the Default and of its intention to exercise its rights under clause 28.3 on the expiration of [REDACTED] if the Default is capable of being rectified but is not rectified within the [REDACTED] period; or
  - (2) its intention to exercise its rights under clause 28.3 immediately if the Default is not capable of being rectified, or in the case of an Insolvency Event.

A notice given under this clause must specify that it is a Default notice under this clause.

## 28.2 Defaulting NOP

For the purposes of clause 28.1(b), a NOP will be deemed to be a Defaulting NOP for the purposes of this clause 28 where:

- (a) the relevant material breach or failure to perform, as the case may be, relates to a particular duty, obligation, term or condition arising out of, or connected with, this Agreement (**Stipulation**); and
- (b) the NOP in question has committed a material breach in respect of all or part of that Stipulation,  
unless, prior to the issue of a Default Notice in respect of the Stipulation, the ALT has, in writing and with express reference to this clause 28.2, determined that the NOP in question will not be allocated responsibility and performance of the Stipulation under this Agreement.

## 28.3 Failure to remedy

- (a) If:
  - (1) the Defaulting NOP fails within [REDACTED] after receipt of a notice given under clause 28.1(d)(1) to either remedy a Default or in writing show (to the reasonable satisfaction of the Project Owner ) that reasonable progress has been made in rectifying the Default; or
  - (2) if the Project Owner gives notice under clause 28.1(d)(2),  
then:
    - (3) subject to clause 28.3(b), the Project Owner may, without prejudice to its rights under this Agreement or otherwise:
      - (A) at any time thereafter wholly or partly suspend the Defaulting NOP's portion of any payment due to the NOPs under this Agreement until the Default has been remedied to the reasonable satisfaction of the Project Owner; or
      - (B) terminate this Agreement by notice in writing to the Defaulting NOP and the non-defaulting Participants.
- (b) Where the Project Owner is entitled to exercise its rights under clause 28.3(a)(3) but has not exercised those rights, the Project Owner may, without prejudice to its rights under this Agreement or otherwise, by notice to the Defaulting NOP and the non-defaulting Participants exclude the Defaulting NOP from further participation in the performance of any of the Works, in which case the provisions of clause 28.4 will apply.



- (c) Upon exclusion of the Defaulting NOP from further participation in the performance of any of the Works and this Agreement by notice under this clause 28.3:
- (1) the Defaulting NOP will continue to be and will remain liable in respect of any act or omission of the NOPs or obligation which has accrued prior to the notice under this clause 28.3;
  - (2) subject to clause 28.3(c)(3), the Defaulting NOP will no longer be subject to any obligation under this Agreement the time for performance of which has not accrued prior to the notice under this clause 28.3;
  - (3) the Defaulting NOP will continue to be subject to the requirements of clauses 4.1, 20, 21, 23.1, 23.10, 24, 25, 27, 28.4, 28.5, 28.6, 29, 31, 32 and 37, Schedule 9 to the extent that Schedule 9 applies to Reimbursable Costs already incurred, and Schedule 14; and
  - (4) except as set out in clause 28.3(c)(2), the obligations of a NOP under this Agreement are not affected or discharged by the exclusion of the Defaulting NOP under this clause 28.3 and the non-defaulting Participants acknowledge and agree that they remain liable under this Agreement notwithstanding the discharge of the Defaulting NOP under clause 28.3(c)(2).
- (d) The Project Owner acknowledges and agrees that, prior to exercising any of its rights under this clause 28.3, it must first consult with the non-defaulting NOPs.

## **28.4 Exclusion from further participation in this Agreement**

If the Project Owner excludes the Defaulting NOP from further participation in the performance of any of the Works and this Agreement by notice under clause 28.3:

- (a) clause 29 applies in respect of the Defaulting NOP, as if this Agreement had been terminated;
- (b) the non-defaulting Participants may employ and pay other persons to replace the Defaulting NOP in the performance of the Works and may use all Construction Plant provided by the Defaulting NOP as necessary to perform the Works;
- (c) the Defaulting NOP will, if required by the non-defaulting Participants, promptly assign or novate to the non-defaulting Participants, without payment, the benefit of any agreements for the performance of any part of the Works;
- (d) as and when required by the non-defaulting Participants (and not before), the Defaulting NOP will remove from each Site any Construction Plant and other property provided by the Defaulting NOP. If the Defaulting NOP fails to do so not less than 15 Business Days after written notice to it of the non-defaulting Participants' intention to do so (but without being responsible for any loss or damage), the non-defaulting Participants may remove and/or sell any such Construction Plant or other property;
- (e) the non-defaulting Participants may execute all deeds and documents and will do all such things on behalf of the Defaulting NOP, including making decisions on behalf of the Defaulting NOP's representatives at the ALT, as are necessary to give effect to this clause 28.4; and
- (f) to enable the execution of deeds and documents under 28.4(e), the Defaulting NOP by this Agreement irrevocably authorises any directors, managers or officers of the non-defaulting Participants to act as its attorneys for the purpose of executing deeds and documents and doing all things of that kind. The non-defaulting Participants must act reasonably in the performance of any right permitted under this clause 28.4(f).

## **28.5 Loss and damage**

If:

- (a) the Project Owner elects to terminate this Agreement under clause 28.3(a)(3)(B); or

- (b) the Project Owner elects to exclude the Defaulting NOP under clause 28.3(b), then, notwithstanding clause 5.1, the non-defaulting Participants may recover from the Defaulting NOP any and all losses, damages, costs and expenses suffered by the non-defaulting Participants arising out of any, all or any combination of:
- (c) the Default or non performance;
- (d) any exclusion under this clause 28; or
- (e) termination under this clause 28.

## **28.6 Repudiation**

If one of the Participants repudiates this Agreement, then notwithstanding clause 5.1, nothing in this Agreement prejudices the other Participants' rights to recover damages or to exercise any other right in connection with that repudiation.

## **29 Consequences of termination**

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### **29.1 Work to cease**

If this Agreement is terminated for any reason whatsoever, the Participants must immediately cease the Works.

### **29.2 Consequences of notice of termination**

- (a) Upon termination of this Agreement for any reason whatsoever, the Participants must immediately, to the extent each of the following is applicable, comply with any directions by the Project Owner including and to the extent directed, to:
  - (1) protect property in the possession of the NOPs in which the Project Owner or PTV has or may acquire an interest;
  - (2) demobilise from each Site persons, Construction Plant, vehicles, equipment and other things;
  - (3) assign or novate to the Project Owner all rights and benefits under contracts with Third Parties; and
  - (4) provide the Project Owner with IP Documents and Documentation.
- (b) Without limiting any other obligation of the Participants, where this Agreement is terminated for Default by a NOP, the Participants must provide the Project Owner with possession of all Materials, Construction Plant, vehicles, equipment and other things on each Site or off-Site, which are required by the Project Owner for the purpose of, and for such time as necessary, to make the Works safe.

### **29.3 Works continuation**

Without limiting any other rights of the Participants under this Agreement, if this Agreement is terminated for any reason whatsoever, the NOPs acknowledge and agree that the Project Owner is free to continue with the Works either:

- (a) with entirely new contractors and consultants; or
- (b) on an alliance, conventional contractual or any other basis that the Project Owner may decide,

and the NOPs must do all things and execute all further documents necessary to ensure that the Project Owner is free to continue with the Works in the manner set out in this clause 29.3 within the time period prescribed by the Project Owner.

## 30 Security

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### 30.1 Parent company guarantee

- (a) Each NOP (except MTM) must ensure that a parent company guarantee in respect of that NOP in the form, or substantially the same form acceptable to the Project Owner, set out in Schedule 17 is provided to the Project Owner by no later than 10 Business Days after the date of this Agreement.
- (b) The Project Owner may have recourse to the parent company guarantee in the circumstances contemplated by the parent company guarantee.
- (c) Each NOP (except MTM) must ensure that, from the date of this Agreement until the end of the Term, the parent company guarantee in respect of that NOP is maintained in the terms specified in Schedule 17 and is otherwise kept in full force and effect.
- (d) Any agreement between the provider of a parent company guarantee and the Project Owner with respect to any demands made and amounts paid by the provider to the Project Owner under the parent company guarantee is without prejudice to the Project Owner's right to make continuing claims against the NOP in relation to matters for which the parent company guarantee is provided.
- (e) All costs of establishing and maintaining a parent company guarantee (including any costs incurred if the Project Owner seeks recourse to the parent company guarantee) will be the responsibility of and must be paid by the relevant NOP and will not be Reimbursable Costs.

## 31 Intellectual Property

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### 31.1 Ownership of Pre-existing Intellectual Property

- (a) Ownership of Intellectual Property in any drawings, documents, any other information, samples, models, patterns, ideas, policies, procedures, methods, processes, materials or any other tangible or intangible thing required by this Agreement existing prior to the Commencement Date relating to or connected with the Works (**Pre-existing Intellectual Property Materials**) remains with the Participant who created the Pre-existing Intellectual Property Materials.
- (b) The NOPs grant to the Project Owner, PTV, MTM and each other NOP (as the case may be) an irrevocable, non-exclusive, world-wide, perpetual, transferable, sub-licensable, royalty free licence to use the Intellectual Property in the NOPs' Pre-existing Intellectual Property Materials for:
  - (1) the Works and for any operation, maintenance, upgrade, augmentation, selling or decommissioning of the Project;
  - (2) the purposes of Rail Operations and the operation of each Franchise Business;
  - (3) the purposes of road operations as that term is defined in the *Road Management Act 2004* (Vic); and

- (4) otherwise, only to the extent necessary to use the Intellectual Property Assets (as that term is defined in clause 31.3(a)).
- (c) The Project Owner grants to the NOPs and PTV an irrevocable, non-exclusive, world-wide, perpetual, transferable, sub-licensable, royalty free licence to use the Project Owner's Pre-existing Intellectual Property Materials for the Works and for any operation, maintenance, upgrade, augmentation, selling or decommissioning of the Project.
- (d) PTV grants to the Project Owner and the NOPs for the Term of the Alliance a non-exclusive, personal, sub-licensable, royalty free licence to use PTV's Pre-existing Intellectual Property Materials which are required by the Alliance for the performance of the Works.
- (e) The Participants must do everything necessary to effect the grant of the licences set out in clauses 31.1(b), 31.1(c) and 31.1(d) and the ALT must decide the manner in which any costs associated with that vesting will be borne by the Participants.
- (f) The Project Owner, to the extent it is lawfully able to do so, grants to MTM and PTV a perpetual, non-exclusive, royalty free, transferable (with the ability to grant sub-licences) licence to use the Project Owner's Pre-existing Intellectual Property Materials for the purpose of the Franchise Business or any business similar to the Franchise Business whether conducted by MTM or PTV or any of MTM's or PTV's Related Bodies Corporate.

## 31.2 Enhancements

- (a) Any enhancement, adaptation, change, modification or development of the Intellectual Property in the Pre-existing Intellectual Property (**Enhancements**) will be the property of the Participant that owns the Pre-existing Intellectual Property Materials. Ownership will vest immediately upon the creation of the Enhancement.
- (b) The NOPs grant to the Project Owner, PTV, MTM and each other NOP (as the case may be) an irrevocable, non-exclusive, world-wide, perpetual, transferable, sub-licensable, royalty free licence to use its Enhancements for:
  - (1) the Works and for any operation, maintenance, upgrade, augmentation, selling or decommissioning of the Project; and
  - (2) otherwise, only to the extent necessary to use the Intellectual Property Assets (as that term is defined in clause 31.3(a)).
- (c) The Project Owner grants to the NOPs and PTV an irrevocable, non-exclusive, world-wide, perpetual, transferable, sub-licensable, royalty free licence to use its Enhancements for the Works and for any operation, maintenance, upgrade, augmentation, selling or decommissioning of the Project.
- (d) PTV grants to the Project Owner and the NOPs for the Term of the Alliance a non-exclusive, personal, sub-licensable, royalty free licence to use PTV's Enhancements which are required by the Alliance for the performance of the Works.
- (e) The Participants must do everything necessary to effect the grant of the licences set out in clauses 31.2(b), 31.2(c) and 31.2(d) and the ALT must decide the manner in which any costs associated with that vesting will be borne by the Participants.
- (f) The Project Owner, to the extent it is lawfully able to do so, grants to MTM and PTV a perpetual, non-exclusive, royalty free, transferable (with the ability to grant sub-licences) licence to use the Project Owner's Enhancements for the purpose of the Franchise Business or any business similar to the Franchise Business whether conducted by MTM or PTV or any of MTM's or PTV's Related Bodies Corporate.

## 31.3 Ownership of other Intellectual Property

- (a) Intellectual Property in any:

- (1) drawings, documents, the Final Project Proposal, design, any other information, samples, models, patterns and the like required by this Agreement (including those prepared or created by the NOPs) (**IP Documents**); and
- (2) idea, policy, procedure, method, process, materials or any other tangible or intangible thing first discovered or developed during the course of performing the Works,

created on or after the Commencement Date, by any of the Participants and relating to or connected with the Works (together, the **Intellectual Property Assets**) vests in the Project Owner, and the Project Owner grants to the NOPs an irrevocable, non-exclusive, world-wide, perpetual, transferable, sub-licensable, royalty free licence to use the Intellectual Property Assets for:

- (3) the Works; and
  - (4) any other purpose relating to a NOP's business.
- (b) Each of the Participants must do everything necessary to perfect the vesting set out in clause 31.3(a) and the ALT must decide the manner in which any costs associated with that vesting will be borne between the Participants.
  - (c) Enhancements are not, and will not be deemed to be, Intellectual Property Assets.

### **31.4 Grant of sub-licence**

- (a) Where a NOP is the licensee of any Intellectual Property necessary for the purposes of the use of the Intellectual Property in the Pre-existing Intellectual Property Materials or the Intellectual Property Assets, that NOP must use its best endeavours to obtain for the Project Owner a sub-licence of that Intellectual Property on terms and conditions reasonably acceptable to the Project Owner.
- (b) A request by a NOP to obtain an intellectual property sub-licence for a NOP under clause 31.4(a) must be expressed in writing.
- (c) The ALT must decide the manner in which any costs associated with the sub-licence will be borne by the Participants.

### **31.5 Warranty by Participants**

- (a) The Participants warrant to each other that:
  - (1) they own, or have a licence to use and a right to licence as required by this Agreement, the Intellectual Property in those of the Pre-existing Intellectual Property Materials and Intellectual Property Assets (and anything contributed by them in the preparation of the Pre-existing Intellectual Property Materials and IP Documents), provided by the Participants; and
  - (2) the Pre-existing Intellectual Property Materials and IP Documents and the Works do not infringe any other person's Intellectual Property.

These warranties survive the termination of this Agreement.

### **31.6 Protection of Participants' Intellectual Property**

A Participant must:

- (a) notify the other Participants immediately if it becomes aware of any infringement or potential infringement by a Third Party of any Participant's Intellectual Property; and
- (b) take all timely steps necessary to ensure that its agents, employees and Subcontractors who have access to the Participant's Intellectual Property or any part of it do not use the Participant's Intellectual Property, except under this clause.

## 31.7 Moral rights

If the Participants, in the course of the Works, make use of any work or other subject matter in which copyright subsists, the Participants must procure from every person (whether an employee of a Participant or any Subcontractor or consultant) involved in the creation of that work or subject matter an agreement from that person for the benefit of each Participant and each Government Agency under which that person irrevocably and unconditionally consents to each Participant:

- (a) using, disclosing, reproducing or publishing that work or subject matter anywhere in the world in whatever form each Participant thinks fit as so used, disclosed, reproduced or published; and
- (b) using, disclosing, reproducing or publishing that work or subject matter or any adaptation anywhere in the world without making any identification of that person in relation to the work or subject matter.

## 31.8 Saving

Notwithstanding clause 5.1, a failure by:

- (a) the NOPs to comply with the requirements of this clause confers on the Project Owner; or
- (b) the Project Owner to comply with the requirements of this clause confers on the NOPs, an enforceable right at law or in equity to seek any one of or a combination of specific performance, injunction or damages and, to the extent that any right under a Statutory Requirement might otherwise be excluded this Agreement, any right under that Statutory Requirement.

## 32 Victorian Government policies

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### 32.1 Victorian Industry Participation Policy

- (a) The Project is a strategic project for the purposes of the VIPP. The Project Owner has accepted a draft LID Plan (**Draft LID Plan**) prepared and proposed by the NOPs. A copy of the Draft LID Plan is set out in Final Project Proposal.
- (b) The Participants must:
  - (1) following the date of this Agreement, prepare a final LID Plan which:
    - (A) is consistent with the Draft LID Plan; and
    - (B) contains a percentage of local content which is no lower than that contained in the Draft LID Plan,
  - (2) procure certification by the ICN of the final LID Plan within 3 months of the date of this Agreement (**Final LID Plan**), and maintain such certification until the Final Completion Date;
  - (3) provide the Project Owner with a copy of the certified Final LID Plan promptly after the certification referred to in clause 32.1(b)(2); and
  - (4) implement and comply with:
    - (A) prior to the certification referred to in clause 32.1(b)(2), the Draft LID Plan; and

- (B) after the certification referred to in clause 32.1(b)(2), the Final LID Plan.
- (c) If the Project Owner gives the Participants a direction which involves or necessitates a change to the Final LID Plan (or before the Final LID Plan is certified by the ICN as required by clause 32.1(b)(2), a change to the requirements of the Draft LID Plan), then the Participants must:
- (1) prepare a revised LID Plan in collaboration with and certified by the ICN;
  - (2) provide the Project Owner with a copy of the revised LID Plan promptly after the certification referred to in clause 32.1(c)(1); and
  - (3) procure written agreement to the revised LID Plan from the Project Owner,
- after which the revised LID Plan is the Final LID Plan for the purposes of this Agreement.
- (d) The information contained in the Draft LID Plan or Final LID Plan and the measure of the Participants' compliance with the Draft LID Plan or Final LID Plan may be provided to the Department of Economic Development, Jobs, Transport and Resources to be included in a register of VIPP performance. Such information will be made available to other agencies of the State to be used in assessing other proposals for VIPP purposes.
- (e) The Project Owner will monitor and assess the Participants' performance measured against the VIPP outcomes set out in the Draft LID Plan or Final LID Plan and in assessing the Participants' performance will take into account any issue raised which fairly represents a cause of failure to comply beyond the Participants' reasonable control.
- (f) Each Participant must prepare and maintain records demonstrating its compliance with the Draft LID Plan and Final LID Plan, as applicable.
- (g) Without limiting the Participants' obligations under clause 21.1(a)(9), the ALT must provide an annual report demonstrating the progress of the Participants towards implementing their VIPP commitments. This obligation may be satisfied by submitting to the Project Owner a report in the form of the LIDP Monitoring Tables.
- (h) Within one month of the Date of Project Practical Completion, the ALT must provide to the Project Owner a report in the form of the LIDP Monitoring Tables detailing the Participants' aggregate compliance with and identifying and explain any departures from the Draft LID Plan and Final LID Plan, as applicable.
- (i) Without limiting the Participants' obligations under this clause 32.1:
- (1) the NOPs authorise the Project Owner, the ALT and their representatives and the Victorian Auditor-General, to obtain information from the persons, firms or corporations nominated in the Draft LID Plan or Final LID Plan to confirm compliance with the same; and
  - (2) the audit provisions in clause 21.4 will otherwise apply to any Draft LID Plan or Final LID Plan compliance monitoring and assessment.
- (j) The NOPs acknowledge and accept that the NOPs must:
- (1) when requested by the Project Owner, liaise with the Department of Economic Development, Jobs, Transport and Resources and ICN to determine the percentage of local content of the Final LID Plan; and
  - (2) provide reasonable notice to the Project Owner of an expected change in the percentage of local content.

## **32.2 Information Privacy**

- (a) Each Participant:

- (1) must comply with all Privacy Laws in relation to Personal Information, whether or not the party is an organisation bound by the *Privacy Act 1988* (Cth); and
- (2) agrees to immediately notify the Project Owner when it becomes aware of a breach of clause 32.2(a)(1) by any of their Associates or Subcontractors.

### 32.3 Freedom of Information Act

- (a) The NOPs acknowledge and accept that the Project Owner has obligations under the *Freedom of Information Act 1982* (Vic) in relation to the publication and disclosure of certain documents and provisions and particulars of the Agreement.
- (b) In order to comply with the Project Owner's obligations under the *Freedom of Information Act 1982* (Vic), the NOPs:
  - (1) acknowledge and accept that the documentation within the possession of the Project Owner, whether created by the Project Owner or received by the Project Owner from another party including any NOP in respect of the performance of the Works may be subject to disclosure under the *Freedom of Information Act 1982* (Vic);
  - (2) acknowledge and consent to the Project Owner making available all information in relation to the NOPs or this Agreement as it decides to release, or releases in order to comply with a decision or order of the Victorian Civil and Administrative Tribunal, under the *Freedom of Information Act 1982* (Vic); and
  - (3) must co-operate and comply with any requests from the Project Owner regarding any application under the *Freedom of Information Act 1982* (Vic) to access any documentation within the possession of the Project Owner, whether created by the Project Owner or received by the Project Owner from another party including any NOP in respect of the performance of the Works.
- (c) Possession in this context includes documentation that the Project Owner has an immediate right to possession of, including documents that the Project Owner is entitled to call, request or hold under this Agreement.
- (d) The NOPs acknowledge and accept that PTV has obligations under the *Freedom of Information Act 1982* (Vic) in relation to the disclosure of certain documents and provisions and particulars of the Agreement.
- (e) In order to comply with PTV's obligations under the *Freedom of Information Act 1982* (Vic), the NOPs:
  - (1) acknowledge and accept that the documentation within the possession of PTV, whether created by PTV or received by PTV from another party including any NOP in respect of the performance of the Works may be subject to disclosure under the *Freedom of Information Act 1982* (Vic);
  - (2) acknowledge and consent to PTV making available all information in relation to the NOPs or this Agreement as it may decide to release, or which it releases in order to comply with a decision or order of the Victorian Civil and Administrative Tribunal, under the *Freedom of Information Act 1982* (Vic);
  - (3) must co-operate and comply with any requests from PTV regarding any application under the *Freedom of Information Act 1982* (Vic) to access any documentation within the possession of PTV, whether created by PTV or received by PTV from another party including any NOP in respect of the performance of the Works.
- (f) Possession in this context includes documentation that PTV has an immediate right to possession of, including documents that PTV is entitled to call, request or hold under this Agreement.



### 33.1 Enforcement of liquid assets

The Participants agree that sections 120 and 121(4) of the PPS Act do not apply to this Agreement or the transactions contemplated under this Agreement.

### 33.2 Application of PPS Law

(a) If:

- (1) any of the Participants determine that a PPS Law applies, or will at a future date apply, to any of the Transaction Documents or any of the transactions contemplated by them; and
- (2) in the reasonable opinion of the relevant Participant, the PPS Law:
  - (i) adversely affects or would or may adversely affect the relevant Participant's security position or the rights or obligations of the relevant Participant under or in connection with the Transaction Documents or any of the transactions contemplated by them; or
  - (ii) enables or would enable the relevant Participant's security position to be improved without adversely affecting the other Participants in a material respect,

the relevant Participant may give notice to the other Participants requiring the other Participants to do anything (including amending any Transaction Document or executing any new Transaction Document) that in the relevant Participant's reasonable opinion is necessary to ensure that, to the maximum possible extent, the relevant Participant's security position, and rights and obligations, are not adversely affected as contemplated by clause 33.2(a)(2)(i) (or that any such adverse effect is overcome), or that the relevant Participant's security position is improved as contemplated by clause 33.2(a)(2)(ii).

- (b) The other Participants must comply with the requirements of a notice given by the relevant Participant under clause 33.2(a) within the time stipulated in the notice.
- (c) For the avoidance of doubt, the Project Owner's rights in relation to clause 33.2(a) take precedence in the event of any conflict or inconsistency between the Project Owner's and other Participant's rights under clause 33.2(a).
- (d) The Participants acknowledge that nothing in this clause 33 affects (or will require a Participant to amend any Transaction Document so as to affect) the time at which title in any of the Works, Rail Infrastructure or Road Infrastructure passes in accordance with clauses 14.7 and 20.11(a).

### 33.3 NOP and PTV obligations

- (a) In respect of any Security Interest with a value in excess of \$100,000 which a NOP or PTV acquires under or in respect of the Transaction Documents or any of the transactions contemplated by them, the NOP or PTV (as applicable) must:
  - (1) identify, protect and perfect with the highest priority available that Security Interest; and
  - (2) register that Security Interest in the name of the NOP or PTV (as applicable) immediately upon title in that Works, Rail Infrastructure or Road Infrastructure passing to the NOP or PTV (as applicable);

- (b) For any payment claim which relates to any of the Works, Rail Infrastructure or Road Infrastructure which has:
- (1) been paid for by the NOP or PTV prior to the submission of that payment claim, the NOP or PTV must ensure that prior to submitting that payment claim no Subcontractor or any other person engaged by the NOP or PTV (as applicable) arising out of or in connection with the Agreement or the NOP or PTV (as applicable) has a Security Interest in respect of the relevant Works, Rail Infrastructure or Road Infrastructure in respect of which that payment claim is being made, other than a Security Interest which will be extinguished upon payment to the NOP or PTV; and
  - (2) not been paid for by the NOP or PTV, the NOP or PTV must:
    - (i) comply with clauses 20.11(c), 20.11A(a) and 20.11A(b) (as applicable); and
    - (ii) ensure that the NOP or PTV (as applicable) pays the relevant Subcontractor for those Works, Rail Infrastructure or Road Infrastructure on or before the due date for payment and in accordance with the terms under which payments are to be made under the relevant Subcontract and, upon payment ensure that any Security Interest that the relevant Subcontractor has in respect of those Works, Rail Infrastructure or Road Infrastructure to which the relevant payment relates is extinguished.

### **33.4 Specific obligations**

For the avoidance of doubt:

- (a) the Project Owner intends to register any Security Interest the Project Owner acquires in the Works, Rail Infrastructure or Road Infrastructure immediately upon title in those Works, Rail Infrastructure or Road Infrastructure, passing to the Project Owner in accordance with clause 20.11(a) and the Security Interest arising; and
- (b) the NOPs and PTV must assist the Project Owner to register and / or improve that Security Interest by:
  - (1) removing any Security Interest from the PPS Register which the NOP or PTV (as applicable) previously had in the relevant Works, Rail Infrastructure or Road Infrastructure; and
  - (2) ensuring that all Subcontractors remove any Security Interest from the PPS Register which the Subcontractors previously had in the relevant Works, Rail Infrastructure or Road Infrastructure.

## **34 State Project and State Rail Project**

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### **34.1 MTM – State Project**

- (a) PTV, the Project Owner and MTM agree that:
  - (1) the Project has been nominated as a State Project by PTV for the purposes of the MTM Infrastructure Lease and MTM Franchise Agreement; and
  - (2) the MTM Projects Agreement does not apply to the performance of the Works.
- (b) During the period commencing on the Commencement Date and ending on the Date of Final Completion, PTV will provide MTM with OPR mitigation on the terms and conditions, and in accordance with the procedure, set out in clause 2.12 of Schedule 7 to

the MTM Franchise Agreement for any adverse impacts on Passenger Services (including flow-on effects) caused primarily by the Project.

- (c) MTM will not be entitled to OPR mitigation under Schedule 7 of the MTM Franchise Agreement for any adverse impacts on Passenger Services (including flow-on-effects) caused primarily by the Project to the extent adverse impacts on Passenger Services (including flow-on-effects) are caused or contributed to by any Wilful Default by or Insolvency Event in respect of MTM.
- (d) PTV will, in assessing whether MTM has complied with the requirements of clause 2.12 of Schedule 7 to the MTM Franchise Agreement, take into account MTM's obligations and rights under the Agreement. For the avoidance of doubt, clause 2.12(h) of Schedule 7 of the MTM Franchise Agreement will not apply.

## **34.2 Rail Management Act**

- (a) The Project Owner confirms, and the NOPs acknowledge and agree that their liability to pay any amounts pursuant to the following clauses of this Agreement, are deemed to be a civil penalty provision under section 68 of the *Rail Management Act* 1996 (Vic):
  - (1) clause 24; and
  - (2) Schedule 8: clauses 2 and 3.

## **35 Not used**

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## **36 Notices**

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### **36.1 How and where Notices may be sent**

A notice or other communication under this Agreement (**Notice**) must be in writing and delivered by hand or sent by pre-paid post or fax to a Participant at the address or the fax number for that Participant set out in Schedule 13 or as otherwise specified by a Participant by Notice.

### **36.2 Notices sent by company**

A Notice sent by a company must be signed by a duly authorised officer of the sender.

### **36.3 Email not to be used**

Email or similar electronic means of communication must not be used to give Notices under this Agreement.

### **36.4 When Notices are taken to have been given and received**

- (a) A Notice sent by post is regarded as given and received on the second Business Day following the date of postage.
- (b) A fax is regarded as given and received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety

to the recipient's fax number, unless the recipient informs the sender that the Notice is illegible or incomplete within 4 hours of it being transmitted.

- (c) A Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

## 37 General

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### 37.1 Not used

### 37.2 Governing law and jurisdiction

- (a) This Agreement is governed by the law in force in Victoria.
- (b) Each Participant irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each Participant irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### 37.3 Invalidity and enforceability

If any term or part of this Agreement is or becomes for any reason invalid or unenforceable at law, then in that event, that term or part of this Agreement will be and be hereby deemed to be severed from this Agreement without thereby affecting the remainder of this Agreement and the remainder of this Agreement will continue to be valid and enforceable in all things.

### 37.4 Waiver

No Participant to this Agreement may rely on the words or conduct of any other Participant as a waiver of any right unless the waiver is in writing and signed by the Participant granting the waiver.

In this clause 37.4:

- (a) **conduct** includes delay in the exercise of a right;
- (b) **right** means any right arising under or in connection with this Agreement and includes the right to rely on this clause; and
- (c) **waiver** includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

### 37.5 Amendments

Amendment of this Agreement must be in writing and signed by the Participants.

### 37.6 Entire agreement

This Agreement states all the express terms of the agreement between the Participants in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

### 37.6A Prior services

The Participants agree that:

- (a) any:
  - (1) Services (as that term is defined in the ADA) performed in accordance with the ADA (whether performed before or after the Commencement Date); and
  - (2) Works performed before the Commencement Date with the consent of the Project Owner,are deemed to form part of the Works for the purposes of this Agreement; and
- (b) subject to and in accordance with Schedule 6 (including clause 21(y) of Schedule 6), the cost of performance of the:
  - (1) Services referred to in clause 37.6A(a)(1), to the extent that those Services are performed after the Commencement Date; and
  - (2) Works referred to in clause 37.6A(a)(2),will be treated as a Reimbursable Cost under the Agreement, including for the purposes of calculating the AOC.

### 37.7 Counterparts

This Agreement may be executed in any number of counterparts.

### 37.8 Assignment

A NOP must not, without the Project Owner's prior written approval (which must not be unreasonably withheld), assign, mortgage, novate, charge or encumber this Agreement or any part of it or any right, benefit, money or interest under this Agreement.

### 37.8A Novation by the Project Owner

Each of the NOPs and PTV acknowledges and agrees that:

- (a) if required by the Project Owner, it will do all things necessary to effect a novation of the rights and obligations of the Project Owner and the Owner Participant to the Secretary of the Department of Economic Development, Jobs, Transport and Resources or another Government Agency, including executing a deed of novation in the form required by the Project Owner; and
- (b) the deed of novation referred to in clause 37.8A(a) may necessitate amendments to this Agreement to ensure that the statutory rights, duties, powers and functions of VicRoads are accommodated in the Agreement, which amendments may include:
  - (1) the inclusion of VicRoads as a Participant other than as the Project Owner and Owner Participant;
  - (2) references to VicRoads as the owner of Road Infrastructure; and
  - (3) amendments to facilitate the exercise by VicRoads of its statutory rights, duties, powers and functions, including those contained or referred to in any Statutory Requirement including the:
    - (i) *Road Management Act 2004* (Vic), including that VicRoads may, in relation to any part of the Project determined to be a Designated Road Project (as defined in that Act), become either or both a Coordinating

Road Authority and Responsible Road Authority (as defined in that Act) in respect of municipal roads; and

- (ii) *Road Safety (Traffic Management) Regulations 2009 (Vic).*

### **37.9 Not used**

### **37.10 Change in Control**

- (a) Each NOP (except MTM) must ensure that there is no Change in Control in respect of it or any of the providers of the parent company guarantees to be provided under clause 30.1 without the Project Owner's prior written approval (which must not be unreasonably withheld).
- (b) Subject to clause 37.11 and without limiting clause 37.10(a), in the event of a proposed Change in Control occurring, the relevant NOP must:
  - (1) provide the Project Owner with any documentation or information requested by the Project Owner in respect of the proposed Change in Control (including information in respect of the financial and technical capability of the third party acquiring or exercising control over the relevant NOP); and
  - (2) attend any meetings requested by the Project Owner including arranging for attendance at those meetings by the third party acquiring or exercising control over the relevant NOP.

### **37.11 MTM Change in Control**

- (a) The Participants acknowledge and accept that the MTM Franchise Agreement provides that PTV may terminate the MTM Franchise Agreement in the event of a MTM Change of Control.
- (b) Subject to clause 37.11(c), MTM will provide the Project Owner with reasonable prior notice of any MTM Change in Control.
- (c) Where the MTM Change in Control has occurred as a result of a Change in Control of a corporation listed on a stock exchange, and MTM is unable, or it is not practicable for MTM, to comply with clause 37.11(b), MTM will use its best endeavours to provide the Project Owner with notice of the MTM Change in Control as soon as practicable following the MTM Change in Control.
- (d) MTM will provide the Project Owner with any documentation requested by the Project Owner and attend any meetings (including, where reasonably requested by the Project Owner with any third party acquiring or exercising control over MTM) arising out of or in connection with the MTM Change in Control.
- (e) The Project Owner and MTM acknowledge and accept that in the event of any MTM Change in Control:
  - (1) the Project Owner reserves the power to determine whether to exclude MTM from the Alliance; and
  - (2) notwithstanding clause 8.1(a)(1), the Project Owner is not entitled to exercise its entitlement in clause 37.11(e)(1) if PTV has not exercised its entitlement under clause 22.2 of the MTM Franchise Agreement in the event of a MTM Change in Control.
- (f) MTM agrees that it will use its best endeavours to procure any third party involved in the MTM Change in Control to execute any documentation determined to be required by the Project Owner (which may include an appropriate parent company undertaking or guarantee) to enable the Project Owner to determine whether the MTM Change in

Control will have any prejudicial effect on the Project Owner's interests, the Alliance or the Works.

- (g) In the event of any MTM Change in Control, MTM agrees that it will use its best endeavours to make all necessary administrative arrangements so as to minimise any adverse impact on the Alliance or the Project.
- (h) Any costs incurred by MTM arising out of or in connection with a MTM Change in Control and performing its obligations under this clause 37.11 will not be a Reimbursable Cost.

### **37.12 Termination of MTM Franchise Agreement**

In the event that the MTM Franchise Agreement is terminated, PTV, MTM and the other NOPs must do all things necessary including executing documents, in a form required by the Project Owner, which will effect (as required by PTV) an assignment of MTM's rights or novation of MTM's rights and obligations under the Agreement to PTV (or its nominee).

### **37.13 Confidentiality**

- (a) Subject to clause 37.13(b), the Participants agree that this Agreement, and any information relating to or arising from the Agreement, is confidential, and that they will not disclose the Agreement, or any information relating to or arising from the Agreement, to any person, unless that disclosure or that information:
  - (1) is at the material time in the public domain;
  - (2) is required by any Statutory Requirement to be communicated to a person who is authorised by any Statutory Requirement to receive it;
  - (3) is necessarily made to a court, or to an arbitrator or administrative tribunal or to legal counsel in the course of proceedings provided that, in the case of any arbitration proceedings, the Participant concerned first obtains from each other party to those proceedings an undertaking, enforceable by any Participant, that each party must similarly not divulge or communicate, without the Project Owner's written consent, any information referred to in this clause;
  - (4) is required to be disclosed to any Government Minister, Parliament or Government Agency whether in connection with the granting of any licence or otherwise (including VicTrack in its role as custodian of strategic rail assets);
  - (5) is to a servant, employee, agent or contractor of the Participants, when that disclosure is reasonably necessary for the conduct of this Agreement;
  - (6) is to a Related Body Corporate of the Participants;
  - (7) the Project Owner or PTV may decide to release, or which either the Project Owner or PTV release in order to comply with a decision or request by the Freedom of Information Commissioner or a decision or order of the Victorian Civil and Administrative Tribunal under the *Freedom of Information Act 1982* (Vic);
  - (8) the Project Owner or PTV decide to release information to the IBAC Commissioner or the Victorian Inspector;
  - (9) is to any successor operator, or potential successor operator as determined or nominated by PTV, of metropolitan rail services, or any bidder participating in a tender process for the engagement of an operator of metropolitan rail services;
  - (10) is necessary to comply with any approved policy guidelines of the State (including the VIPP);
  - (11) was consented to in writing by each of the other Participants; or

- (12) is required to be disclosed to the Australian Stock Exchange Limited (ABN 98 008 624 691).
- (b) The Project Owner may determine to publish or disclose (on the internet or otherwise):
- (1) a brief description of the Project;
  - (2) the names of the Participants;
  - (3) the terms of the Agreement;
  - (4) any documentation arising out of or in connection with the Agreement; and
  - (5) any other information that the Project Owner determines to publish or disclose,
- except to the extent that the Project Owner determines, after consultation with the relevant Participant, any such documentation is commercial-in-confidence or financially sensitive.
- (c) Notwithstanding clause 5.1, a failure by a Participant to comply with the requirements of this clause confers on the other Participants an enforceable right at law or in equity to seek any one of or a combination of specific performance, injunction or damages and, to the extent that any right under a Statutory Requirement may be excluded by this Agreement, under that Statutory Requirement.

#### **37.14 Relationship of the Participants**

- (a) Nothing in this Agreement gives a Participant authority to bind any other Participant in any way.
- (b) Each Participant is an independent entity and for the purposes of this Agreement, the employees, agents and Subcontractors of a Participant will not be deemed to be employees, agents or Subcontractors of another Participant. Each Participant must pay all costs associated with its employees.
- (c) This Agreement, or the alliance relationship created by it, is not intended to create, nor will it be construed as creating, any partnership, joint venture or fiduciary obligation with regard to, or as between, the Participants.

#### **37.15 Corporate power and authority**

Each Participant represents and warrants to the others that it has full power to enter into and perform its obligations under this Agreement and that when executed it will constitute legal, valid and binding obligations under its terms.

#### **37.16 Financial difficulties**

A Participant must immediately notify the other Participants in writing if it forms the opinion that it will be unable to, or be unlikely to be able to, satisfy any of its financial obligations in relation to this Agreement from the financial resources available, or likely to be available to it, at the time the financial obligation is due.

#### **37.17 Project Owner's and PTV's statutory functions**

Nothing contained in or implied by this Agreement or any document contemplated by this Agreement has the effect of constraining:

- (a) the Project Owner's or PTV's, or placing any fetter on the Project Owner's or PTV's, statutory rights, duties, powers and functions, including those contained or referred to in any Statutory Requirement; and



- (b) the Auditor-General for the State of Victoria or placing any fetter on its statutory rights, duties, powers and functions.

### **37.18 Survival**

Clauses 4.1, 5, 20, 21, 23.1, 23.10, 24, 25, 27, 28.4, 28.5, 28.6, 29, 31, 32 and 37, Schedule 9 to the extent that Schedule 9 applies to Reimbursable Costs already incurred, and Schedule 14, survive the termination of this Agreement.

### **37.19 Costs**

Each Participant must pay its own costs and disbursements in connection with the negotiations, preparation and execution of this Agreement, which costs will not be Reimbursable Costs.

### **37.20 Stamp duty**

- (a) The NOPs must pay any stamp duty in respect of the execution, delivery and performance of this Agreement.
- (b) Stamp duty referred to in clause 37.20(a) is not a Reimbursable Cost.

# Schedules

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## Schedules

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# Schedule 1

## Schedule 1 – Agreement Particulars

No.	Reference	Description	Particular
1	Clause 1.1	Date for Practical Completion	In respect of Separable Portion 1: 30 June 2016.  In respect of Separable Portion 2: 30 June 2017.  In respect of Separable Portion 3: 30 June 2017.  In respect of Separable Portion 4: 30 June 2017.
2	Clause 1.1	Defects Correction Period	a period of 2 years commencing from the Date of Practical Completion.
3	Clause 1.1	Project Owner	VicRoads, being the client for the performance of the Works.
4	Clause 1.1	Request for Proposal	Each of: <ul style="list-style-type: none"> <li>the request for proposals to form an alliance to carry out the Project and perform the Works in respect of Separable Portions 1 and 2, issued by the Project Owner on 24 October 2014; and</li> <li>the request for proposals to form an alliance to carry out the Project and perform the Works in respect of Separable Portions 3 and 4, issued by the Project Owner on 3 February 2015,</li> </ul> as amended or supplemented from time to time.
5	Clause 1.3(b)	The Project Owner's representative under this Agreement as at the date of this Agreement	Chief Operating Officer, VicRoads
6	Clause 6.1(b)	The representatives on the ALT as at the date of this Agreement	<b>Owner Participant</b>  <b>PTV</b>  <b>MTM</b>  <b>John Holland</b>  <b>KBR</b> 

7	Clause 6.5(b)	Alternative ALT representatives	<b>Owner Participant</b> ██████████ <b>PTV</b> ██████████ <b>MTM</b> ██████████ <b>John Holland</b> ██████████ <b>KBR</b> ██████████
8	Clause 9.1	The Alliance Manager as at the date of this Agreement	██████████
9	Clause 20.11A(a)	Subcontract amount	\$5,000,000

## Schedule 2 – Alliance Charter

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### 1 Alliance Principles

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The Alliance Principles are:

- (a) all Participants win, or all Participants lose, based on achieved project outcomes. Win-lose outcomes are not acceptable;
- (b) we will achieve MCOS Performance for each KRA;
- (c) Participants have a peer relationship where each Participant has an equal say in decisions of the ALT;
- (d) subject to the terms of this Agreement, risks and responsibilities are shared and managed collectively by the Participants, rather than allocated to individual Participants;
- (e) disputes are avoided by adopting a no blame culture;
- (f) risks and rewards are shared among Participants;
- (g) Participants provide 'best-in-class' resources;
- (h) Participants act consistently according to these Alliance Principles;
- (i) Participants are committed to developing a culture that promotes and drives collaboration, innovation and outstanding performance;
- (j) the Participants empower the ALT and the AMT to make decisions and take actions under this Agreement;
- (k) all financial and commercial transactions are fully open book;
- (l) Participants are committed to developing a 'communication culture' and being transparent in all of their dealings with each other;
- (m) Participants share all information in accordance with this Agreement and do not hold back ideas;
- (n) communication between all Participants is open, straight and honest so as to enable informed decision making;
- (o) each Participant is committed to ensuring that each other Participant understands any documentation prepared in respect of the Project;
- (p) we will require ethical and responsible behaviour at all times;
- (q) learnings of the Participants are identified and shared and capability is developed; and
- (r) decisions are made, and processes and systems are adopted, on a Best For Project basis, subject to the Project Owner's determinations.

## 2 Alliance Purpose

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The primary purpose of the Project is to achieve the VfM Statement.

## 3 Alliance Objectives

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The Alliance Objectives are:

(a) Project benefits

The provision of an infrastructure solution which delivers the following project benefits:

Project Benefits	Burke Road	North Road	McKinnon Road	Centre Road
More efficient road/transport network	✓	✓	✓	✓
More efficient public transport network	✓		✓	✓
Safety	✓	✓	✓	✓

(b) Cost performance

- Minimisation of the long term operational and maintenance costs to be a key consideration in decisions made by the Alliance
- Achieve positive environmental sustainability outcomes
- Clear demonstration of best value for the investment (delivering the Project benefits at the lowest cost)
- Target Outturn Cost (TOC) within budget allowance
- Delivery to the TOC or better whilst achieving other cost objectives

(c) Time performance

- Delivery of Burke Road, Glen Iris by mid 2016
- All work complete in 2017
- Progressive completion to enable earliest possible delivery of project benefits

(d) Quality outcomes

- The design aligns with the objectives for the local area to complement or provide opportunities for enhancement, including opportunities for future value capture
- The design considers and provides for a positive user experience.

Schedule 3 – Responsibilities Matrix

1 ALT Responsibilities Matrix

Alliance Leadership Team				
Accountable for:		As tested by:	Responsible for the completion of the following tasks:	
1	Development and deployment of the Alliance Charter for the Alliance.	<ul style="list-style-type: none"> <li>Creation of the Alliance Charter.</li> </ul>	1.1	Create vision purpose for the Alliance.
			1.2	Align on the governing Alliance Principles.
			1.3	Deploy and sign off on Alliance Purpose, Alliance Principles and Alliance Objectives, and working together commitments.
			1.4	Develop strategy to deploy strategic framework throughout the Alliance.
2	Deployment of a transparent governance framework across the Alliance.	<ul style="list-style-type: none"> <li>Creation of Alliance systems and controls.</li> </ul>	2.1	Endorsement of Alliance organisational structures.
			2.2	Preparation of job description of Alliance Manager.
			2.3	Appointment of Alliance Manager.



Alliance Leadership Team			
Accountable for:	As tested by:	Responsible for the completion of the following tasks:	
		2.4	Performance management of Alliance Manager.
		2.5	Endorsement of job descriptions of Alliance Manager and AMT members.
		2.6	Endorse succession plans for key functions.
		2.7	Establish ALT modus operandi (including meeting, management and leadership protocols).
		2.8	Approve limits of delegation and authority for Alliance Manager and AMT.
		2.9	Endorse Alliance issue escalation and decision making processes.
		2.10	Resource the deployment of the management systems plans and controls necessary for the Alliance to achieve MCOS Performance.
		2.11	Endorse management system.
		2.12	Approve the Alliance management plans, systems and controls.
		2.13	Initiate internal and third party management system audits, review reports and act on findings.
3	Delivery and performance of obligations under PAA.	• Audit against PAA checklist.	3.1 Monitor Alliance performance against checklist.

Alliance Leadership Team				
Accountable for:		As tested by:	Responsible for the completion of the following tasks:	
4	The Alliance achieving MCOS Performance or better.	<ul style="list-style-type: none"> <li>Performance against KRAs.</li> </ul>	4.1	Maintain team focus on KRAs.
			4.2	Adopt the reporting requirements required by the Project Owner.
5	Ensuring that reporting to the Project Owner is timely, accurate and comprehensive.	<ul style="list-style-type: none"> <li>Audit against reporting.</li> <li>Feedback from the Project Owner's Representative.</li> </ul>	5.1	Ensure Alliance reporting meets the Project Owner's reporting requirements.
			5.2	Monitor the Project Owner's satisfaction with reporting and respond to assure satisfaction.
6	Structuring and resourcing the Alliance so as to be able to achieve MCOS Performance in respect of all KRAs.	<ul style="list-style-type: none"> <li>Organisation charts.</li> <li>People in position.</li> <li>Job Descriptions.</li> </ul>	6.1	Endorse organisational structures changes across the Project lifecycle.
			6.2	Develop principles of selection, succession and access to people.
			6.3	Ensure that Best For Project resources are provided to meet the demands of the manning plan and curve.
7	Ensuring all ALT decision making is unanimous.	<ul style="list-style-type: none"> <li>Audit of minutes of ALT meetings.</li> </ul>	7.1	Endorse which issues require resolution/decision by ALT.
			7.2	Document outcomes of ALT issues resolution and decision making.

Alliance Leadership Team			
Accountable for:	As tested by:	Responsible for the completion of the following tasks:	
8	Creating and sustaining a culture necessary to achieve Exceptional Performance in respect of all KRAs.	<ul style="list-style-type: none"> <li>Alliance health checks and surveys.</li> </ul>	8.1 Monitor health of Alliance and act on any health issues.
9	Implementation of the Project Owner's directions under the PAA.	<ul style="list-style-type: none"> <li>Feedback from the Project Owner</li> <li>Compliance.</li> </ul>	9.1 Define ALT leadership style and its practical application in Project delivery (include in modus operandi – see 2.7 of this Schedule above).
10	Providing the leadership necessary for the Alliance to achieve MCOS Performance in respect of all KRAs.	<ul style="list-style-type: none"> <li>Performance against KRAs.</li> <li>Alliance Manager and AMT feedback.</li> </ul>	10.1 Obtain feedback from Alliance Manager and AMT on ALT leadership performance.
11	Ensuring that all actions, decisions and behaviours are consistent with Alliance Principles.	<ul style="list-style-type: none"> <li>Alliance Health Check.</li> <li>ALT self and third party assessments against strategic framework.</li> </ul>	11.1 Develop ALT behavioural checklist (include in modus operandi – see 2.7 of this Schedule above).
			11.2 Establish and deploy ALT health check process and plan.
			11.3 Deployment of Alliance Principles.

## 2 Alliance Manager Responsibilities Matrix

Alliance Manager			
Accountable for:	As tested by:	Responsible for the completion of the following tasks:	
<p>1 Deployment of the Alliance Charter of Alliance Principles, Alliance Objectives and Alliance Purpose throughout the Alliance, such that Alliance team members at all levels of the Alliance (including sub-contractors) understand the elements of the Alliance Charter and their part in its delivery.</p>	<ul style="list-style-type: none"> <li>• Display of Alliance Charter across the Site.</li> <li>• Feedback from Alliance team members.</li> </ul>	1.1	Display prominently elements of Alliance Charter at all Alliance worksites.
		1.2	Inclusion of Alliance Charter in inductions.
		1.3	Integrate Alliance Charter in job descriptions.
		1.4	Monitoring performance of the Alliance against Alliance Charter.
<p>2 Development, endorsement and implementation of the organisational structure.</p>	<ul style="list-style-type: none"> <li>• Organisational structure.</li> </ul>	2.1	Develop organisational structure and update to reflect changes.
		2.2	Develop manning plans in accordance with organisational structures and schedule.
		2.3	Resource the team according to the manning plan.
<p>3 Development and deployment of AMT and AMT member job</p>	<ul style="list-style-type: none"> <li>• Job descriptions.</li> </ul>	3.1	Develop job descriptions for AMT members.
		3.2	Performance management of AMT members.

Alliance Manager				
Accountable for:	As tested by:	Responsible for the completion of the following tasks:		
descriptions.				
4	Development and deployment of a performance management process for the WPT.	<ul style="list-style-type: none"> <li>Performance management process.</li> </ul>	4.1	Develop performance management process.
			4.2	Ensure performance management process is deployed.
5	Establishing succession plans for key members of the AMT and WPT.	<ul style="list-style-type: none"> <li>Succession plan.</li> </ul>	5.1	Develop succession plans for AMT members and critical discipline leads and supervisors.
			5.2	Develop succession plans for critical discipline leads and supervisors.
			5.3	Endorse succession plans.
6	Development and effective deployment of Alliance issue escalation and decision making processes.	<ul style="list-style-type: none"> <li>Issue resolution and escalation protocol.</li> <li>Audit of issue resolution.</li> </ul>	6.1	Develop issue escalation and decision making protocol.
			6.2	Deploy protocol (e.g. include in inductions etc).
			6.3	Test use of protocol.
7	Deployment of management systems appropriate to the delivery of outstanding outcomes	<ul style="list-style-type: none"> <li>System audit.</li> </ul>	7.1	Identify and select the management system most appropriate to KRA delivery.
			7.2	Ensure the management system is capable of integration with the Project Owner's systems.

Alliance Manager			
Accountable for:	As tested by:	Responsible for the completion of the following tasks:	
in all KRAs across the Alliance.		7.3	Deploy the management system across the Alliance.
		7.4	Train Alliance team members in system use.
		7.5	Monitor system compliance.
8 Development and deployment of management plans appropriate to the delivery of outstanding outcomes in all KRAs.	<ul style="list-style-type: none"> <li>Management plans.</li> <li>Audit of plans.</li> </ul>	8.1	Development of management plans.
		8.2	Deploy plans.
		8.3	Monitor plan compliance.
9 Development and deployment of a reporting regime to meet ALT and the Project Owner's needs.	<ul style="list-style-type: none"> <li>Alliance (monthly) report.</li> </ul>	9.1	Ensure reports meet the Project Owner's and the ALT's needs.
		9.2	Develop reports for ALT meetings.
		9.3	Present reports at ALT meetings.
		9.4	Amend reports based on ALT feedback.
10 Ensuring that the relevant obligations of the Alliance Manager and AMT are delivered.	<ul style="list-style-type: none"> <li>Compliance with PAA.</li> </ul>	10.1	Deliver Alliance Manager obligations.
		10.2	Deliver AMT obligations.
		10.3	Monitor and report on delivery of Alliance Manager and AMT obligations.

<b>Alliance Manager</b>				
<b>Accountable for:</b>		<b>As tested by:</b>	<b>Responsible for the completion of the following tasks:</b>	
11	Establishment, deployment and reporting of KRAs, performance spectrum and measurement methodologies for Alliance performance in KRAs.	<ul style="list-style-type: none"> <li>KRA reports.</li> </ul>	11.1	Collate and analyse and display and report performance data.
			11.2	Act on performance data.
12	The Alliance team maintaining its focus on achieving targets in all KRAs endorsed by the ALT, over the life of the project.	<ul style="list-style-type: none"> <li>Performance in KRAs.</li> </ul>	12.1	Establish performance in KRAs on meeting agendas at all levels of the organisation.
			12.2	Obtain personal commitments to contribute to KRA delivery.
			12.3	Recognise and reward commitments to contribute.
13	Development and deployment of a 'culture development and maintenance plan' that supports the delivery of the Project across the Alliance.	<ul style="list-style-type: none"> <li>Culture development and maintenance plan.</li> </ul>	13.1	Develop culture development and maintenance plan.
			13.2	Deploy culture development and maintenance plan.
			13.3	Monitor compliance with plan and act accordingly.
14	The AMT and WPT being led in a manner consistent with the ALT defined leadership philosophy and	<ul style="list-style-type: none"> <li>Feedback from ALT, AMT and WPT.</li> </ul>	14.1	Develop and model leadership behaviours consistent with the Alliance strategic framework and leadership philosophy.
			14.2	Coach and mentor and monitor AMT leadership behaviours.

Alliance Manager			
Accountable for:	As tested by:	Responsible for the completion of the following tasks:	
appropriate to the team maintaining its focus on achieving outstanding outcomes in all KRAs.			
15 Timely communication of information relevant to the performance of the Project to all project personnel.	<ul style="list-style-type: none"> <li>Feedback from project personnel.</li> </ul>	15.1	Dissemination of relevant information from ALT to AMT and the WPT.
		15.2	Development of internal communications strategy and plan for the Alliance and its sub-contractors.
		15.3	Deployment of the internal communications strategy and plan.
		15.4	Monitor feedback from team and act accordingly.
16 The Commercial Framework and Reward model is modelled and tested and the Reward establishment protocol established.	<ul style="list-style-type: none"> <li>Measure and test to be developed.</li> </ul>	16.1	Test and model Reward arrangements in a number of scenarios.
		16.2	Provide Reward calculations to ALT according to PAA schedule.
		16.3	Disseminate relevant information about the Reward model across the Alliance.
		16.4	Integrate Alliance Charter in job descriptions.
		16.5	Monitoring performance of the Alliance against Alliance Charter.



### 3 AMT Responsibilities Matrix

Alliance Management Team				
Accountable for:		As tested by:	Responsible for the completion of the following tasks:	
1	Prominent display of the Alliance's Alliance Charter at the Site.	<ul style="list-style-type: none"> <li>Site observation.</li> </ul>	1.1	Production of Alliance Charter documents.
			1.2	Display of Alliance Charter at sites.
2	Inclusion of the Alliance's Alliance Charter at all inductions.	<ul style="list-style-type: none"> <li>Induction material.</li> </ul>	2.1	Develop induction package.
			2.2	Deliver inductions.
3	Integration of the Alliance's Alliance Charter into job descriptions of all Alliance personnel.	<ul style="list-style-type: none"> <li>Job descriptions.</li> </ul>	3.1	Develop job descriptions for each member of the Alliance (in this format – accountabilities, responsibilities format).
			3.2	Manage individual performance against job descriptions and act accordingly.
4	Development of manning/resource plans in alignment with organisational structure, and then implementing the plans.	<ul style="list-style-type: none"> <li>Manning plan.</li> </ul>	4.1	Develop initial manning plan.
			4.2	Update manning plan as appropriate.
			4.3	Identify resource needs and gaps.

Alliance Management Team				
Accountable for:		As tested by:	Responsible for the completion of the following tasks:	
5	Deployment of job descriptions for AMT members.	<ul style="list-style-type: none"> <li>AMT member job descriptions.</li> </ul>	5.1	Set first performance management review meeting.
6	Development of performance management process.	<ul style="list-style-type: none"> <li>Performance management procedure.</li> </ul>	6.1	Develop performance management process.
			6.2	Gain endorsement from Alliance Manager.
			6.3	Post-endorsement, deploy performance management process with their team.
7	Development of succession plans for critical discipline leads and supervisors.	<ul style="list-style-type: none"> <li>Succession plans.</li> </ul>	7.1	Develop succession plans.
			7.2	Gain endorsement from Alliance Manager.
			7.3	Deploy succession plans as needed.
8	Development and deployment of an issue escalation and decision making protocol for the Alliance.	<ul style="list-style-type: none"> <li>Issue escalation and decision making protocol.</li> </ul>	8.1	Develop issue escalation and decision making protocol.
			8.2	Gain endorsement from Alliance Manager.
			8.3	Deploy issue escalation and decision making protocol in inductions and display at the Site.
9	The management system	<ul style="list-style-type: none"> <li>Operating management</li> </ul>	9.1	Identify and select management systems.

Alliance Management Team			
Accountable for:	As tested by:	Responsible for the completion of the following tasks:	
most appropriate to KRA delivery is selected and deployed across all Alliance Sites.	systems.	9.2	Check ability of management systems to integrate with the Project Owner's systems.
		9.3	Gain endorsement of management systems by Alliance Manager.
		9.4	Deploy management systems across all Alliance Sites.
10 Ensuring training of Alliance team members in use of the management system.	<ul style="list-style-type: none"> <li>Training register.</li> </ul>	10.1	Conduct training needs analysis.
		10.2	Develop training modules and materials.
		10.3	Produce training plan.
		10.4	Train people to plan.
11 Development and deployment of management plans necessary to deliver the Project.	<ul style="list-style-type: none"> <li>Management plans cover KRAs and all other aspects of the Project.</li> </ul>	11.1	Develop management plans format.
		11.2	Gain endorsement of management plan format.
		11.3	Develop management plans.
		11.4	Gain endorsement of management plans by Alliance Manager or ALT (through Alliance Manager).
		11.5	Deploy management plans.

Alliance Management Team				
Accountable for:	As tested by:	Responsible for the completion of the following tasks:		
		11.6	Report on management plan/s delivery.	
		11.7	Develop management plan audit schedule.	
12	Producing accurate, complete and timely sections for ALT monthly report.	<ul style="list-style-type: none"> <li>Quality and timeliness of ALT report section.</li> <li>Alliance Manager and ALT feedback.</li> </ul>	12.1	Develop draft and final sections of monthly alliance management report to ALT.
			12.2	Amend reporting based on Alliance Manager/ALT feedback.
13	Production of PAA obligations and check sheet, and delivery of AMT obligations.	<ul style="list-style-type: none"> <li>Obligations check sheet.</li> </ul>	13.1	Review PAA.
			13.2	Identify and record obligations of ALT, Alliance Manager, AMT and other on checklist.
			13.3	Gain endorsement of checklist from Alliance Manager.
			13.4	Deliver and report on delivery of AMT member and other obligations.
			13.5	Collate and analyse and display and report performance data.
14	Obtaining personal commitments to contribute to KRA delivery from all	<ul style="list-style-type: none"> <li>Personal commitments register.</li> </ul>	14.1	Include 'personal commitment' section in inductions.
			14.2	Produce personal commitments register.

Alliance Management Team			
Accountable for:	As tested by:	Responsible for the completion of the following tasks:	
Alliance personnel.		14.3	Review personal commitments in team meetings and reset as delivered.
		14.4	Update personal commitments register.
15 Development and deployment of a culture development and maintenance plan.	<ul style="list-style-type: none"> <li>Culture development and maintenance plan.</li> <li>Culture surveys (Alliance health &amp; climate surveys).</li> </ul>	15.1	Gain endorsement of Alliance peak performance plan by ALT.
		15.2	Deploy of Alliance peak performance plan.
		15.3	Report outcomes of Alliance peak performance plan.
16 Development and deployment of an internal communications strategy and plan for the Alliance and its sub-contractors.	<ul style="list-style-type: none"> <li>Internal communications strategy and plan.</li> <li>Culture surveys.</li> </ul>	16.1	Gain endorsement of internal communications strategy and plan by Alliance Manager/ALT.
		16.2	Deploy internal communications strategy.
		16.3	Collect, analyse and report data on effectiveness of internal communications strategy and plan.

## Schedule 4 – NOP Key Personnel

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The following persons are nominated as the NOPs' Key Personnel for the purposes of the Agreement:



Schedule 5 – VfM Statement

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## Schedule 6 – Reimbursable Costs

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Subject to clauses 20 and 21 of this Schedule 6, Reimbursable Costs are those costs and expenses which are both:

- (a) reasonably and actually incurred by the Participants in connection with the Works (excluding any corporate overhead component not specific to the Works and any profit or mark up of any kind); and
- (b) described in clauses 1 to 19 of this Schedule 6, or which this Agreement otherwise expressly provides will be Reimbursable Costs.

It is a fundamental underlying principle of this Agreement that, except for the Corporate Overhead and Profit, no Participant will derive any mark up, overhead, profit or unreasonable advantage from the utilisation of their resources for the Works.

### 1 Labour, staff and supervision

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The actual cost of labour employed by a Participant and assigned to the AMT and WPT for the performance of the Works will be Reimbursable Costs, determined in accordance with clauses 1.1 to 1.3 of this Schedule 6.

#### 1.1 Non-Wages Personnel costs and expenses

- (a) The Reimbursable Costs in respect of Non-Wages Personnel for NOPs will be calculated as follows:

$$\text{Reimbursable Costs for Non-Wages Personnel} = \sum (\text{Chargeable Rate } \{i, j\} \times \text{Applicable RCM } \{j\} \times \text{Actual Hours } \{i, j\}),$$

where:

- (1) Chargeable Rate  $\{i, j\}$  is determined using Table 1 to this Schedule 6 for the relevant Non-Wages Personnel category, subject to clause 1.10 of this Schedule 6;
- (2) Applicable RCM is the multiplier specified in Table 2 to this Schedule 6 for the relevant Non-Wages Personnel category; and
- (3) Actual Hours  $\{i, j\}$  is, for all Non-Wages Personnel categories except for overtime, the actual number of hours that each Non-Wages Personnel  $\{i\}$  under the Non-Wages Personnel category  $\{j\}$  spent performing the Works to a maximum of [REDACTED] hours per week and [REDACTED] hours per annum, and for overtime is the number of actual overtime hours spent in performing the Works as approved by the ALT. For the purposes of this clause 1.1 of this Schedule 6, a reference to a 'week' is a rolling period of seven consecutive days.



**Table 1 – Chargeable rates**

██████████

(b) Salary increases in excess of ██████████% per annum from the date of the issue of the first RFP to be issued will not be Reimbursable Costs unless approved by the ALT on a value for money basis.

**Table 2 – RCM**

Reimbursable Cost Multiplier			
	MTM	John Holland	KBR
Full-Time Staff	██████████	██████████	██████████
Casual Staff	██████████	██████████	██████████
Contract Staff	██████████	██████████	██████████
Temporary Staff	██████████	██████████	██████████
Allowances	██████████	██████████	██████████
Overtime	██████████	██████████	██████████

(c) The RCMs specified in Table 2 to this Schedule 6 are, unless otherwise determined by the Project Owner, fixed for the Term and have been calculated on the basis of the following principles:

(1) the employment-related on-costs incorporated into the RCM have been calculated, in part, by reference to payment of the following allowances or expenses:

██████████

(2) the RCMs for Allowances are limited to the recovery of an accrual for:

██████████

(3) the RCMs for Casual Staff are limited to the recovery of an accrual for:

██████████; and

(4) the RCM for overtime is limited to the recovery of an accrual for:

██████████.

**1.2 Wages Personnel**

The Reimbursable Costs in respect of Wages Personnel for NOPs will be calculated in accordance with:

(a) the relevant industrial instrument or agreement by which a Wages Personnel person is employed by a Participant, as validated by a financial auditor appointed by the Project Owner; or

(b) any relevant policies approved by the ALT (including those referred to in clause 20 of this Schedule 6).



### 1.3 Owner Participant and PTV

The Reimbursable Costs for personnel costs in respect of the Owner Participant and PTV will be the actual personnel costs of VicRoads and PTV, calculated on a basis which is consistent with the basis of the calculations used to develop the TOC.

## 2 MTM

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### 2.1 MTM Shared Direct Costs

MTM is entitled under the MTM Projects Agreement to reimbursement of MTM Shared Direct Costs.

Actual MTM Shared Direct Costs will be Reimbursable Costs to the extent that the actual MTM Shared Direct Costs are attributable to the Project.

MTM Shared Direct Costs have been agreed between MTM and PTV, prior to the date of the Agreement, and incorporated into the TOC. The proportion of the actual MTM Shared Direct Costs attributable to the Project will be determined in accordance with that agreement.

The amount to be recovered by MTM for the MTM Shared Direct Costs will be subject to audit and reconciliation.

### 2.2 Other Reimbursable Costs

Notwithstanding clause 21 of this Schedule 6, costs and expenses in respect of:

- (a) recruitment;
- (b) training;
- (c) medical examinations specific to recruitment and training for alliance work;
- (d) tools of trade; and
- (e) bonus payments (to the extent that an amount for bonus payments has been incorporated into the RCMs applicable to MTM),

will be Reimbursable Costs on the basis that MTM is entitled under the MTM Projects Agreement to reimbursement of those costs and expenses.

## 3 Taxes, fees and charges

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- (a) Except as otherwise determined by the ALT, all taxes, duties, excises, levies, assessments and other charges of any kind levied by any Authority on, or in connection with, the Works will be a Reimbursable Cost.
- (b) All fringe benefits tax benefits or related benefits:
  - (1) must be transparent and disclosed to the Project Owner; and

- (2) which are beyond reasonable benefit limits must be approved by the Project Owner.
- (c) Any Participant who has obtained a benefit from the receipt of a research and development tax concession in the performance of the Works must share the benefit of the research and development tax concession with the Participants.

## 4 Legal expenses

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- (a) Subject to clause 4(b) of this Schedule 6, all reasonable costs paid in defending or prosecuting lawsuits or claims (including payment of judgments, awards, orders, damages, restitution, compensation or interest) arising out of or in connection with the Works (but excluding costs, payment of judgments, awards, orders, damages, restitution, compensation or interest incurred or suffered in relation to issues between the Participants as contemplated in clause 5.3 of this Agreement), or any reasonable legal costs otherwise necessary or expedient for the Works other than legal services used in the preparation, negotiation or execution of this Agreement, will be Reimbursable Costs.
- (b) Any cost referred to in clause 4(a) of this Schedule 6 will only be a Reimbursable Cost if it is incurred by a Participant in accordance with the:
  - (1) procedures and protocols agreed by the ALT; and
  - (2) prior written approval of the ALT.

## 5 Subcontractors and consultancies

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The cost of Subcontract works and services (including consultancy services) and the provision of equipment and utilities in connection with Works from sources other than the Participants will be Reimbursable Costs.

## 6 Materials

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The following will be Reimbursable Costs:

- (a) cost of Materials purchased by any of the Participants for the Works, including Materials purchased for research and development directly related to the Works; and
- (b) cost of the disposal of Materials not required for the purposes of performing the Works.

## 7 Participant facilities

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The costs of the use of on-Site and off-Site Construction Plant provided for the Works will be Reimbursable Costs. These costs will be allocated on a basis determined by the ALT if the Construction Plant in question is also used for purposes other than the Works.

## 8 Training and Inductions

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All Alliance-specific training costs and the cost of Site inductions (including occupational health and safety inductions) agreed or recommended by the ALT will be Reimbursable Costs.

## 9 Mobilisation and de-mobilisation

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The cost, as approved by the ALT, of mobilising and de-mobilising the AMT and WPT to the Site and all relevant Site accommodation in accordance with the mobilisation policy determined by the ALT will be a Reimbursable Cost.

Establishment, maintenance and operation of the Site, any site accommodation, warehousing or other facilities, including all transportation facilities, utilities, consumables and dedicated telecommunications services and the like, incurred by a Participant necessary to perform the Works will be a Reimbursable Cost.

## 10 Participants' Construction Plant

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(a) Subject to clauses 10(b) and 10(c) of this Schedule 6, the actual cost of Construction Plant and temporary works, including:

- (1) craneage;
- (2) scaffolding and access;
- (3) Site vehicles;
- (4) concrete placing plant;
- (5) general small tools;
- (6) the supply, installation and miscellaneous (eg. freight) costs of mechanical equipment; and
- (7) any additional equipment for testing,

on an audited actual cost basis – avoiding 'profit on profit' or 'fee on fee' – provided or supplied by a Participant to perform the Works, on a basis and at rates agreed to by the ALT prior to their provision to the Alliance or use on the Site or the Works, will be a Reimbursable Cost.

(b) All equipment, small plant and hardware valued at over \$1000 must be maintained on an Alliance asset register. Subject to clause 20.11, all small plant and equipment procured by the Participants for the performance of Works shall be procured on behalf of the Project Owner and title in all such plant and equipment shall vest in the Project Owner.

(c) The hire rate to the Project for all Participant owned Construction Plant will be the lesser of:

- (1) the published internal rate currently being utilised by the Participant; or
- (2) the best external hire rate for a similar piece of equipment for a similar period of hire.

(d) Participants must provide evidence of the published internal hire rate referred to in clause 10(c) of this Schedule 6.

## 11 Photocopying and Printing

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All costs associated with producing, copying and binding:

- (a) all drawings;
- (b) maintenance and operation manuals;
- (c) test reports; and
- (d) other documents produced as part of the Works,  
will be Reimbursable Costs.

## 12 Insurance

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- (a) Subject to clause 12(b) of this Schedule 6, the following costs will be Reimbursable Costs:
  - (1) the cost of providing the insurances referred to in this Agreement; and
  - (2) any deductible or excess payable in relation to the insurances referred to in this Agreement or unrecovered amounts and the cost of preparing any claims.
- (b) If any of the insurances referred to in this Agreement are not specific to this Agreement, the ALT must determine the extent that the cost of that insurance should be apportioned for the purpose of being a Reimbursable Cost.

## 13 Project Office

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Leasing, support and equipment (including communications and signage) costs of the Project Office will be Reimbursable Costs.

## 14 Specialist groups

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Subject to clause 1 of this Schedule 6, the costs charged by any specialist group within any of the Participants when their services are used by the AMT for the purposes of the Works will be Reimbursable Costs.

## 15 IT Costs

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- (a) Subject to clause 15(b) of this Schedule 6, the following information technology (IT) costs will be Reimbursable Costs:
  - (1) IT support for staff on the Site, including corporate software and systems and Alliance specific software and hardware;
  - (2) IT system administrator which is Alliance specific;
  - (3) use, purchase or upgrade of software and licences within Site office, including corporate and Alliance-specific software and licences (e.g. payroll and accounting);

- (4) IT network and hardware including desktops, printers, monitors, servers, telephones;
- (5) installation of Site based or Alliance-specific LAN/WAN; and
- (6) IT operating costs, including phone charges, internet charges and consumables,

to the extent that these IT costs are not otherwise reimbursed or accrued as part of any RCM or form part of the Corporate Overhead and Profit of any NOP.

- (b) Information technology personnel, software, network, hardware and operating costs must:
  - (1) be procured in accordance with the IT Management Plan and the Contracting Strategy forming part of the Project Management System;
  - (2) in respect of specialist software packages, be pre-approved by the ALT on the recommendation of the Alliance Manager on a Best for Project basis; and
  - (3) in respect of items valued at over \$1000, be recorded on an Alliance asset register.

## 16 Safety

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All personal protective or site safety equipment, occupational health and safety requirements and the cost or expense to provide and maintain a safe working environment and to take all practicable steps to ensure the safety of all persons performing or affected by any aspect of the Works will be a Reimbursable Cost.

## 17 Replacement of train or tram services

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All costs relating to the provision of replacement bus and other transportation services required for affected rail or tram users during Track Occupations that require the cancellation of train or tram services, together with communications and staff costs relating to the cancellation of train or tram services, will be a Reimbursable Cost.

## 18 Reimbursable Costs that do not form part of the TOC

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The Participants acknowledge and accept that the following items, costs and expenses will be Reimbursable Costs, but have not been incorporated into the TOC and will not be incorporated into the TOC in the event of any adjustment to the TOC or the Commercial Framework for the purpose of any Adjustment Event:

- (a) any Specialist Non-Wages Personnel travel, relocation or accommodation costs or expenses;
- (b) any initial alliance team integration activities or alliance health check costs in accordance with the Alliance Team Integration Plan included in the Project Management System;
- (c) any insurance deductibles paid or payable under any insurance policy in accordance with this Agreement;
- (d) legal and litigation expenses associated with defending claims on the Alliance referred to in clause 4 of this Schedule 6;
- (e) damage to rolling stock supplied by MTM or PTV and rolling stock maintenance caused by performance of the Works, as accepted by the Project Owner;

- (f) any cost, loss or expense incurred in rectifying, repairing or replacing any assets owned or in the care, custody or control of VicTrack which are damaged as a result of the performance of the Works;
- (g) any costs to rectify or make good any loss, damage or Defects or to take care in accordance with clause 13.5 of the Agreement before the issue of the Certificate of Final Completion; and
- (h) team building costs approved by the ALT on a value for money basis.

## 19 Project Owner approved Reimbursable Costs

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All other costs or expenses that the ALT determines are Reimbursable Costs, and which the Project Owner has approved, will be Reimbursable Costs.

## 20 ALT approval of policy and procedures

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Unless the ALT has expressly approved the item, cost or expense prior to the NOP incurring the item, cost or expense, there will be no payment of:

- (a) the following items, costs and expenses as Reimbursable Costs until the ALT has approved a policy or procedure:
  - (1) any overtime costs or time in lieu;
  - (2) any Alliance training costs, but excluding site safety inductions;
  - (3) any motor vehicle costs or kilometre reimbursements;
  - (4) any allowances;
  - (5) any Specialist Non-Wages Personnel travel, relocation or accommodation costs or expenses;
  - (6) any recruitment or relocation costs for specialist staff;
  - (7) any legal and litigation expenses; and
  - (8) any travel expenses;
- (b) any information technology costs as Reimbursable Costs until approval of the IT Management Plan in accordance with clause 19.10(a)(3) of the Agreement;
- (c) any costs of Subcontractors as Reimbursable Costs until approval of the Contracting Strategy in accordance with clause 19.10(a)(3) of the Agreement; and
- (d) any Reimbursable Costs until approval of the Financial Control Plan in accordance with clause 19.10(a)(3) of the Agreement.

## 21 Exclusions

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The following costs incurred by the Participants will not be Reimbursable Costs (and to the extent that they have previously been recognised as Reimbursable Costs, will be credited against Reimbursable Costs):

- (a) any costs incurred by a Participant in performing any works or services which are not directly referable to the VfM Statement, the Scope of Works and the assumptions adopted by the Participants in developing the TOC or which do not otherwise form part of the Works under this Agreement;
- (b) any legal costs incurred by a Participant in defending any prosecution or claim brought against a Participant by a Governmental Agency by reason of an alleged breach of any Statutory Requirement, except where the Project Owner determines otherwise by notice in writing to the Participants, having regard to the nature of the breach and the effect of the breach on the Project, the Works and the Project Owner;
- (c) any costs associated with Participants' representatives attending an ALT meeting;
- (d) any costs, liabilities or payments incurred or made by a Participant in indemnifying another Participant in accordance with this Agreement;
- (e) any costs, liabilities or payments incurred or made by a Participant in defending or prosecuting lawsuits or claims (including payment of judgments, awards, orders, damages, restitution, compensation or interest) by or against another Participant in accordance with clause 5.3 of this Agreement;
- (f) any costs incurred by a Participant in providing any difference in cover insurance to supplement the insurances referred to in this Agreement;
- (g) any and all costs, losses, damages and expenses suffered or incurred by the Defaulting Participant arising out of or in connection with a Default and/or exclusion and/or termination under clauses 28 or 29 of the Agreement;
- (h) any corporate or personal income tax or capital gains tax imposed on a Participant;
- (i) GST;
- (j) any penalties or fines in respect of the matters referred to in clause 3 of this Schedule 6;
- (k) any costs incurred by a NOP, or to be incurred by a NOP, which were excluded from the Reimbursable Costs under this Agreement as part of the Final Project Proposal;
- (l) any and all costs or expenses (including legal costs and expenses) arising out of or in connection with mobilising, recruitment and relocation of resources for Participants, unless approved by the ALT or under a travel policy approved by the ALT;
- (m) any and costs arising out of or in connection with redundancy of Non-Wages Personnel;
- (n) any costs incurred by a NOP for allowances other than on an exceptions basis in accordance with the policies approved by the ALT and recommended by the Alliance Manager;
- (o) any costs associated with pre-existing medical conditions and medical examinations for current employees nominated for the Project;
- (p) any and all costs or expenses (including legal costs and expenses) arising out of or in connection with bonuses payable to any Participant's personnel;
- (q) any and all costs or expenses (including legal costs and expenses) arising out of or in connection with any leave escalation or additional net accrual for increasing an employee's employment entitlements beyond the accrual in the employment related on-costs;
- (r) other than expressly approved by the ALT, living away from home allowances or any other living allowances;
- (s) any costs incurred as a result of negotiation of industrial agreements or attendance at industrial agreement meetings;



- (t) any costs arising out of or in connection with specialised personnel travel, relocation or accommodation, except where approved by the ALT;
- (u) any costs or expenses arising out of or in connection with finance, administration and cashflow fees, charge and costs including offsite administration fees;
- (v) ALT costs and expenses;
- (w) any and all costs or expenses arising out of or in connection with catalyst team or peer review (excluding technical reviews required to achieve MCOS Performance) services or activities for the Alliance;
- (x) any costs or expenses arising out of or in connection with corporate of Alliance entertainment;
- (y) any cost or expense incurred by a Participant prior to the date of the Agreement, including:
  - (1) tendering, proposal or submission costs; or
  - (2) formulation and execution of the Agreement;
- (z) any costs or expenses arising out of or in connection with business development and professional development which is not specific to the Alliance;
- (aa) donation and sponsorship costs;
- (bb) any costs or expenses arising out of or in connection with all corporate training, including cost of training and cost of time of attending the training;
- (cc) information technology support staff or system administrators from corporate head office;
- (dd) software development costs associated with corporate software;
- (ee) subject to clause 19 of this Schedule 6, the equipment a person commonly brings to a project in order to perform his or her occupation including mobile telephone handsets and accessories ("standard tools of trade");
- (ff) any costs or expenses arising out of or in connection with providing and maintaining any security under clause 30 of the Agreement;
- (gg) any costs or expenses arising out of or in connection with professional library (including periodicals, books and publications);
- (hh) any costs or expenses arising out of or in connection with kilometre reimbursement unless in accordance with an award or policy approved by the ALT and reasonably administered by the Alliance;
- (ii) any handling fee or mark up on sub-consultants [REDACTED];
- (jj) any contribution to corporate overhead costs or expenses or any profit or unreasonable advantage from the utilisation of people, plant, equipment or resources;
- (kk) any amount paid or payable by or on behalf of a Participant to a supplier to the extent that the Participant is entitled to claim and retain an input tax credit in respect of that payment;
- (ll) in respect of MTM and subject to clause 2 of this Schedule 6:
  - (1) any benefit or reimbursement MTM receives from a third party relating to the procurement of services or materials used in connection with MTM's performance of its obligations under the Agreement, the MTM Franchise Agreement or MTM Infrastructure Lease;

- (2) any cost, expense or amount of money that MTM receives, or is entitled to receive, as part of the Franchise Sum (as that term is defined in the MTM Franchise Agreement) in accordance with the MTM Franchise Agreement;
  - (3) any costs incurred as a result of any fraudulent act or omission on the part of MTM or any of MTM's officers, employees, agents, contractors, consultants or advisors of or to MTM;
  - (4) any increase or decrease in the amount of OPR Incentive Payment payable by or to MTM under Schedule 7 of the MTM Franchise Agreement for any adverse impact on Passenger Services (including flow on effects) primarily caused by the Participants accessing land for the performance of the Works or the Project;
  - (5) any costs incurred by MTM in relation to MTM's performance of its obligations on any project steering committee in respect of the Project; and
  - (6) any fee for profit on goods supplied, works undertaken and services performance by MTM other than MTM's entitlement to Corporate Overhead and Profit under this Agreement;
- (mm) any and all costs or expenses (including legal costs and expenses) arising out of or in connection with payments in excess of an employee's contract of employment or statutory award or enterprise bargaining agreement entitlement;
  - (nn) any and all costs or expenses (including legal costs and expenses) arising out of or in connection with employee's employment entitlements increasing beyond accruals in an RCM, provisions for increase in leave entitlements due to increases in salary, or leave escalation;
  - (oo) any expert determination, arbitration or adjudication to resolve a dispute in accordance with Schedule 16 of the Agreement or a payment issue in accordance with Schedule 14 of the Agreement;
  - (pp) a Change in Control under clause 37.10 of the Agreement;
  - (qq) an MTM Change in Control under clause 37.11 of the Agreement; and
  - (rr) any costs incurred by a Participant, or to be incurred by a Participant, specifically excluded under this Agreement from being a Reimbursable Cost.

## Schedule 7 – Corporate Overhead and Profit

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- (a) The total Corporate Overhead and Profit payable by the Project Owner to the NOPs under this Agreement is calculated as follows:



- (b) Corporate Overhead and Profit is a mark-up on the NOPs' Reimbursable Costs component of the AOC.
- (c) The percentage figure specified above will apply for the duration of the Project and will not be adjusted, split, modified or altered in any way for any reason or purpose including for the purpose of recognising that each NOP may have a different internal percentage figure that is normally applied in other contracting arrangements.
- (d) The procedure for payment must be established by the ALT in accordance with clause 20.3.
- (e) The Participants agree that the corporate overhead component of Corporate Overhead and Profit is, unless the Agreement otherwise provides, inclusive of all overhead costs.

## Schedule 8 – Risk or Reward Regime

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### 1 General

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- (a) The Risk or Reward Regime is separated into two components, namely:
- (1) the Cost Risk or Reward Regime set out in clause 2 of this Schedule 8, in respect of AOC underrun or overrun (which may result in a Gainshare Amount or Painshare Amount); and
  - (2) the Performance Risk Regime set out in clause 3 of this Schedule 8, in respect of performance against KRAs, Fee Reduction Modifiers and Mitigation Modifiers (which may result in a Performance Liability Amount).
- (b) The total of any Painshare Amount and any Performance Liability Amount, in aggregate, payable by a NOP is capped (**NOP Risk Cap**) at:
- (1) in respect of MTM, [REDACTED];
  - (2) in respect of John Holland, [REDACTED]; and
  - (3) in respect of KBR, [REDACTED].

### 2 Cost Risk or Reward Regime

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#### 2.1 Painshare Amount

- (a) If the AOC is greater than the TOC, a Painshare Amount will be payable by the NOPs to the Project Owner, as follows:

Painshare Amount = [REDACTED] % x (AOC – TOC).

- (b) The Painshare Amount will be allocated amongst the NOPs on the following basis:

- (1) the result of the following calculation:

[REDACTED]

will be payable by MTM, subject to the NOP Risk Cap applicable to MTM;

- (2) the result of the following calculation:

[REDACTED]

will be payable by John Holland, subject to the NOP Risk Cap applicable to John Holland; and

- (3) the result of the following calculation:

██████████  
will be payable by KBR, subject to the NOP Risk Cap applicable to KBR.

## 1.1 Gainshare Amount

- (a) If the AOC is less than the TOC, a Gainshare Amount will be payable by the Project Owner to the NOPs on the following basis:
- (1) where  $AOC < TOC$  and  $AOC \geq (\text{██████████\% of the TOC})$ , Gainshare Amount =  $\text{██████████\%} \times (TOC - AOC)$ ; and
  - (2) where  $AOC < (\text{██████████\% of the TOC})$ , Gainshare Amount =  $\text{██████████\%} \times (TOC - (TOC \times \text{██████████\%})) + \text{██████████\%} \times ((TOC \times \text{██████████\%}) - AOC)$ .
- (b) The Gainshare Amount will be allocated amongst the NOPs on the following basis:
- (1) ██████████% of the Gainshare Amount will be payable to MTM;
  - (2) ██████████% of the Gainshare Amount will be payable to John Holland and KBR, allocated on the basis of the following calculations:
    - (A) the result of the following calculation:  
██████████  
will be payable to John Holland; and
    - (B) the result of the following calculation:  
██████████  
will be payable to KBR.

## 2 Performance Risk Regime

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### 2.1 Principles

- (a) The Performance Risk Regime for the Project will be applied such that:
- (1) without limiting clause 1.9 of the Agreement, performance of the NOPs will be assessed such that it may be taken into account for future tendering and contracting opportunities in accordance with clause 1.9 of the Agreement; and
  - (2) either or both of:
    - (i) the attainment of an Overall Performance Score showing Poor Performance against the KRAs based on a weighted average; and
    - (ii) the occurrence of any Fee Reduction Modifiers,will result in a Performance Liability Amount being payable by the NOPs to the Project Owner.

### 2.2 KRAs

The KRAs for the Project are set out in the VfM Statement.

**3.3 Performance against KRAs**

For the KRAs, Part A of this Schedule (as may be amended in the KRA Performance Management and Monitoring Plan included in the Project Management System) sets out:

- (a) the Key Performance Indicators;
- (b) KPI weightings; and
- (c) methodologies for measuring performance and calculating a performance score, such that a performance spectrum is defined for:
  - (1) each relevant KRA with an associated KRA Performance Score; and
  - (2) each KPI with an associated KPI Performance Score,
 of:
  - (3) equal to or greater than -100 and less than zero (**Poor Performance**);
  - (4) equal to zero (**MCOS Performance**); or
  - (5) greater than zero and less than or equal to 100 (**Exceptional Performance**).

**3.4 Calculation of KRA Performance Liability Amount**

- (a) The overall performance score in respect of the KRAs (**Overall Performance Score**) is calculated as set out in Part A of this Schedule.
- (b) Where the Overall Performance Score is greater than zero, the KRA Performance Liability Amount is equal to zero.
- (c) Where the Overall Performance Score attained is less than zero, the KRA Performance Liability Amount is as follows:

Overall Performance Score	KRA Performance Liability Amount
0 > OPS ≥ -20	██████████% of NOP Risk Cap for each NOP
-20 > OPS ≥ -40	██████████% of NOP Risk Cap for each NOP
-40 > OPS ≥ -60	██████████% of NOP Risk Cap for each NOP
-60 > OPS ≥ -80	██████████% of NOP Risk Cap for each NOP
-80 > OPS ≥ -100	██████████% of NOP Risk Cap for each NOP

**3.5 Fee Reduction Modifiers and Mitigation Modifiers**

- (a) The Fee Reduction Modifiers for the Project are:
  - (1) harm arising out of performance of the Works;
  - (2) rail safety infringements;
  - (3) an event that results in death or total or permanent disability to any person; and
  - (4) the attainment of a KRA Performance Score of less than -50 points in respect of a KRA.
- (b) The Mitigation Modifiers for the Project are:

- (1) driving of a proactive safety culture; and
- (2) the attainment of a KRA Performance Score of more than 50 points in respect of a KRA.

### **3.6 Performance against Fee Reduction Modifiers and Mitigation Modifiers**

For each Fee Reduction Modifier and Mitigation Modifier, Part A of this Schedule (as may be amended in the KRA Performance Management and Monitoring Plan included in the Project Management System) sets out:

- (a) what constitutes a recordable event; and
- (b) methodologies for recording these events.

### **3.7 Calculation of Total Modifier Performance Liability Amount**

- (a) Subject to clause 3.7(b) of this Schedule 8, the Total Modifier Performance Liability Amount is the aggregate of the Modifier Performance Liability Amounts in respect of all Fee Reduction Modifiers.
- (b) In the calculation of the Total Modifier Performance Liability Amount, where a:
  - (1) Mitigation Modifier – Safety occurs, an amount may be set off against a Modifier Performance Liability Amount arising from a Fee Reduction Modifier – Safety; and
  - (2) Mitigation Modifier – KRA Performance occurs, an amount may be set off against a Modifier Performance Liability Amount,

calculated as set out in Part A of this Schedule 8 (as may be amended in the KRA Performance Management and Monitoring Plan included in the Project Management System).

### **3.8 Calculation of Performance Liability Amount**

For the purposes of the Agreement, and subject to clause 1(b) of this Schedule 8, the Performance Liability Amount payable from the NOPs to the Project Owner is the aggregate of the KRA Performance Liability Amount and the Total Modifier Performance Liability Amount.

## Part A to Schedule 8

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### KRAs and KPI weightings and Overall Performance Score

#### Burke Road

KRA	KRA weighting	KPI	KPI weighting within KRA
<b>Disruptions</b>	35%	Disruption to rail services – Days of Outage	15%
		Disruption to rail services – PWM	15%
		Disruption to tram services	20%
		Disruption to road users	50%
<b>Stakeholder engagement</b>	20%	Excellent and pro-active relationships established with key stakeholders	40%
		Excellent and pro-active relationships established with the local community	60%
<b>Schedule</b>	15%	Date for Practical Completion of the Works	80%
		Completion of all Post Practical Completion Documentation	20%
<b>Urban design</b>	30%	Urban design and transport integration outcomes are achieved	100%



## North Road, McKinnon Road & Centre Road

KRA	KRA weighting	KPI	KPI weighting within KRA
Disruptions	35%	Disruption to rail services – Days of Outage	37.5%
		Disruption to rail services – PWM	37.5%
		Disruption to road users	25%
Stakeholder engagement	20%	Excellent and pro-active relationships established with key stakeholders	40%
		Excellent and pro-active relationships established with the local community	60%
Schedule	15%	Date for Practical Completion of the Works	80%
		Completion of all Post Practical Completion Documentation	20%
Urban design	30%	Urban design and transport integration outcomes are achieved	100%

### Calculation of Overall Performance Score

The Overall Performance Score for use in section 3.4 of this Schedule 8 is calculated as follows:

$$\text{Overall Performance Score} = \sum (\text{KRA Performance Score} \times \text{KRA Weighting})$$

# KPI measures

## KRA 1: Disruptions

### KPI 1.1a Disruption to rail services – Days of Outage

<p><b>Principle</b></p>	<p>The principle of this KPI is to ensure that rail services are not further disrupted than originally planned at commencement of the project. The KPI aims to promote improved performance to meet or improve on the expected level of planned disruptions.</p>		
<p><b>Planned Days of Outage</b></p>	<p>Days of Outage refers to periods of time where the rail tracks are occupied as a consequence of the Works, such that passenger rail services cannot run.</p> <p>Planned Days of Outage is a measure of the planned impact on rail users and is determined from the initial Track Occupations Program, as articulated within the first version of the Rail Access Management Plan included in the Project Management System. The Track Occupations Program incorporates planned rail closures and disruption periods for the relevant rail line (<b>Planned Days of Outage</b>).</p> <p>Any subsequent amendment to the Track Occupations Program incorporated into revisions to the Rail Access Management Plan (or otherwise incorporated into the Project Management System) will not be taken into account in determining the Planned Days of Outage.</p> <p>The Planned Days of Outage will be used as a baseline to assess the performance against this KPI.</p> <p>Actual Days of Outage will be determined by reference to all track occupations implemented to complete the Works, which excludes disruption measured by KPI 1.1b (Late Handback and Unplanned Disruptions).</p> <p>Measurement of this KPI is a comparison of the Actual Days of Outage against the number of Planned Days of Outage.</p> <ul style="list-style-type: none"> <li>• “After Last, Before First” occupations do not count towards Planned or Actual Days of Outage as no services are affected.</li> <li>• Any extended “After Last, Before First” occupations will be calculated to contribute half (0.5) a Day of Outage (Planned or Actual) as they affect services.</li> </ul>		
<p><b>Performance spectrum</b></p>	<p><b>Fail</b></p>	<p><b>MCOS</b></p>	<p><b>Exceptional</b></p>
	<p>Actual Days of Outage <math>\geq</math> 125% of Planned Days of Outage.</p>	<p>Actual Days of Outage = the number of Planned Days of Outage.</p>	<p>Actual Days of Outage are <math>\leq</math> 75% of Planned Days of Outage.</p>
<p><b>KPI Performance Score calculation</b></p>	<p><b>Measure: Days of Outage</b></p>		<p><b>KPI Performance Score</b></p>
	<p>Actual Days of Outage are <math>\geq</math> 125% of Planned Days of Outage.</p>		<p>-100 (Fail).</p>
	<p>Actual Days of Outage &gt; Planned Days of Outage but &lt;125% of the Planned Days of Outage.</p>		<p>Linearly distributed between -100 to 0.</p>
	<p>Actual Days of Outage = Planned Days of Outage.</p>		<p>0 (MCOS)</p>

	Actual Days of Outage is < Planned Days of Outage but >75% of the Planned Days of Outage.	Linearly distributed between 0 to 100
	Actual Days of Outage are $\geq$ 75% of the Planned Days of Outage.	+100 (Exceptional)

## KPI 1.1b Disruption to rail services – PWM

<p><b>Principle</b></p>	<p>The principle of this KPI is that rail patrons should be able to rely on communications regarding the provision of services. This KPI is targeted at ensuring that works programmed during planned disruption to passenger rail services are well planned to ensure that rail services are recommenced as planned. In addition, the Works are to be well planned and managed to eliminate unplanned disruptions to ensure ‘no surprises’.</p>
<p><b>Late Handback</b></p>	<p>Late Handback refers to an event where a track occupation is not completed as per the approved track occupation arrangements, and as a consequence passenger rail services are unable to be provided.</p> <p>A rail service means a Service as defined under the MTM Franchise Agreement, as applicable. Each rail service has an associated Passenger Weighted Minutes (PWM). PWM is a measure of the impact of disruptions to rail services as calculated in accordance with Schedule 7 of the MTM Franchise Agreement.</p> <p>The Alliance will record all events of Late Handback, and determine the associated PWMs as a result of the Late Handback event. The PWMs for each Late Handback event which occur during the Works are to be aggregated.</p> <p>PWM for all rail services up to 9am on a weekday morning are:</p> <ul style="list-style-type: none"> <li>• Glen Waverley Railway Line – 486,697 PWM; and</li> <li>• Frankston Railway Line – 948,836 PWM.</li> </ul>
<p><b>Unplanned Disruptions</b></p>	<p>Unplanned disruption (<b>Unplanned Disruption</b>) is any disruption to passenger rail services caused by Works that do not form part of:</p> <ul style="list-style-type: none"> <li>• the agreed Track Occupations Program; or</li> <li>• any requests granted by MTM in accordance with clause 18.5 of this Agreement.</li> </ul> <p>Unplanned disruptions may include Unplanned Bypass, Unplanned Cancellation, Unplanned Delayed Service, Unplanned Early Service or Unplanned Short, which each have the meaning given in Schedule 7 of the MTM Franchise Agreement.</p>
<p><b>Measurement</b></p>	<p>Performance in this KPI will be determined by the ‘worst case’ outcome from each measure.</p>

Performance spectrum – PWM	Fail	MCOS	Exceptional
	<ul style="list-style-type: none"> <li>A single event resulting in disruption to rail services up to 9am on a weekday morning or multiple events resulting in an equivalent PWM impact; or</li> <li>as developed by the Alliance recommended by the ALT for approval by the Project Owner as part of the KRA Performance Management and Monitoring Plan.</li> </ul>	Late Handback PWM = 0	Not applicable.
Performance spectrum – Unplanned Disruptions	Fail	MCOS	Exceptional
	<ul style="list-style-type: none"> <li>3 or more Unplanned Disruptions; or</li> <li>as developed by the Alliance recommended by the ALT for approval by the Project Owner as part of the KRA Performance Management and Monitoring Plan.</li> </ul>	Zero Unplanned Disruptions.	Not applicable.
KPI Performance Score calculation	Measure: Passenger Weighted Minutes (PWM) / number of Unplanned Disruptions		KPI Performance Score
	<ul style="list-style-type: none"> <li>Glen Waverley Railway Line: Late Handback PWM <math>\geq</math> 486,697 PWM</li> <li>Frankston Railway Line: Late Handback PWM <math>\geq</math> 948,836 PWM</li> </ul> or <ul style="list-style-type: none"> <li>3 or more Unplanned Disruptions</li> </ul>		-100 (Fail)
	<ul style="list-style-type: none"> <li>Glen Waverley Railway Line: Late Handback PWM is greater than zero but <math>&lt;</math> 486,697 PWM</li> <li>Frankston Railway Line: Late Handback PWM is greater than zero but <math>&lt;</math> 948,836 PWM</li> </ul> or <ul style="list-style-type: none"> <li>1 or 2 Unplanned Disruptions</li> </ul>		Linearly distributed between -100 to 0
	<ul style="list-style-type: none"> <li>Late Handback PWM = 0</li> </ul> or <ul style="list-style-type: none"> <li>Zero Unplanned Disruptions</li> </ul>		0 (MCOS)

## KPI 1.2 Disruption to road users

<b>Principle</b>	The principle of this KPI is to ensure that nominated roads are not further disrupted than originally planned at commencement of the project. The KPI aims to promote improved performance to meet or improve on the level of expected planned disruption.		
<b>Days of Disruption</b>	<p>Days of Disruption refers to periods of time where the road network (which includes traffic lanes, on-road parking provisions, pedestrian and cyclist facilities) are occupied as a consequence of the Works.</p> <p>Planned Days of Disruption is a measure of the planned impact on road users (including pedestrians and cyclists) and is determined from a disruption calculation tool provided by the Project Owner utilising input data from the first version of the Traffic Management Plan included in the Project Management System.</p> <p>Any subsequent amendment to proposed impact to the road network incorporated into revisions to the Traffic Management Plan (or otherwise incorporated into the Project Management System) will not be taken into account in determining the Planned Days of Disruption.</p> <p>The disruption calculation tool provided by the Project Owner indicates relative weightings for disruption of the various roads and associated infrastructure, as well as weightings associated with time of day to provide an overall number that will be the Days of Disruption.</p> <p>Actual Days of Disruption will be determined by reference to all road network disruptions implemented to complete the Works, calculated utilising the tool provided by the Project Owner.</p> <p>Measurement of this KPI is a comparison of the Actual Days of Disruption against the number of Planned Days of Disruption.</p>		
<b>Performance spectrum</b>	<b>Fail</b>	<b>MCOS</b>	<b>Exceptional</b>
	Actual Days of Disruption is $\geq 125\%$ of the Planned Days of Disruption.	Actual Days of Disruption = Planned Days of Disruption.	Actual Days of Disruption are $\leq 75\%$ of the Planned Days of Disruption.
<b>KPI Performance Score calculation</b>	<b>Days of Disruption</b>		<b>KPI Performance Score</b>
	Actual Days of Disruption is $\geq 125\%$ of Planned Days of Disruption.		-100 (Fail).
	Actual Days of Disruption is $>$ Planned Days of Disruption and $< 125\%$ of Planned Days of Disruption.		Linearly distributed between -100 to 0.
	Actual Days of Disruption = Planned Days of Disruption.		0 (MCOS).
	Actual Days of Disruption is $<$ Planned Days of Disruption and $> 75\%$ of Planned Days of Disruption.		Linearly distributed between 0 to 100.
	Actual Days of Disruption are $\leq 75\%$ of Planned Days of Disruption.		+100 (Exceptional).

### KPI 1.3 Disruption to tram services

<b>Principle</b>	The principle of this KPI is to ensure that nominated tram routes are not further disrupted than originally planned at commencement of the project. The KPI aims to promote improved performance to meet or improve on the level of expected planned disruption.		
<b>Planned Days of Tram Disruption</b>	<p>Planned Days of Tram Disruptions to tram services are only relevant for Separable Portion 1 (Burke Road LCRP).</p> <p>Planned Days of Tram Disruption is a measure of the planned impact on tram services and is determined from a disruption calculation tool provided by the Project Owner utilising input data from the first version of the Traffic Management Plan included in the Project Management System.</p> <p>Any subsequent amendment to the proposed impact to the tram network incorporated into revisions to the Traffic Management Plan (or otherwise incorporated into the Project Management System) will not be taken into account in determining the Planned Days of Tram Disruption.</p> <p>Measurement of this KPI is a comparison of the Actual Days of Tram Disruption against the Planned Days of Tram Disruption.</p>		
<b>Performance spectrum</b>	<b>Fail</b>	<b>MCOS</b>	<b>Exceptional</b>
	Actual Days of Tram Disruption is $\geq$ 125% of the Planned Days of Tram Disruption.	Actual Days of Tram Disruption = Planned Days of Tram Disruption.	Actual Tram Days of Disruption is $\leq$ 75% of the Planned Days of Tram Disruption.
<b>KPI Performance Score calculation</b>	<b>Days of Tram Disruption</b>		<b>KPI Performance Score</b>
	Actual Tram Days of Disruption is $\geq$ 125% of Days of Tram Disruption.		-100 (Fail).
	Actual Days of Tram Disruption is $>$ the Planned Days of Tram Disruption but $<$ 125% of the Planned Days of Tram Disruption.		Linearly distributed between -100 to 0
	Actual Days of Tram Disruption = Planned Days of Tram Disruption.		0 (MCOS)
	Actual Days of Tram Disruption is $<$ the Planned Days of Tram Disruption but $>$ 75% of the Planned Days of Tram Disruption.		Linearly distributed between 0 to 100
	Actual Days of Tram Disruption is $\leq$ 75% of the Planned Days of Tram Disruption.		+100 (Exceptional).

## KRA 2: Stakeholder Engagement

### KPI 2.1 Excellent and pro-active relationships established with key stakeholders

<p><b>Principle</b></p>	<p>The principle of this KPI is to ensure that engagement activities with the key stakeholders are proactive and effective and are able to be measured meaningfully during the Works. The KPI aims to ensure that the key stakeholders are appropriately engaged and informed of the Works so as not to negatively affect or delay the performance of the Works.</p>		
<p><b>Key Stakeholder Survey Result</b></p>	<p>The proposed method of measurement of the success of stakeholder engagement is via surveys. From the Commencement Date until 6 months after the Date of Practical Completion, surveys will be taken with relevant key stakeholders on:</p> <ul style="list-style-type: none"> <li>(a) the effectiveness of communications and relations with key stakeholders as a result of the Works,</li> <li>(b) commitments made and honoured, and</li> <li>(c) management of the impact of the Works on key stakeholders.</li> </ul> <p>Key stakeholders include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• VicRoads,</li> <li>• Municipal Councils,</li> <li>• Bus Operators,</li> <li>• Bicycle Network (Victoria), and</li> <li>• VicTrack.</li> </ul> <p>The frequencies of surveys are based on key stages of the Works program. As a minimum, surveys are to be conducted initially to provide a baseline and within one month of works that are of significance to stakeholders.</p> <p>The Communications and Stakeholder Relations Plan included in the Project Management System will contain key metrics to measure levels of stakeholder engagement. This plan will serve as a baseline by which performance will be measured.</p> <p>The design of surveys will be developed by the Alliance in consultation with the Project Owner, and will target relevant key stakeholders. Questions are to be designed to deliver measureable results, and will have a 10-point engagement scale for each survey question.</p> <p>The survey result is defined as the average of the unweighted scores for each answered question by each stakeholder surveyed.</p> <p>Surveys are to be undertaken by the Alliance, comprehensively documented and are to be provided to the Project Owner in the manner required by this Agreement.</p>		
<p><b>Performance spectrum</b></p>	<p><b>Fail</b></p> <p>Key Stakeholder Survey Result <math>\leq</math> 50% engagement.</p>	<p><b>MCOS</b></p> <p>Key Stakeholder Survey Result is 70% engagement.</p>	<p><b>Exceptional</b></p> <p>Key Stakeholder Survey Result <math>\geq</math> 90% engagement.</p>



KPI Performance Score calculation	Key Stakeholder Survey Result	KPI Performance Score
	Key Stakeholder Survey Result $\leq$ 50%.	-100 (Fail).
	Key Stakeholder Survey Result is between 50% and 70%.	Linearly distributed between -100 and 0.
	Key Stakeholder Survey Result is 70%.	0 (MCOS).
	Key Stakeholder Survey Result is between 70% and less than 90%.	Linearly distributed between 0 and 100.
	Key Stakeholder Survey Result is $\geq$ 90%.	+100 (Exceptional).

## KPI 2.2 Excellent and pro-active relationships established with the local community

<p><b>Principle</b></p>	<p>The principle of this KPI is to ensure that engagement activities with the local community are proactive and effective and are able to be measured meaningfully during the Works. The KPI aims to ensure that the community members are appropriately engaged and informed of the Works so as not to negatively affect or delay the performance of the Works.</p>		
<p><b>Community Survey Result</b></p>	<p>The proposed method of measurement of the success of stakeholder engagement is via surveys. From the Commencement Date until 6 months after the Date of Practical Completion, surveys will be taken with relevant key stakeholders on:</p> <ul style="list-style-type: none"> <li>(a) the effectiveness of communications and relations with the local community as a result of the Works,</li> <li>(b) commitments made and honoured, and</li> <li>(c) management of the impact of the Works on local community members.</li> </ul> <p>Local community members include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• local residents,</li> <li>• people who walk, cycle and drive around the area and access local community facilities,</li> <li>• local businesses who may be impacted during construction,</li> <li>• rail customers, and</li> <li>• community groups.</li> </ul> <p>The frequencies of the surveys are based on key stages of the Works program. As a minimum, surveys are to be conducted initially to provide a baseline and within one month of works that are of significance to local community members.</p> <p>The Communications and Stakeholder Relations Plan will contain key metrics to measure levels of stakeholder engagement. This plan will serve as a baseline by which performance will be measured.</p> <p>The design of surveys will be developed by the Alliance in consultation with the Project Owner, and will target relevant key stakeholders. Questions are to be designed to deliver measureable results, and will have a 10-point engagement scale for each survey question. The survey result is defined as the average of the unweighted scores for each answered question by each stakeholder surveyed.</p>		
<p><b>Performance spectrum</b></p>	<p><b>Fail</b></p>	<p><b>MCOS</b></p>	<p><b>Exceptional</b></p>
	<p>Community Survey Result <math>\leq</math> 50% engagement.</p>	<p>Community Survey Result is 70% engagement.</p>	<p>Community Survey Result <math>\geq</math> 90% engagement.</p>

KPI Performance Score calculation	Community Survey Result	KPI Performance Score
	Community Survey Result $\leq$ 50%.	-100 (Fail).
	Community Survey Result is between 50% and 70%.	Linearly distributed between -100 and 0.
	Community Survey Result is 70%.	0 (MCOS).
	Community Survey Result is between 70% and less than 90%.	Linearly distributed between 0 and 100.
	Community Survey Result $\geq$ 90%.	+100 (Exceptional).

### KRA 3: Schedule

#### KPI 3.1 Practical Completion of the Works

<b>Principle</b>	The principle of this KPI is to promote improved performance outcomes by satisfactorily completing the Works prior to the Date for Practical Completion enabling the new train facilities to be available for public use as soon as possible after the main occupation, and an overall reduction in the impact of the Works to the community.		
<b>Practical Completion of the Works</b>	The Date for Practical Completion and the Date of Practical Completion will be used for purposes of this KPI.		
<b>Performance spectrum</b>	<b>Fail</b>	<b>MCOS</b>	<b>Exceptional</b>
	Date of Practical Completion is 2 months after the Date for Practical Completion.	Date of Practical Completion is the Date for Practical Completion.	Date of Practical Completion is 2 months before the Date for Practical Completion
<b>KPI Performance Score calculation</b>	<b>Practical Completion of Works</b>		<b>KPI Performance Score</b>
	Date of Practical Completion is 2 months after the Date for Practical Completion.		-100 (Fail).
	Date of Practical Completion is < 2 months after the Date for Practical Completion.		Linearly distributed between 0 and -100.
	Date of Practical Completion is the Date for Practical Completion.		0 (MCOS).
	Date of Practical Completion is < 2 months before the Date for Practical Completion.		Linearly distributed between 0 and 100.
	Date of Practical Completion is 2 months before the Date for Completion.		+100 (Exceptional).

### KPI 3.2 Submission of all Post Practical Completion Documentation

<b>Principle</b>	The principle of this KPI is to ensure that all Post Practical Completion Documentation is submitted by the Alliance and satisfies all the requirements of the Agreement as soon as possible after the Date of Practical Completion.		
<b>Submission of Post Practical Completion Documentation</b>	Submission of all Post Practical Completion Documentation complying with the requirements of clause 2 of Schedule 19.		
<b>Performance Spectrum</b>	<b>Fail</b>	<b>MCOS</b>	<b>Exceptional</b>
	All complying Post Practical Completion Documentation submitted 3 months after the Date of Practical Completion.	All complying Post Practical Completion Documentation submitted between 1 and 2 months after the Date of Practical Completion.	All complying Post Practical Completion Documentation submitted within 1 month after the Date of Practical Completion.
<b>KPI Performance Score calculation</b>	<b>Submission of all complying Post Practical Completion Documentation</b>		<b>KPI Performance Score</b>
	All complying Post Practical Completion Documentation is submitted 3 months after the Date of Practical Completion.		-100 (Fail).
	All complying Post Practical Completion Documentation is submitted, within 3 months of the Date of Practical Completion but after 2 months after the Date of Practical Completion.		Linearly distributed between 0 and -100.
	All complying Post Practical Completion Documentation submitted, between 1 and 2 months after the Date of Practical Completion.		0 (MCOS).
	All complying Post Practical Completion Documentation submitted, within 1 month after the Date of Practical Completion.		+100 (Exceptional).

## KRA 4: Urban design

### KPI 4.1 Urban design

<b>Principle</b>	The principle of this KPI is to ensure that the built urban design outcome by the Alliance meets, and where possible, improves upon the Urban Design Principles and Guidelines.		
<b>Urban design</b>	<ul style="list-style-type: none"> <li>The key objective is for the Alliance to deliver urban design outcomes in accordance with the Urban Design Principles and Guidelines.</li> <li>The Project Owner will convene the Urban Design Advisory Panel which will form an expert view of the Works at Practical Completion with regard to the Urban Design Principles and Guidelines.</li> <li>Performance in the KPI will be measured by a comparison between the Urban Design Principles and Guidelines and the Works at Practical Completion.</li> </ul>		
<b>Performance spectrum</b>	<b>Fail</b>	<b>MCOS</b>	<b>Exceptional</b>
	Works are ranked as achieving less than 75% of the Urban Design Principles and Guidelines.	Works are ranked as achieving the Urban Design Principles and Guidelines.	Works are ranked as achieving more than 25% of the Urban Design Principles and Guidelines.
<b>KPI Performance Score calculation</b>	<b>Achievement of Urban Design Principles and Guidelines</b>		<b>KPI Performance Score</b>
	The Works are ranked < 75% of the Urban Design Principles and Guidelines.		-100 (Fail).
	The Works are ranked below the Urban Design Principles and Guidelines, but not lower than 75%.		Linearly distributed between -100 to 0.
	The Works are ranked as achieving the Urban Design Principles and Guidelines.		0 (MCOS).
	The Works are ranked as improving on the Urban Design Principles and Guidelines by up to 125%.		Linearly distributed between 0 to 100.
	The Works are ranked exceeding the Urban Design Principles and Guidelines by $\geq$ 125%.		+100 (Exceptional)

## Fee Reduction Modifiers and Mitigation Modifiers

The Fee Reduction Modifiers and Mitigation Modifiers are outlined below.

Fee Reduction Modifiers and Mitigation Modifier calculations apply to all Separable Portions, and are not specific to a Separable Portion, unless otherwise stated.

The principle of Fee Reduction Modifiers is to ensure that poor performance in respect of safety, or poor performance in any one KRA, offsets the overall performance of the Alliance for the purposes of the Risk or Reward Regime. The principle of Mitigation Modifiers is that positive performance in proactive safety measures can improve the overall performance of the Alliance for the purposes of the Risk or Reward Regime.

Where an individual event could result in measurement against multiple KPIs as a Fee Reduction Modifier, the event will only contribute to one Fee Reduction Modifier. The Fee Reduction Modifier that results in the higher Performance Liability Amount is to be used.

For example, if an event that results in human fatality under RR 1.3 occurs which would otherwise meet the definitions of LTIFR under KPI RR 1.1 and is also a Major Rail Safety Infringement (RSI) (KPI RR 1.2), then the Performance Liability Amount would be accounted for against RR 1.3 only.

### Fee Reduction Modifiers – Safety

#### RR 1.1 Harm arising out of the performance of the Works

<b>Principle</b>	The principle of this Fee Reduction Modifier is to account for injury to persons connected with the performance of the Works.		
<b>Lost Time Injury Frequency Rate (LTIFR)</b>	<p>LTIFR is the number of Lost Time Injuries (LTI) arising after the Commencement Date and prior to the Final Completion Date per million hours of work by persons performing the Works as expressed in the following formula:</p> $LTIFR = LTI \times 1,000,000 \div \text{total hours worked by persons performing the Works}$ <p>A Lost Time Injury is defined as an injury or illness to a person arising out of or in connection with the performance of Works which results in the person being certified unfit for any duties for one full work shift (or where work shifts are not applicable then Business Days) or more (not necessarily immediately) by a medical practitioner.</p> <p>All injury or illness covered by this KPI must be recorded in the manner required by the Health and Safety Management Plan to be provided in accordance with the Agreement.</p>		
<b>Performance Spectrum</b>	<b>Fail</b>	<b>MCOS</b>	<b>Exceptional</b>
	LTIFR $\geq$ 5	LTIFR $\leq$ 2	N/A
<b>Calculation of Modifier Performance Liability Amount</b>	<b>Measure: LTIFR</b>		<b>Impact (% of NOP Risk Cap)</b>
	LTIFR $\leq$ 2		Nil
	2 < LTIFR $\leq$ 3.5		██████ % of NOP Risk Cap.
	3.5 < LTIFR < 5		██████ % of NOP Risk Cap.
	LTIFR $\geq$ 5		██████ % of NOP Risk Cap.

## RR 1.2 Rail safety infringements

<b>Principle</b>	The principle of this Fee Reduction Modifier is to account for incidents which may compromise the safe operation of the rail network.		
<b>Major Rail Safety Infringement (Major RSI)</b>	<p>A Major Rail Safety Infringement is defined as a Category A Notifiable Occurrence (as defined in the <i>Rail Safety National Law National Regulations 2012 (SA)</i>) that:</p> <ul style="list-style-type: none"> <li>(a) occurs after the Commencement Date and prior to the Final Completion Date,</li> <li>(b) is identifiable, notifiable and investigated under the Rail Safety National Law, and</li> <li>(c) arises out of or in connection with the performance of the Works.</li> </ul> <p>All Major Rail Safety Infringements covered by this KPI must be recorded in the manner required by the Health and Safety Management Plan included in the Project Management System.</p>		
<b>Minor Rail Safety Infringement Rate (Minor RSIR)</b>	<p>Minor Rail Safety Infringement Rate is defined as the number of Minor Rail Safety Infringements per total hours of work by persons performing the Works as expressed in the following formula:</p> $\text{Minor Rail Safety Infringement Rate} = \frac{\text{Minor Rail Safety Infringements} \times 1,000,000}{\text{total hours worked by persons performing the Works}}$ <p>Minor Rail Safety Infringements are defined as:</p> <ul style="list-style-type: none"> <li>(a) a Rail Safety Incident – any accident or incident involving rail infrastructure, network operations or rolling stock, whether in motion or not, affecting the safety of any Rail Safety Worker (as Rail Safety Worker is defined in the Rail Safety National Law), passengers, public, property or railway operations, or</li> <li>(b) a Near Miss – any incident where the driver of a moving train takes emergency action, or would have if there was sufficient time, to avoid impact with a person, vehicle or other obstruction and no collision occurred (emergency action includes continuous audible warning and/or emergency brake application), and</li> <li>(c) where the Rail Safety Incident or Near Miss: <ul style="list-style-type: none"> <li>(i) is recorded as such by MTM, V/Line or ARTC in accordance with their Safety Incident Reporting and Investigation procedure, and</li> <li>(ii) arises out of or in connection with the performance of the Works.</li> </ul> </li> </ul> <p>All Minor Rail Safety Infringements covered by this KPI must be recorded in the manner required by the Health and Safety Management Plan included in the Project Management System.</p>		
<b>Performance spectrum – Major RSI</b>	<b>Fail</b>	<b>MCOS</b>	<b>Exceptional</b>
	Major RSI $\geq 3$	Major RSI = 0,	Not applicable.
<b>Performance spectrum – Minor RSIR</b>	<b>Fail</b>	<b>MCOS</b>	<b>Exceptional</b>
	Minor RSIR $\geq 5$	Minor RSIR $\leq 3.5$	Not applicable.
<b>Calculation of</b>	The Modifier Performance Liability Amount will be the greater of the calculated		



<b>Modifier Performance Liability Amount</b>	amount for each measure below:	
	<b>Measure 1: Major RSI</b>	<b>Impact (% of NOP Risk Cap)</b>
	0 incident	Nil.
	1 incident	██████ % of NOP Risk Cap.
	2 incident	██████ % of NOP Risk Cap.
	≥ 3 incidents	██████ % of NOP Risk Cap.
	<b>Measure 2: Minor RSIR</b>	<b>Impact (% of NOP Risk Cap)</b>
	Minor RSIR ≤ 3.5	Nil.
	3.5 < Minor RSIR < 5	██████ % of NOP Risk Cap.
	Minor RSIR ≥ 5	██████ % of NOP Risk Cap.

### RR 1.3 An event that results in death or total or permanent disability to any person

<b>Principle</b>	The principle of this Fee Reduction Modifier is to account for incidents which result in fatality or total or permanent disability to any person.
<b>Event</b>	<p>For the purposes of this Fee Reduction Modifier, an "Event" is the occurrence of an event that results in a human fatality or the total or permanent disability to any person which either occurs within the Site or arises out of or in connection with the Works.</p> <p>Where an Event occurs the ALT must notify the Project Owner of the occurrence of the Event. The ALT must make a recommendation to the Project Owner, after taking into account the circumstances of the Event and the factors set out below, whether the Event is attributable to the Alliance for the purposes of the determining an impact on the NOP Risk Cap.</p> <p>The ALT shall consider:</p> <ul style="list-style-type: none"> <li>• any act or omission of a Participant, or those for whom they are responsible, in the performance of the Works; and</li> <li>• whether a Participant, or the Participants, have taken or implemented all measures reasonably available to them to ensure that the risk of the occurrence of the Event was as low as reasonably practicable taking into account: <ul style="list-style-type: none"> <li>(a) the likelihood of the risk eventuating;</li> <li>(b) the degree of harm that would result if the risk eventuated;</li> <li>(c) the Participants' commitment to the collective responsibilities for all of the risks in performing the Alliance obligations under the Agreement;</li> <li>(d) the availability and suitability of potential mitigants to eliminate or reduce the risk; and</li> <li>(e) the costs of eliminating or reducing the risk.</li> </ul> </li> </ul> <p>If the ALT recommends to the Project Owner that an Event triggering a Fee Reduction Modifier has occurred, but that a Fee Reduction Modifier does not arise and no diminution of NOP Risk Cap is recommended, the Project Owner</p>

	<p>will determine whether a Fee Reduction Modifier has occurred and determine the level of diminution of the Fee Reduction Modifier Amount per occurrence as a percentage of the NOP Risk Cap after taking into account the factors set out above and the circumstances of the Event.</p> <p>Each Event will be recorded and reported in the manner required by the Health and Safety Management Plan and the KRA Performance Management and Monitoring Plan included in the Project Management System.</p>	
<p><b>Calculation of Modifier Performance Liability Amount</b></p>	<p>Per occurrence</p>	<p>██████% of NOP Risk Cap</p>

**Mitigation Modifier – Safety**

**RR 1.4 Driving of a proactive safety culture**

<p><b>Principle</b></p>	<p>The principle of this Mitigation Modifier is to drive proactive safety behaviour to prevent the occurrence of injuries as a consequence of the Works.</p>
<p><b>Lead Indicator (LI)</b></p>	<p>Lead Indicators are defined as measures of processes or inputs essential to deliver the desired safety outcomes. Lead Indicators are proactive measures and relate directly to safety management activities. Lead Indicators are either measure of those activities themselves or of the results of those activities.</p> <p>Lead Indicators and LI scores are to be developed by the Alliance and will be recommended by the ALT for approval by the Project Owner as part of the KRA Performance Management and Monitoring Plan.</p> <p>The following guidance is provided to assist proponents to develop safety lead indicators:</p> <ul style="list-style-type: none"> <li>• safety index;</li> <li>• timely and complete reporting of near misses;</li> <li>• approach to implement learning from and prevention of safety events and near misses;</li> <li>• safety training measures; and</li> <li>• management of high risk activities – Safe Work Method Statements, implementation of higher order controls.</li> </ul> <p>The proposed safety indicators must be reasonably measurable.</p>
<p><b>Performance spectrum</b></p>	<p>The Alliance will develop the performance spectrum for recommendation by the ALT to the Project Owner for approval as part of the KRA Performance Management and Monitoring Plan.</p> <p>This Mitigation Modifier can only be applied as an offset to a Modifier Performance Liability Amount arising from a Fee Reduction Modifier – Safety.</p>
<p><b>Calculation of offset arising from Mitigation Modifier</b></p>	<p>To be determined based on LI and performance spectrum, but no more than +50% of a Modifier Performance Liability Amount arising from a Fee Reduction Modifier – Safety.</p>

**Fee Reduction Modifier – KRA Performance**

**RR 2.1 Attainment of a KRA Performance Score of less than -50 points in respect of a KRA**

<b>Principle</b>	The principle of this Fee Reduction Modifier is to account for low performance in respect of any single KRA.	
<b>KRA performance</b>	If a KRA Performance Score of less than -50 points is attained in respect of a single KRA, this results in a Modifier Performance Liability Amount.	
<b>Calculation of Modifier Performance Liability Amount</b>	Per occurrence	██████████% of NOP Risk Cap.

**Mitigation Modifier – KRA Performance**

**RR 2.2 Attainment of a KRA Performance Score of more than 50 points in respect of a KRA**

<b>Principle</b>	The principle of this Mitigation Modifier is to recognise high performance in respect of any single KRA.	
<b>KRA performance</b>	If a KRA Performance Score of more than 50 points is attained in respect of a single KRA, this results in a Mitigation Modifier.	
<b>Performance spectrum</b>	KRA Performance Score in a specific KRA is greater than 50 points.	
<b>Calculation of offset arising from Mitigation Modifier</b>	Per occurrence	██████████% of the NOP Risk Cap

## Schedule 9 – Payment procedures

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### 1 Introduction

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The Project Owner and the NOPs acknowledge and agree that:

- (a) the Project Owner will reimburse the NOPs and PTV for Reimbursable Costs (as defined in Schedule 6) incurred by them;
- (b) subject to clause 20.8, the Project Owner will pay the NOPs the Corporate Overhead and Profit;
- (c) if applicable, the Project Owner will pay the NOPs a Gainshare Amount or the NOPs will pay the Project Owner a Painshare Amount (as the case may be); and
- (d) if applicable, the NOPs will pay the Project Owner a Performance Liability Amount.

This Schedule sets out the procedure which will govern the payments referred to above.

### 2 Payments to the NOPs and PTV

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- (a) After the end of each Month during the Term, on a date agreed by the ALT or otherwise as soon as practicable, the AMT must prepare and deliver a payment claim in a format approved by the ALT to the Alliance Manager detailing for that Month of the Term:
  - (1) the Reimbursable Costs reasonably and actually incurred by the NOPs and PTV;
  - (2) the entitlement of the NOPs to Corporate Overhead and Profit calculated in accordance with this Agreement; and
  - (3) if the Project Owner has made a determination under clause 3(c)(1) or 3(h)(3) of this Schedule, each NOP's:
    - (A) entitlement, if any, to receive an Interim Gainshare Amount or Gainshare Amount; and
    - (B) obligation, if any, to pay an Interim Painshare Amount or Painshare Amount.
- (b) The payment claim under clause 2(a) of this Schedule must include:
  - (1) all invoices, accounts, time sheets and other documentation (including any additional documentation requested by the ALT or Alliance Manager) in support of the payment claim; and
  - (2) a statutory declaration by a representative of each NOP and PTV in the form set out in Schedule 20.
- (c) The AMT will not submit more than one payment claim for each Month and will endeavour to submit payment claims within 3 months after the end of the Month to which

that payment claim relates. Claims for payment not submitted by the AMT within 3 months after the end of the month to which that payment claim relates can only be submitted as a payment claim under clause 2(a) of this Schedule after the Project Owner's determination that any such claim for payment can be submitted.

- (d) The Alliance Manager will, within 2 Business Days of the submission of the payment claim in clause 2(a) of this Schedule, review the payment claim and:
  - (1) if the Alliance Manager determines that the payment claim is true, correct and fully substantiated, recommend the payment claim to the Project Owner; or
  - (2) if the Alliance Manager determines that the payment claim is not true, not correct or not fully substantiated, the Alliance Manager must return the payment claim to the AMT and request a revised payment claim that is true, correct and fully substantiated.
- (e) The Participants acknowledge and agree that the Project Owner may engage an independent advisor to review and validate the amounts contained in any payment claim prepared under clause 2(a) of this Schedule and all supporting documentation relating to the amounts contained in that payment claim will be available for inspection and audit by the Project Owner (or the Project Owner's independent advisor).
- (f) Within 7 Business Days of receipt of the recommended payment claim under clause 2(d)(1) of this Schedule:
  - (1) if the Project Owner determines that the recommended payment claim sets out bona fide, fair and reasonable amounts payable in accordance with the Agreement, the Project Owner will issue a payment schedule from the Project Owner to PTV and each of the NOPs which identifies the payment claim to which the payment schedule relates, and sets out the amount payable to each NOP and PTV for the Month of the payment claim; or
  - (2) if the Project Owner is not satisfied for any reason that the amounts set out in the recommended payment claim are bona fide, fair and reasonable amounts payable in accordance with the Agreement, the Project Owner will:
    - (A) return the recommended payment claim to the Alliance Manager with full details of why it is not satisfied;
    - (B) inform the Alliance Manager in writing of each amount the Project Owner instead accepts is a bona fide, fair and reasonable amount payable in accordance with the Agreement; and
    - (C) direct the Alliance Manager to provide a replacement payment claim for each amount informed under clause 2(f)(2)(B) of this Schedule and the times and process in clause 2(f) of this Schedule will recommence.
- (g) Within 2 Business Days after receiving the payment schedule issued by the Project Owner under clause 2(f)(1) of this Schedule:
  - (1) PTV will issue a Tax Invoice to the Project Owner attaching the relevant payment schedule for the scheduled amount payable to PTV; and
  - (2) each NOP will issue a Tax Invoice to the Project Owner attaching the relevant payment schedule for the scheduled amount payable to that NOP.
- (h) The Project Owner shall, within 10 Business Days after receiving a Tax Invoice under clause 2(g) of this Schedule, pay to PTV or the relevant NOP the amount stated in the relevant Tax Invoice by electronic funds transfer to a bank account nominated by PTV or the relevant NOP, as applicable.
- (i) Clause 20.6 of this Agreement will apply to any overpayment by the Project Owner of Reimbursable Costs or Corporate Overhead and Profit.

- (j) This clause 2 of this Schedule does not limit the Project Owner's right to withhold or deduct payments in accordance with this Agreement.

### 3 Payment procedure for Gainshare Amount or Painshare Amount

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- (a) Within 60 Business Days after the Date of Project Practical Completion, the ALT must:
- (1) make any adjustments to the TOC required under clause 17A(d);
  - (2) calculate, for the period from the date of this Agreement until the Date of Project Practical Completion, the Interim Gainshare Amount or Interim Painshare Amount (if any and as the case may be) payable in accordance with the Risk or Reward Regime; and
  - (3) prepare and deliver and notice to the NOPs and the Project Owner which details the Interim Gainshare Amount or Interim Painshare Amount (if any and as the case may be) calculated to be payable.
- (b) All supporting documentation relating to the amount set out in any notice prepared under clause 3(a) of this Schedule must be available for inspection and audit.
- (c) If the Project Owner determines, after independently considering and applying the Risk or Reward Regime, that the ALT's recommendations in the notice under clause 3(a) of this Schedule are correct, the Project Owner will determine:
- (1) that the Interim Gainshare Amount less ██████████% (Gainshare Retention Amount) is paid to the NOPs and PTV in accordance with clause 2 of this Schedule; and/or
  - (2) that an Interim Painshare Amount must be paid by the NOPs.
- The Project Owner will issue a notice to the NOPs and PTV of its determination and, if the determination is made under clause 3(c)(2) of this Schedule, then, within 20 Business Days of receipt of notice of the determination, the NOPs must pay the Project Owner the Interim Painshare Amount.
- (d) If the Project Owner determines, after independently considering and applying the Risk or Reward Regime, that any of the ALT recommendations in the notice under clause 3(a) of this Schedule are not correct, the Project Owner will:
- (1) return the notice to the ALT with reasons; and
  - (2) direct the ALT to provide a replacement recommendation and the process in clause 3(a) of this Schedule will recommence.
- (e) The Participants acknowledge and agree that:
- (1) the payment of any Interim Gainshare Amount or Interim Painshare Amount under clause 3(c) of this Schedule is payment on account only;
  - (2) the Interim Gainshare Amount paid to the NOPs or Interim Painshare Amount paid by the NOPs (if any and as the case may be) is subject to adjustment at Final Completion to reflect the outcome of the calculation of the Gainshare Amount or Painshare Amount under clause 3(h) of this Schedule; and
  - (3) where any Participant is required to refund any part (or all) of the Interim Gainshare Amount to the Project Owner under clause 3(h) of this Schedule, that part of the Interim Gainshare Amount will be deemed to be held on trust for the benefit of the Project Owner.
- (f) Within 60 Business Days after the Final Completion Date, the ALT must:

- (1) calculate, for the period from the date of this Agreement until the Final Completion Date, the Gainshare Amount or Painshare Amount (if any and as the case may be) payable in accordance with the Risk or Reward Regime;
  - (2) calculate any Gainshare Amount entitlement of the NOPs or any Painshare Amount entitlement of the Project Owner (if any and as the case may be), taking into account:
    - (A) the difference (if any) between the Interim Gainshare Amount or Interim Painshare Amount (if any and as the case may be) paid under clause 3(c) of this Schedule, and the Gainshare Amount or Painshare Amount (if any and as the case may be) calculated to be payable under clause 3(f)(1); and
    - (B) any Gainshare Retention Amount to which the NOPs are entitled; and
  - (3) prepare and deliver a notice to the NOPs and the Project Owner detailing the amounts calculated under this clause 3(f).
- (g) All supporting documentation relating to the amount set out in any notice prepared under clause 3(f) of this Schedule must be available for inspection and audit.
- (h) If the Project Owner determines, after independently considering and applying the Risk or Reward Regime, that the ALT's recommendations in the notice under clause 3(f) of this Schedule are correct, the Project Owner will issue a notice to the NOPs and PTV which sets out its determination of:
- (1) the Gainshare Amount owing to the NOPs and PTV; and
  - (2) the Painshare Amount owing from the NOPs to the Project Owner,
- and after taking into account any payment made or received by the Project Owner under clause 3(c) of this Schedule:
- (3) each NOP's entitlement, if any, to be paid any remaining Gainshare Amount in accordance with clause 2 of this Schedule; and/or
  - (4) each NOP's obligation, if any, to pay the Project Owner any remaining Painshare Amount.
- If a determination has been made that a NOP has an obligation to pay the Project Owner a remaining Painshare Amount as described in clause 3(h)(4) of this Schedule, then, within 20 Business Days of receipt of notice of the determination, that NOP must pay the Project Owner the remaining Painshare Amount.
- (i) If the Project Owner determines, after independently considering and applying the Risk or Reward Regime, that any of the ALT recommendations in the notice under clause 3(f) of this Schedule are not correct, the Project Owner will:
- (1) return the notice to the ALT with reasons; and
  - (2) direct the ALT to provide a replacement recommendation and the process in clause 3(f) of this Schedule will recommence.
- (j) Clause 20.6 of this Agreement will apply to any overpayment of the Gainshare Amount or Painshare Amount.
- (k) This clause 3 of this Schedule does not limit the Project Owner's right to withhold or deduct payments in accordance with this Agreement.

## 4 Payment procedure for Performance Liability Amount

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- (a) Within 60 Business Days after the Date of Project Practical Completion, the ALT must prepare and deliver a notice to the Project Owner and the NOPs detailing for the period



from the date of this Agreement until the Date of Project Practical Completion the Performance Liability Amount (if any) calculated to be payable under the Risk or Reward Regime.

- (b) All supporting documentation relating to the amount set out in any notice prepared under clause 4(a) of this Schedule must be available for inspection and audit.
- (c) If the Project Owner determines, after independently considering and applying the Risk or Reward Regime, that the ALT's recommendations in the notice under clause 4(a) of this Schedule are correct, the Project Owner will issue a notice to the NOPs and PTV which sets out its determination of the Performance Liability Amount owing from the NOPs to the Project Owner. Within 20 Business Days of receipt of notice of the determination, the NOPs must pay the Project Owner the Performance Liability Amount.
- (d) If the Project Owner determines, after independently considering and applying the Risk or Reward Regime, that any of the ALT recommendations in the notice under clause 4(a) of this Schedule are not correct, the Project Owner will:
  - (1) return the notice to the ALT with reasons; and
  - (2) direct the ALT to provide a replacement recommendation and the process in clause 4(a) of this Schedule will recommence.
- (e) Within 60 Business Days after the Final Completion Date, the ALT must :
  - (1) calculate, for the period from the date of this Agreement until the Final Completion Date, the Performance Liability Amount (if any) payable in accordance with the Risk or Reward Regime;
  - (2) calculate any Performance Liability Amount entitlement of the Project Owner (if any), taking into account the difference (if any) between the Performance Liability Amount (if any) paid under clause 4(c) of this Schedule, and the Performance Liability Amount (if any) calculated to be payable under clause 4(e)(1); and
  - (3) prepare and deliver a notice to the NOPs and the Project Owner detailing the amounts calculated under this clause 4(e).
- (f) All supporting documentation relating to the amount set out in any notice prepared under clause 4(e) of this Schedule must be available for inspection and audit.
- (g) If the Project Owner determines, after independently considering and applying the Risk or Reward Regime, that the ALT's recommendations in the notice under clause 4(e) of this Schedule are correct, the Project Owner will issue a notice to the NOPs and PTV which sets out its determination of:
  - (1) the Performance Liability Amount owing from the NOPs to the Project Owner; and
  - (2) after taking into account any payment made or received by the Project Owner under clause 4(c) of this Schedule, each NOP's obligation, if any, to pay the Project Owner any remaining Performance Liability Amount.

If a determination has been made that a NOP has an obligation to pay the Project Owner a remaining Performance Liability Amount as described in clause 4(g)(2) of this Schedule, then, within 20 Business Days of receipt of notice of the determination, the NOP must pay the Project Owner the remaining Performance Liability Amount.
- (h) If the Project Owner determines, after independently considering and applying the Risk or Reward Regime, that any of the ALT recommendations in the notice under clause 4(e) of this Schedule are not correct, the Project Owner will:
  - (1) return the notice to the ALT with reasons; and
  - (2) direct the ALT to provide a replacement recommendation and the process in clause 4(e) of this Schedule will recommence.

- (i) Clause 20.6 of this Agreement will apply to any overpayment of the Performance Liability Amount.
- (j) This clause 4 of this Schedule does not limit the Project Owner's right to withhold or deduct payments in accordance with this Agreement.

## 5 Further procedures

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Within 20 Business Days of the date of this Agreement, the AMT must develop any further procedures as are necessary to define in detail the processes for payment. Those procedures must be based on the principles set out in this Schedule and are subject to the approval (or otherwise) of the ALT.

## Schedule 10 – Insurance policies

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### 1 Insurance policies to be effected and maintained by the Owner Participant

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#### 1.1 Insurance of the Works

- (a) The Owner Participant must effect contract works insurance insuring the Works (which includes the transit of Materials ex-works to Site) in the joint names of the Owner Participant, PTV, the NOPs and Subcontractors.
- (b) This insurance must be for the full replacement cost and cover the costs of demolition and removal of debris.
- (c) This policy must cover the Project Owner, PTV, the NOPs and Subcontractors and it must come into effect on the date of the commencement of the Works and continue until two years from the Date of Project Practical Completion.

#### 1.2 Combined general liability insurance policy

- (a) The Owner Participant must effect a combined general liability insurance policy in the names of the Owner Participant, PTV, the NOPs and Subcontractors, whether nominated or otherwise for their respective rights and interests and liabilities, for an amount not less than \$300,000,000 arising from any one occurrence in respect of:
  - (1) death of or personal injury (including illness) to any person not being a person who at the time of the occurrence is engaged in or upon the service of the insured under a contract of service or apprenticeship; and
  - (2) damage to property not belonging to nor in the care, custody or control of the insured,caused by an event occurring during the period of insurance arising out of or in the course of or by reason of the performance or purported performance of the Works.
- (b) The insurance referred to in this clause 1.2 of this Schedule must commence on the date of commencement of the Works and continue until the expiration of the Term.

#### 1.3 Professional indemnity insurance

- (a) The Owner Participant must effect a professional indemnity insurance policy, covering losses incurred and claims made arising from breach of duty in the performance of professional services, in the names of the Owner Participant, PTV, the NOPs and any Subcontractors providing professional services.
- (b) This insurance must include a limit of liability of no less than \$20 million for any one loss or claim and \$20 million in the aggregate, and be in the name of the NOPs and the Subcontractors providing professional services and endorsed to indemnify the Project Owner as a co-insured.

- (c) This insurance must be arranged so that it came into effect on 31 October 2014 and be effected and maintained for a period of 6 years from the date of inception of the insurance policy.
- (d) Prior to the issue of the Final Certificate under 15.1, the ALT must meet and determine what, if any, insurance arrangements are to be put in place to address the risks of claims arising following the expiration of the 6 year period. As part of this process, the ALT will consider whether any amendments are required to this Agreement to give effect to those agreed insurance arrangements. If the ALT determines that additional insurance is required or the current policy should be renewed or extended, any costs associated with effecting and maintaining that additional insurance or extension or renewal of the current policy will be Reimbursable Costs and the amount of the costs must be added to the TOC so that the TOC is increased for the purposes of the calculation of any Gainshare Amount or Painshare Amount (if any and as the case may be) under the Risk or Reward Regime.

#### **1.4 Workers' compensation**

- (a) The Owner Participant must insure its liability, as required under any Statutory Requirement, to its employees engaged in doing anything for the purpose of exercising or performing the Owner Participant's rights or obligations under this Agreement.
- (b) The Owner Participant must obtain endorsement of the workers' compensation and employers' indemnity policy referred to this clause 1.4 of this Schedule to provide cover in respect of liability incurred by the Owner Participant to the NOPs' employees, arising by virtue of a Statutory Requirement.

#### **1.5 Motor vehicle insurance**

The Owner Participant must effect motor vehicle third party liability insurance against property damage and injury to and death of persons, arising from the use of motor vehicles belonging to or in the care, custody or control of the Project Owner and used in connection with the Works, for any obligation under a Statutory Requirement for insurance relating to motor vehicles.

## **2 Insurance policies to be effected and maintained by the NOPs and PTV**

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### **2.1 Construction and equipment insurance**

Each of the NOPs must insure Construction Plant, equipment, tools, facilities, hutments, services, construction aids and the like, belonging to it or under its physical or legal care, custody or control and including its employees' effects whilst on a Site or being mobilised to the Site or being demobilised from a Site, supplied, leased or hired by the NOP or PTV for use in connection with the performance of the Works. The insurance effected and maintained pursuant to this clause 2.1 of this Schedule must be:

- (a) unless otherwise agreed by the Owner Participant, for the insured property's market value;
- (b) extended to include the interest, if any, of the Owner Participant;
- (c) against all risks and physical loss or damage arising from any cause which:
  - (1) occurs during the period commencing on the date of commencement of the Works and ending on the date the NOPs have completed demobilisation from every Site; or
  - (2) becomes apparent after the Date of Practical Completion (as specified in the Certificate of Practical Completion) and before the date of issue of the Final

Certificate provided that the cause has occurred prior to or on the Date of Practical Completion,

and in either case arises out of or in the course of or by reason of the performance or purported performance of the Works.

## **2.2 Workers' compensation**

- (a) Each NOP must insure its liability, as required under any Statutory Requirement, to its employees engaged in doing anything for the purpose of exercising or performing that NOP's rights or obligations under this Agreement.
- (b) PTV must insure its liability, as required under any Statutory Requirement, to its employees engaged in doing anything for the purpose of exercising or performing PTV's rights or obligations under this Agreement.
- (c) Each NOP must also ensure that each of its Subcontractors insures its liability as required under any Statutory Requirement to their employees engaged in doing anything for the purpose of executing the relevant NOP's rights or obligations under this Agreement.
- (d) To the extent permitted by law, the workers' compensation policy or policies required by this clause 2.2 of this Schedule must be endorsed to:
  - (1) indemnify the Owner Participant against any liability which it may incur to such employees, arising by virtue of a Statutory Requirement; and
  - (2) provide cover in respect of each and every claim for an amount not less than the minimum as specified in any Statutory Requirement.

## **2.3 Motor vehicle insurance**

The NOPs and PTV must effect motor vehicle third party liability insurance against property damage and injury to and death of persons, arising from the use of motor vehicles belonging to or in the care, custody or control of a NOP and used in connection with the Works, for any obligation under a Statutory Requirement for insurance relating to motor vehicles.

## Schedule 11 – Final Project Proposal

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### 1 Scope of Works

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#### 1.1 Interpretation


Any requirement to comply with a specified standard under this section 1 of Schedule 11 does not limit any other obligation of the Participants under this Agreement, including in respect of compliance with other standards.

#### 1.2 Scope, quality and standard of Works for Burke Road, Glen Iris (Separable Portion 1)

The Scope of Works for Separable Portion 1 includes a grade separation by lowering the Glen Waverley railway line underneath Burke Road, Glen Iris, and the associated works set out below.

##### (a) Station works

The station works include:

- Demolition of the existing Gardiner Station;
- A new Un-staffed station (as defined in VRIOG Standards) to replace Gardiner Station (entrance at street level), to be designed and constructed in accordance with VRIOG Standards and MTM's Final Operational Requirements and Station Functional Specification, with passive provision to be upgraded to a Host station (as defined in VRIOG Standards) ;
- Provision of protective service officer facilities at the station;
- Two new side platforms servicing up and down tracks (160m long active face) with future provision to extend to 230m;
- Design, supply and installation of lifts and stair access from the station concourse to/from the platforms;
- Emergency access / egress ramps (with remote surveillance & operation);
- Installation of the information and communication technology system for the new station;
- Provision of station car parks on the basis that there is no reduction in the number of permanent car parks. Some station car parking can be relocated to neighbouring stations along the rail corridor on the basis that there is no net reduction in the number of car parks, to facilitate urban renewal and value capture at Gardiner Station. Station car parking relocation proposals will be considered by PTV on a case by case basis; and
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##### (b) Structural works

The structural works include:

- A new Burke Road Bridge over the lowered railway line;

- Earth retaining structures for the new lowered railway and station platforms;
- Station car park access, from Carroll Crescent, through an underpass under the lowered railway line;
- Provision for access for rail maintenance and emergency vehicles to existing substation and commuter car park;
- Existing pedestrian underpass at York Road to be retained;
- Road and rail safety barriers; and
- Maintain vertical clearance from track to structures at minimum height of 5.26m.

(c) **Track and civil works**

These works include:

- Design and construction of the new railway alignment for two tracks, including bulk earthworks, drainage, formation, earth retaining structures and track (using low profile sleepers);
- Disposal of contaminated material to a maximum of the quantities stated below:

Item	Quantity	Unit
Haul & dispose of asbestos contaminated fill (day rate)	████████	tonne
Haul & dispose of asbestos contaminated fill (night rate)	████████	tonne
Haul & dispose of contaminated fill – Category A	████████	tonne
Haul & dispose of contaminated fill – Category C (day rate)	████████	tonne
Haul & dispose of contaminated fill – Category C (night rate)	████████	tonne

- Diversion, protection and relocation of affected utility services excluding:
  - Enabling works in relation to the digital train radio system;
  - Design of the 11kv high voltage power relocation; and
  - The western tie-in near Carroll Crescent / Weir Street and eastern tie-in at Wills Street / York Road of the gas relocation;
- Design and construction of a new 1.0m wide access path at track level; and
- Removal of redundant tracks and associated infrastructure, the existing level crossing infrastructure and the existing 'tram square'.

(d) **Associated rail infrastructure works**

These works include:

- Modification to overhead traction power system to meet the new track alignment;
- Design, supply and installation of overhead structures and wiring, including any associated gantries or structures to support signalling equipment;
- Detailed design and construction of the combined services route (**CSR**), including relocation of all associated services into the CSR, including signalling, high voltage (22kV, 2.2 kV or 1500DC including negative returns), electrolysis and communications services;
- Road / rail interface protection barriers and throw screens as required by applicable standards; and
- All other rail infrastructure works to be in accordance with MTM's Final Operational Requirements and Signalling Functional Specification.

(e) **Train control systems**

These works include:

- Design, supply, installation, fit-out, testing and commissioning of the signalling system, including equipment cases, impedance bonds, signals, train stops and associated equipment. All signalling infrastructure where impacted by the Project must be upgraded to meet current standards and the corridor signalling strategy, including where applicable modifications to MTM's disaster recovery system;
- Design, supply, installation, fit-out, testing and commissioning of the new high voltage signalling power supplies where required;
- Relocation and/or protection of existing rail assets, in particular the signalling services that were not relocated during the early works;
- All operational control systems to be upgraded to relevant standards with location cases kept clear of the danger zone to enable maintenance to be performed safely without the need for an occupation;
- Removal of the existing signal box equipment and associated signalling circuits and equipment when the tram square is decommissioned, and delivery of salvageable items to the nominated MTM depot;
- Provision of a communications equipment room to VRIOG Standard 013.1 and as per MTM requirements;
- Installation of a computer based interlocking (**CBI**) signalling system to support the new signalling arrangement;
- Removal of the manual signal controls at Gardiner station and installation of new signals to be controlled from the new CBI;
- Utilisation of the fibre network for CBI communication backbone with VicTrack synchronous digital hierarchy fibre link as secondary link;
- Removal of the tram square and installation of a new "air gap" and separate feed to both sides of the air gap from the Gardiner sub-station;
- All other works in accordance with MTM's Final Operational Requirements and Signalling Functional Specification;
- New signalling equipment room in the vicinity of the new station; the room is to house the CBI;
- New communications equipment room servicing all systems in the vicinity of the new station; and
- Signalling works between Heyington and Tooronga stations [REDACTED].

(f) **Tram Works**

The tram works include:

- Design and construction of tram infrastructure including provision of a 33m *Disability Discrimination Act* 1992 (Cth) (**DDA**) compliant central island platform;
- DDA compliant access / egress from tram stop to station concourse; and
- If required by PTV or Yarra Trams, design and temporary relocation of tram stops. Any temporary tram facilities must maintain existing standard of access.

(g) **Road works**

The road works include:

- Burke Road reconstructed to achieve the required clearance above the lowered rail;
- Provision of new bicycle facilities to connect to existing bicycle facilities;



- Design and construction of new pavement including bulk earthworks, formation, pavement construction, kerb construction, drainage, line marking and signage as required;
- Design and construction of traffic signal works at the Carroll Crescent/ Wills Street/ Burke Road intersection;
- Modification of traffic signals to improve the efficiency of vehicle movements post construction; and
- Design and construction of street lighting in accordance with current VicRoads, Victorian Electricity Supply Industry and VicTrack standards.

(h) **Bussing**

These works include:

- Planning and liaison with PTV, MTM and Yarra Trams to manage bussing operations and temporary bussing operations;
- Design and temporary relocation of bus stops affected by construction works. Temporary bus facilities must provide for equivalent disability access; and
- Provision of way finding signage integrated with other modes of transport and facilities.

(i) **Further design considerations / future proofing**

The following future proofing provisions are to be included in the design of the Project:

- Passive provision to upgrade the station from an unstaffed designation to a Host designation in the future in line with MTM's Station Functional Specification. A design must be prepared for a Host station configuration and as well as a constructability plan demonstrating how this future arrangement will be achieved (including building, construction, fit out and servicing); and
- Development of station and precinct designs that enable the highest and best use of the sites to generate value uplift that can be realised by the State.

### 1.3 **Scope, quality and standard of Works for North Road, Ormond (Separable Portion 2)**

The Scope of Works for Separable Portion 2 comprises a grade separation by lowering the Frankston railway line underneath North Road, Ormond, with associated works as set out below.

(a) **Station Works**

The station works include:

- Demolition of the existing Ormond Station;
- A new Host station (as defined in VRIOG Standards) to replace Ormond Station (entrance at street level), to be designed and constructed in accordance with VRIOG Standards and MTM's Final Operational Requirements and Station Functional Specification;
- Provision of protective service officer facilities at the station;
- Provision of station car parks on the basis that there is no reduction in the number of car parks. Some station car parking can be relocated to neighbouring stations along the rail corridor on the basis that there is no reduction in the number of car parks, to facilitate urban renewal and value capture at Ormond Station. Station car parking relocation proposals will be considered by PTV on a case by case basis;
- One side face platform and one island platform to service the three track arrangement;

- Myki ticketing system and associated infrastructure to support Myki operations;
- Provision for future Myki barriers;
- Design, supply and installation of lifts, ramps and stairs at the station;
- An island platform and one side platform servicing up, down and centre tracks (160m long active face);
- [REDACTED]; and
- Undertake a study for the value capture proposal at Ormond Station, to provide an integrated concept design for piling, transfer beams and deck, and a construction methodology and cost plan.

(b) **Structural works**

The structure works include:

- Design and construction of the North Road bridge and associated components for the rail cutting;
- A pedestrian and cyclist underpass at the existing Dorothy Avenue railway underpass. Drainage culverts at the discontinued Dorothy Avenue under the lowered railway;
- Design and construction of earth retaining walls and pier works;
- Road and rail safety barriers; and
- Maintain vertical clearance from track to structures at minimum height of 5.26m.

(c) **Track and civil works**

These works include:

- Design and construction of the new lowered railway alignment for three tracks, including bulk earthworks, drainage, formation, retaining structures and track (including low profile sleepers);
- Removal of redundant tracks and associated infrastructure including the existing level crossing infrastructure, including delivery of salvageable items to the nominated depot;
- Design and construction of a new 1.0m wide access path at track level;
- Disposal of contaminated material to a maximum of the quantities stated below:

Item	Quantity	Unit
Haul & dispose of asbestos contaminated fill (day rate)	[REDACTED]	tonne
Haul & dispose of asbestos contaminated fill (night rate)	[REDACTED]	tonne
Haul & dispose of contaminated fill – Category A	[REDACTED]	tonne
Haul & dispose of contaminated fill – Category C (day rate)	[REDACTED]	tonne
Haul & dispose of contaminated fill – Category C (night rate)	[REDACTED]	tonne

- Diversion, protection and relocation of affected utility services;
- Temporary use of EE Gunn Reserve for construction works as per the licence agreement to be entered into between VicRoads and Glen Eira City Council;
- Design and construction of shared use paths, including realignment of the existing shared user path from EE Gunn Reserve to the rail reserve where possible; and
- All other track and rail civil works to be in accordance with MTM's Final Operational Requirements.

(d) **Associated rail infrastructure works**

These works include:

- Modification to overhead traction power system to meet the new track alignment;
- Design, supply and installation of overhead structures and wiring, including any associated gantries or structures to support signalling equipment;
- Detailed design and construction of the combined services route (**CSR**), including relocation of all associated services into the CSR, including signalling, high voltage (22kV, 2.2 kV, or 1500DC including negative returns), electrolysis and communications services;
- Road / rail interface protection barriers and throw screens as required by applicable standards; and
- All other works in accordance with MTM's Final Operational Requirements and Signalling Functional Specification.

(e) **Train control systems**

These works include:

- Design, supply, installation, fit-out, testing and commissioning of the signalling system. All signalling infrastructure where impacted by the Project must be upgraded to meet current standards and the corridor signalling strategy, including where applicable modifications to MTM's disaster recovery system;
- Installation of a computer based interlocking signalling system to support the new signalling arrangement – refer to the Signalling Functional Specification;
- Modifications to control systems such that all changes are to be adequately reflected in the Metrol Caulfield signal box and Moorabbin signal indication panel including digital train radio system, train control management system and train numbering system;
- All operational control systems to be upgraded to relevant standards with location cases kept clear of the danger zone to enable maintenance to be performed safely without the need for an occupation;
- Provision of a communications equipment room to VRIOG Standard 013.1 and as per MTM's requirements;
- Alteration to existing communication systems effected by the changes to the network at Ormond i.e. maintaining Digital Train Radio System reliability within the underpass;
- Supply, installation, fit out, testing and commissioning of the new high voltage signalling power supplies;
- Relocation and/or protection of existing rail assets; and
- All other works in accordance with MTM's Final Operational Requirements and Signalling Functional Specification.

(f) **Road works**

The road works include:

- Modification of North Road, Dorothy Avenue, Katandra Road, Cadby Avenue, Newham Grove and any other roads affected by the Works;
- Design and construction of new pedestrian operated signals crossing North Road in the location of the station entrance and Frankston rail trail;
- Shared user path along Katandra Road adjacent the station, to provide continuity of the Frankston rail trail; and
- Street lighting to meet the current VicRoads, Victorian Electricity Supply Industry and VicTrack standards.

(g) **Bussing**

These works include:

- Planning and liaison with PTV and MTM to manage bussing operations, temporary bussing operations and changes to bus facilities;
- Design and temporary relocation of bus stops affected by construction works. Temporary bus facilities must provide for equivalent disability access;
- Design and construction of permanent bus facilities for a minimum of 1 No. bus bays. Bus facilities are to be fully DDA compliant; and
- Provision of way finding signage integrated with other modes of transport and facilities.

(h) **Further design considerations / future proofing**

The following future proofing provisions are to be included in the design of the Project:

- Passive provision to upgrade the station from a Host designation to a Premium designation in the future in line with MTM's Station Functional Specification. An architectural drawing showing building layout must be prepared for a Premium station configuration as well as a high level constructability plan demonstrating how this future arrangement will be achieved (including building, construction, fit out and servicing); and
- Passive provision for a future dual gauge track on the east of the existing railway.

**1.4 Scope, quality and standard of Works for McKinnon Road, McKinnon and Centre Road, Bentleigh (Separable Portions 3 and 4)**

The Scope of Works for:

- Separable Portion 3 includes a grade separation by lowering the Frankston railway line underneath McKinnon Road, McKinnon; and
- Separable Portion 4 includes a grade separation by lowering the Frankston railway line underneath Centre Road, Bentleigh,

and the associated works set out below.

(a) **Station works**

The station works at the Centre Road site include:

- Demolition of the existing Bentleigh Station;
- A new Premium station (as defined in VRIOG Standards) to replace Bentleigh Station (entrance at street level), to be designed and constructed in accordance with VRIOG Standards and MTM's Station Functional Specification;
- Supply and installation of fare payment devices (**FPDs**), Myki barriers, ticketing machines and vending machines; and
- Provision of station car parks on the basis that there is no reduction in the number of permanent car parks along the rail corridor. Station car parking relocation proposals will be considered by PTV on a case by case basis.

The station works at McKinnon Road site include:

- Demolition of the existing McKinnon Station;
- A new unstaffed station to replace McKinnon Station (entrance at street level), to be designed and constructed in accordance with VRIOG Standards and MTM's Station Functional Specification;
- Passive provision to be upgraded to a 'Host' station;
- Provision for future Myki ticket barriers, including pit and pipe infrastructure within the station building and concourse; and

- Provision of station car parks on the basis that there is no reduction in the number of permanent car parks along the rail corridor. Station car parking relocation proposals will be considered by PTV on a case by case basis.

General items across both Centre Road and McKinnon Road station sites include:

- An island platform and one side platform servicing up, down and centre tracks (160m long active face) ;
- [REDACTED];
- Emergency access / egress ramps (with remote surveillance & operation);
- DDA compliant ramps and stairs provided for access and egress;
- Design, supply and installation of lifts at the stations;
- Station concourse slab and forecourt to be provided;
- Installation of the information and communication technology system for the new station; and
- Provision of protective service officer facilities at each station.

**(b) Structural works**

The structural works at the Centre Road site include:

- A new Centre Road Bridge over the lowered railway line and associated structural components to support the rail cutting;
- Integral bridge abutments;
- All structures over the railway line are to maintain a minimum vertical clearance of 5.26m from the track in accordance with the VRIOG Standards;
- Compliance with MTM Design Practice Note 13 regarding face of retaining walls.

The structural works at the McKinnon Road site include:

- McKinnon Road Bridge over the lowered railway line and associated structural components to support the rail cutting;
- Integral bridge abutments to be constructed;
- All structures over the railway line are to maintain a minimum vertical clearance of 5.26m from the track in accordance with the VRIOG Standards;
- Road barrier containment with anti-throw protection screens, rail safety barrier to be incorporated on the capping beam where required by applicable standards; and
- Compliance with MTM Design Practice Note 13 regarding face of retaining walls.

**(c) Track and civil works**

The track and civil works for the McKinnon Road site include:

- Design and construction of the new lowered railway alignment for three tracks, including bulk earthworks, drainage, formation, retaining structures and track (including low profile sleepers);
- Extension of the shared user path between Murray Road and McKinnon Road for the use of cyclists and pedestrians with on-road connection where required;
- Diversion, protection and relocation of affected utility services; and
- Overland flow solution for Murray Road which includes any flows over a 1 in 100 year rainfall event entering the rail cutting.

The track and civil works for the Centre Road site include:

- Relocation of the Bentleigh main drain using a syphon.

General items across both sites include:

- Design and construction of a new 1.0 metre wide access path at track level.

(d) **Associated rail infrastructure works**

These works across both sites include:

- Modification to overhead traction power system to meet the new track alignment;
- Design, supply and installation of overhead structures and wiring, including any associated gantries or structures to support signalling equipment;
- Detailed design and construction of the combined services route (**CSR**), including relocation of all associated services into the CSR, including signalling, high voltage (22kV, 2.2 kV or 1500DC including negative returns), electrolysis and communications services;
- Road / rail interface protection barriers and throw screens as required by applicable standards.

(e) **Train control systems**

These works across both sites include:

- The signalling and operational control systems (OCS) / information and communication technology system (ICT) systems to be integrated with the signalling and OCS/ICT developed for North Road site in accordance VRIOG Standards; and
- Integration into full CBI, controlled from Caulfield signalling control centre.

(f) **Road works**

The road works for the McKinnon Road site includes:

- Modification of McKinnon Road (construction of a new bridge over the lowered railway), retaining the existing road layout and configuration;
- Maintaining existing access to side roads and driveways;
- Design and construction of new pedestrian operated signals crossing McKinnon Road in the location of the station entrance and the Frankston Rail Trail;
- Access to McKinnon Station for pedestrians, vehicles and buses, maintaining existing standard of access;
- Intermodal bus-train connection: standard of connection to be no less than existing;

The road works for the Centre Road site includes:

- Modification of Centre Road (construction of a new bridge over the lowered railway) retaining existing road layout and configuration;
- Maintaining existing access to side roads and driveways;
- Design and construction of new pedestrian operated signals crossing Centre Road in the location of the station entrance and the Frankston Rail Trail;
- Access to Bentleigh Station for pedestrians, vehicles and buses, maintaining existing standard of access;
- Intermodal bus-train connection: standard of connection to be no less than existing;
- Conforming design to comply to V60 Desirable standards as described in relevant Austroads Guides; and
- Intersection design vehicle: 19m semi trailer as described in relevant Austroads Guides.

General items across both sites include:

- Number of through lanes, turning lanes, bicycle lanes: no less than existing, or an amount to provide a net improvement to the Level of Service as described in relevant Austroads Guides, whichever is the greater;
- Lane widths as per the Austroads Guides or no less than existing, whichever is the greater;
- Footpaths to be provided across both McKinnon and Centre Road structures, to Austroads requirements or existing width whichever is the greater;
- Extension of the shared user path from Cadby Avenue/Murray Road to McKinnon Road to provide continuity of the Frankston Rail Trail to provide a continuous path for the use of cyclists and pedestrians;
- Realignment of the shared user path between Bentleigh sub-station and Bentleigh Station to provide continuity of the Frankston Rail Trail for the use of cyclists and pedestrians;
- Reinstatement of damaged infrastructure along local roads used as haulage routes for the construction of these projects;
- Replacement of non-station car parking on the basis that there is no reduction in the number of car parks, or with the agreement of the asset owner;
- Consolidate bus stops in a location to provide improved access between the stations and bus facilities in compliance with the *Disability Discrimination Act 1992* (Cth);
- Provision of street lighting in accordance with current Victorian Electricity Supply Industry Standards, and other roads in accordance with Victorian Electricity Supply Industry Standards;
- Drainage average recurrence interval – as per Austroads Guides;
- Kerb & channel to be provided at all locations; and
- All newly constructed road traffic areas to be deep strength asphalt pavement, in accordance with Austroads Design Standards.

**(g) Bussing**

General items across both sites include:

- Bussing strategy for both McKinnon and Centre Road will adopt the North Road strategy; and
- Infrastructure to cater for rail replacement bus services between Caulfield and Moorabbin.

**(h) Further design considerations / future proofing**

The following future proofing provisions are to be included in the design of the Project:

- Passive provision for a future dual gauge track on the east of the existing railway.

## **1.5 MTM Rail Transport Operator Role**

The MTM RTO Role includes:

- Management of rail safety and access to network;
- Provision and management of infrastructure support during delivery of the Project (overhead observers, s/station spotters, high voltage spotters, maintenance, etc);
- Design, supply, installation, testing and commissioning of train control systems in accordance with VRIOG Standards;

- Operational staff to support works on Melbourne Trains – Metropolitan Railway Train Control Centre (Metrol) and the Metropolitan Rail and Electrical Control Centre (Electrol);
- Occupation and commissioning management (planning, provision of infrastructure support);
- Provision and management of planned disruption including timetabling, captive running and replacement buses;
- Train customer relations and engagement;
- Training of maintenance and operational staff (station staff, train controllers, signal controller, drivers and customer service staff);
- Engineering design review and acceptance (requirements review, risk assessment review, safety in design review, drawing management system reviews, dispensation reviews, etc);
- Asset handover management [REDACTED];
- Acceptance of rail systems and train station facilities; and
- Management of change – preparation of documentation, internal RTO consultation, consultation with the Office of the National Rail Safety Regulator, and implementation.

## 2 Design development

---

The Participants must:

- (a) develop the design of the Works in a timely manner and in accordance with the Urban Design Principles and Guidelines; and
- (b) obtain approval of the design in accordance with the design approval framework set out in the Design and Engineering Management Plan included as part of the Project Management System, including consultation with key stakeholders, including the Urban Design Advisory Panel, Office of the Victorian Government Architect, relevant municipal councils, VicRoads, PTV and MTM.



### 3 Total Outturn Cost (TOC)

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#### 3.1 TOC

<b>TOTAL TOC – all Separable Portions</b>	<b>\$529,765,142.24</b>
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#### 3.2 Allowances included in the TOC

(a) The Scope Variation Allowance is [REDACTED] in respect of Scope Variations arising from:

[REDACTED]

(b)

[REDACTED]

#### 3.3 Assumptions underlying TOC

Not applicable.

### 4 Alliance Risk and Opportunity Provisions

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#### (a) Risk & Contingency Provisions

The TOC includes provision for all risks and contingencies except those which, if they eventuate, constitute Adjustment Events.

#### (b) Opportunities

The Participants will use their best endeavours to explore value capture opportunities, maximising return to the State.

5 Adjustment Event Guidelines

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5.1 Separable Portions 1 and 2



1

## **5.2 Separable Portions 3 and 4**



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## **6 Governance Plan**

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Within 20 Business Days of the date of the Agreement, the AMT must make a written recommendation to the Project Owner, in respect of each system and plan referred to in clause 19.10(a)(1) of the Agreement, as to whether that system or plan should be approved by the ALT or the Project Owner.

If the Project Owner, in its absolute discretion, approves the AMT's recommendation, then the Project Owner will issue a notice to the Participants approving the recommendation, and for the purposes of clause 19.10(a)(2) of the Agreement, the Participants must provide that system or plan to the ALT or Project Owner as applicable (as nominated in the recommendation).

If the Project Owner, in its absolute discretion, does not approve the AMT's recommendation, then the Project Owner will issue a notice not approving the recommendation, and directing the Participants in writing to instead provide that system or plan to the ALT or Project Owner, as applicable. For the purposes of clause 19.10(a)(2) of the Agreement, the Participants must provide that system or plan to the ALT or Project Owner as applicable (as directed).

## **7 Draft Local Industry Development Plan**

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### **7.1 Draft LID Plan in respect of Separable Portions 1 and 2**



## 7.2 Draft LID Plan in respect of Separable Portions 3 and 4



## Schedule 12 – Project Management System requirements

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System or plan	Requirements
Alliance Team Integration Plan	Means the plan outlining the activities and processes by which the Participants will develop and maintain alignment between the Participants' representatives appointed to the AMT and WPT to ensure the implementation and adoption of the Alliance Principles and to embrace the Alliance Charter.
Communications and Stakeholder Relations Plan	Detailing how the Alliance will communicate with all stakeholders and the public in undertaking the Works and processes for cooperation and providing assistance to the State in relation to media and stakeholder relations activities.
Completion and Handover Plan	Identifies how the Practical Completion of the Works will be staged, how the final infrastructure works will be handed over to the relevant maintenance providers and addresses the requirements for achieving Practical Completion. Includes a list of all assets, a defects response schedule and a maintenance and operations manual for MTM.
Construction Management Plan	Includes construction methodology, stakeholder management, integrated master program and works staging plans.
Contracting Strategy	As a minimum includes agreed delegations and financial authorisations and identifies opportunities for joint procurement of materials etc.
Design and Engineering Management Plan	Includes a design approval framework, safety in design, whole of life cycle, urban design, sustainability, all regulatory requirements, management of change process, reliability / availability / maintainability / safety (RAMS) plan, stakeholder management and a management and compliance matrix.
Document Control and Documentation Management Plan	Detailing compliance, storage, maintenance, retention, access, transfer, format, structure, security and privacy aspects of all documentation.
Emergency Response and Incident Management Plan	Detailing the overall approach to the response and management of emergency scenarios, incidents and evacuation planning consistent with and reflecting stakeholder requirements.
Environmental Management Plan	Includes an environmental risk assessment and a cultural heritage and management plan which satisfies the requirements of the <i>Aboriginal Heritage Act 2006 (Vic)</i> , and identifies all regulatory requirements, protection measures and sustainability requirements.
Financial Control Plan	Sets out the principles, objectives, policies, procedures, approaches, controls, reporting (including frequency of

	reporting), financial audit and verification activities necessary to provide, and ensure, a robust accounting and control of the Reimbursable Costs and all financial transactions relating to the performance of Works necessary to satisfy all relevant accounting standards.
Health and Safety Management Plan	Satisfying at a minimum, the Project Owner's and MTM's occupational health and safety policies or requirements together with an employer's and Principal Contractor's obligations under any relevant laws and under this Agreement, including the obligations in clause 19.13. The Principal Contractor must ensure that any health and safety management systems utilised for the performance of the Works must be certified by an external JAS-ANZ accredited certification body in accordance with AS/NZS 4801:2001.
KRA Performance Management and Monitoring Plan	Includes the framework for reporting details of the Alliance's performance against the KRAs in accordance with the Risk and Reward Regime.
Mobilisation and Interface Plan	Identifies the strategy, timing and plans for the mobilisation of the Alliance. Describes interfaces that will impact on the Project and how the Alliance will manage these interfaces (including stakeholders) and incorporate them into the program.
Project Control and Reporting Plan	Identifies the key process used to manage scope, change, progress measurement, cost and schedule forecasting and the associated reporting (including in respect of the VIPP and LID Plan). The Project Owner's expectation is that the nominated processes will be integrated and that their use has been proven on comparably complex capital projects.  Identifying the frequency and details of reporting Alliance performance to the ALT and from the ALT to the Participants including the annual project report and project plan identified in clause 21.1(b). The Project Owner's expectation is that this reporting would occur at least monthly via a single consolidated report submitted to and endorsed by the ALT.
Project Management Plan	Incorporating the various policies and plans that will be used to guide and manage the performance of the Works, including peak performance. Includes site mobilisation, management and implementation plans, organisation structure, roles & responsibilities, human resources management, resourcing and fatigue management strategies for delivery of all Separable Portions, etc.
Quality Management Plan	Detailing the approach to the Works to ensure that the quality assurance requirements of the Agreement are met.
Rail Access Management Plan	Includes the Track Occupations Program, bussing, train operations and customer service plans.
Risk Management Plan	Describes how the identified risks and opportunities will be managed during the Works. Outlines treatment, mitigation and management of Project risks, and includes a risk and opportunity register and workshop schedule (that will assist with the development of the Project contingency).
Services Management Plan	Details the approach to the identification, protection and relocation of services.

Site Safety Strategy and Site Safety Management Plan	Detailing the site safety arrangement for individual work areas consistent with the Health and Safety Management Plan and Emergency Response and Incident Management Plan for the Project.
Testing and Commissioning Management Plan	Identifies the frequency and type of testing of materials and the Works, and the commissioning and integration of the final infrastructure into service for operation and associated training plans and addresses MTM's resource requirements and the MTM handover process.
Traffic Management Plan	Traffic management plans to demonstrate the means, methods and techniques by which the Participants will perform the Works to prevent if possible, or minimise if not possible, any impact on continuing road operations (including haulage etc).
Workplace Relations Management Plan	Identifies how industrial relations matters will be managed to satisfy the requirements of clause 19.12.

Schedule 13 – Project Owner and Participants' contact details

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1 Project Owner

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Address: [REDACTED]  
Fax: [REDACTED]  
Attention: [REDACTED]

2 Owner Participant

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Address: [REDACTED]  
Fax: [REDACTED]  
Attention: [REDACTED]

3 PTV

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Address: [REDACTED]  
Fax: [REDACTED]  
Attention: [REDACTED]

4 MTM

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Address: [REDACTED]  
Fax: [REDACTED]  
Attention: [REDACTED]

5 John Holland

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Address: [REDACTED]  
Fax: [REDACTED]  
Attention: [REDACTED]



6 KBR

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Address: [REDACTED]

Fax: [REDACTED]

Attention: [REDACTED]

## Schedule 14 – Termination payment

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### 1 Termination payments – termination of Agreement for convenience

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- (a) Subject to the Project Owner's rights under or in connection with this Agreement, including but not limited to a right to withhold or set off payment and recover all amounts for which any of the NOPs may be liable under this Agreement, if this Agreement is terminated in accordance with clause 27.1, the Project Owner must pay PTV and the NOPs, or PTV and the NOPs must pay the Project Owner (as the case may be):
- (1) an amount which is to be agreed between the Participants; or
  - (2) failing agreement, an amount determined by an Adjudicator,
- in accordance with the provisions of this Schedule.
- (b) In agreeing the amount payable under this clause, the Participants must have regard to the following:
- (1) the Reimbursable Costs, Corporate Overhead and Profit, Gainshare Amount or Painshare Amount (if any and as the case may be) and Performance Liability Amount (if any) payable in accordance with clause 20.1 for the Works performed prior to the date of termination. In considering any Gainshare Amount or Painshare Amount (as the case may be) or Performance Liability Amount (if any) that may be payable, the Participants must, in Good Faith, estimate the Gainshare Amount or Painshare Amount (if any and as the case may be) or Performance Liability Amount (if any) which would have been payable during the course of this Agreement, if this Agreement had not been terminated under clause 27.1;
  - (2) the cost of Materials reasonably ordered by the NOPs for the Works, which the NOPs are legally liable to accept, but only if the Materials become the property of the Project Owner upon payment;
  - (3) costs reasonably and actually incurred by the NOPs in the expectation of completing the whole of the Works including costs or damages incurred by reason of the NOPs having to terminate contractual arrangements with other parties that were entered into for the purposes of the Works, those costs and damages not having been accounted for in any payment by the Project Owner (including any payment to be made by the Project Owner under a new agreement as referred to in clause 1(b)(7) of this Schedule);
  - (4) reasonable costs of demobilisation;
  - (5) the reasonable costs of complying with any directions given by the Project Owner upon, or subsequent to, termination;
  - (6) any amounts which the Project Owner has previously paid to the NOPs; and
  - (7) if any of the NOPs agree to continue with the Works as contemplated by clause 29.3, the extent to which Materials, orders made and other matters the subject

of the costs outlined in this clause 1(b) of this Schedule can be used in any new agreement entered into between those NOPs for the continuation of the Works.

- (c) Payments made under this Schedule are the only liability of the Project Owner in relation to or in connection with a termination under clause 27.1 and the Project Owner is not otherwise liable to the NOPs for any cost, loss (including Consequential Loss), expense or damage incurred by the NOPs as a consequence of, or in connection with, this Agreement, the Works, or the termination.
- (d) Any issue between the Participants regarding the amount payable under clause 1(a) of this Schedule must be referred to the Adjudicator for determination.
- (e) Notwithstanding the undertaking to avoid issues arising between the Participants and litigation or arbitration set out in clause 5.1 of this Agreement, the Project Owner and the NOPs are entitled to recover the amount as determined in accordance with this clause if that amount is not paid within 20 Business Days of the date of agreement between the Participants or the date of determination by an Adjudicator, as the case may be.

## 2 Independent Adjudicator

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### 2.1 Referral of certain issues to an Adjudicator

If an issue arises between the Participants in respect of the amount payable under clause 1 of this Schedule, then a Participant may by notice in writing to the others, specify the nature of the issue and call for submission of the issue to an Adjudicator to determine it. In the event of a submission of the issue to the Adjudicator, the Adjudicator must determine the amount payable by the Project Owner to the NOPs or the NOPs to the Project Owner (as the case may be) by determining the net sum of the amounts set out in clauses 1(b)(1) to (7) of this Schedule (**Determination**).

### 2.2 Nomination of Adjudicator

The procedure for appointing the Adjudicator is as follows:

- (a) Written notice must be given by the Participant calling for the appointment of the Adjudicator, including details of the matter to be resolved by the Adjudicator, to the other Participants.
- (b) If the matter is not resolved within 5 Business Days from the date of the notice, the Participants must agree on a single Adjudicator to determine the issue.
- (c) If, within 5 Business Days of the notice, the Participants fail to agree on a single Adjudicator, then the Participants must, as soon as practicable, request the President of CPA Australia or the most senior officer of CPA Australia to appoint the Adjudicator.
- (d) Upon agreement of the Participants, or appointment of an Adjudicator under clause 2.2(c) of this Schedule, the Participants and the Adjudicator must enter into an agreement which will govern the determination of the issue. That agreement must be consistent with the provisions of this Schedule.

### 2.3 Adjudicator to have appropriate experience

- (a) The Adjudicator must have appropriate commercial and practical experience and expertise in the area of the issue.
- (b) Any person nominated to act as an Adjudicator must fully disclose any interest or duty prior to that person's appointment. If that person has or may have any interest or duty which conflicts with their appointment as Adjudicator, then that person must not be appointed except with the agreement of all the Participants.

- (c) In resolving the issue the Adjudicator must act impartially.

## **2.4 Confidentiality**

It will be a term of the Adjudicator's appointment that the Adjudicator undertakes to keep confidential matters coming to the Adjudicator's knowledge by reason of the Adjudicator's appointment and carrying it out.

## **2.5 Powers of Adjudicator**

The Adjudicator will have the following powers:

- (a) to determine an issue regarding the amount payable under clause 1(a) of this Schedule;
- (b) to inform itself independently as to facts to which the issue relates;
- (c) to obtain evidence from any person in relation to any aspect of the issue;
- (d) to receive written submissions and sworn and unsworn written statements and to photocopy documents and to act upon the same;
- (e) to consult with such other professionally qualified persons as the Adjudicator in its absolute discretion thinks fit; and
- (f) to take such measures as the Adjudicator thinks fit to expedite the completion of the issue resolution,

but the Adjudicator will only have the power to determine an issue regarding the amount payable under clause 1(a) of this Schedule and no other issue (unless the Participants otherwise agree).

## **2.6 Timing of issue resolution**

It will be a term of the Adjudicator's appointment that the Adjudicator must be required to make a determination of the issue within 40 Business Days of the Adjudicator's appointment or such further period as the Participants may agree in writing.

## **2.7 Written determination**

The Adjudicator must deliver a written determination which sets out the reasons for the determination and the findings of fact on which the determination is based.

## **2.8 Issue resolution to be held in Melbourne**

The issue resolution must be held in Melbourne, Victoria unless the Participants otherwise agree.

## **2.9 Adjudicator's Determination is final**

The Adjudicator must act as an expert and not an arbitrator. The determination is final and binding on the Participants except where the Adjudicator is in breach of the agreement referred to in clause 2.2(d) of this Schedule, in the case of manifest error on the face of the determination or if the Adjudicator has acted in bad faith.

## **2.10 Costs of Adjudicator**

The costs of the Adjudicator must be borne equally by the Participants and are not Reimbursable Costs.

## **2.11 Referral to Adjudicator does not affect the obligations of the Participants**

The referral of any matter to an Adjudicator does not in any manner relieve any Participant from performing its obligations under this Agreement pending the determination of the issue.

## Schedule 15 – Project Owner’s representative

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### 1 Role

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The Project Owner’s representative must perform all of the Project Owner’s obligations in the Project Owner’s capacity as client for the performance of the Works under this Agreement.

### 2 Responsibilities

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#### 2.1 General

The Project Owner’s representative’s responsibilities can be divided into 4 categories:

- (a) scope of Works;
- (b) financial accountability;
- (c) liaison and facilitation; and
- (d) ownership.

The responsibilities of the Project Owner in respect of the 4 categories identified above include the matters set out in clauses 2.2 to 2.5 of this Schedule.

#### 2.2 Scope of Works

The Project Owner’s representative:

- (a) must facilitate the Participants’ access to documentation, which describes the Project Owner’s requirements for the design, documentation and construction of the Works; and
- (b) may direct the Participants in writing to change the Works in accordance with clause 17.1.

#### 2.3 Financial accountability

The Project Owner’s representative must:

- (a) specify the required format and intervals for reporting to the Project Owner on financial and other matters;
- (b) determine any adjustments to be made to any or all of the TOC, the KRAs and the Date for Practical Completion where an Adjustment Event occurs;
- (c) ensure all payments to the NOPs for the Reimbursable Costs that the NOPs incur are made in accordance with this Agreement;

- (d) ensure verification and payment of any Gainshare Amount or Painshare Amount (if any and as the case may be) and Performance Liability Amount (if any);
- (e) receive the security for performance required to be provided by the NOPs under this Agreement;
- (f) in accordance with the terms of this Agreement, have recourse to the security provided by the NOPs; and
- (g) ensure payment on the Final Certificate to the extent that the Project Owner is required to make payment to the NOPs under the Final Certificate.

## **2.4 Liaison and facilitation**

The Project Owner's representative must:

- (a) communicate directly with the chairperson of the ALT, Alliance Manager and the AMT on operational issues;
- (b) attend ALT meetings as required, and other meetings by agreement with the Alliance Manager;
- (c) ensure that the Project Owner provides relevant information in a timely manner;
- (d) communicate to the Project Owner issues arising from the Participants;
- (e) facilitate access to relevant resources and expertise in the Project Owner for the benefit of the Participants; and
- (f) ensure relevant support staff within the Project Owner understand the nature of the alliance, and the obligations placed on the Participants.

## **2.5 Ownership**

The Project Owner's representative must:

- (a) give the Participants possession of each Site or sufficient of each Site to enable the Participants to perform the Works;
- (b) issue a Certificate of Practical Completion for the Works to the Participants in accordance with this Agreement and be satisfied that defects or omissions are rectified before the end of the Defects Correction Period;
- (c) receive all documents and information in respect of the design and construction of the Works including all design documentation, surveys and as constructed information together with any other documentation, which ought to be held by the Project Owner with respect to the Works;
- (d) to the extent required, make payment to the NOPs on the Final Certificate in accordance with this Agreement; and
- (e) if necessary, suspend the progress of the whole or part of the Works in accordance with clause 26.2.

## Schedule 16 – Issue resolution procedures

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### 1 Issue resolution principles

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The principles to underpin how issues will be handled by the alliance are agreed as follows.

- (a) Issues resolved in accordance with the Alliance Principles.
- (b) Issues resolved at lowest practical level within the alliance.
- (c) Issues resolved quickly.
- (d) Issues resolved via an agreed escalation procedure which covers people, authorities, issues and resolution time.
- (e) Final place for resolution of all issues is the ALT.
- (f) Issue resolution at the ALT is unanimous.

### 2 Issue resolution process

---

The issue resolution process is as follows.

- (a) The ALT must use its best endeavours to resolve the issue at no less than two separate ALT meetings.
- (b) If the issue cannot be resolved by the ALT, the Participants can refer the issue to a separate meeting of authorised officers of each Participant (who must meet within 2 Business Days of the issue being referred to them and attempt to resolve the issue within 5 Business Days).
- (c) If the authorised officers of each Participant cannot resolve the issue within 5 Business Days of the issue being referred to them, then, subject to the no litigation or arbitration principle set out in clause 5, the Project Owner must determine (taking into account the nature of the issue) the manner in which the issue is to be resolved by nominating, by notice in writing to the Participants, one of the following issue resolution mechanisms for resolution of the issue:
  - (1) except in circumstances where the no litigation or arbitration principle set out in clause 5 applies, referral of the issue to arbitration in accordance with clause 3 of this Schedule;
  - (2) except in respect of a Wilful Default or an alleged Wilful Default, determination of the issue by an expert (**Expert**) in accordance with clauses 4 of this Schedule; or
  - (3) except in circumstances where the no litigation or arbitration principle set out in clause 5 applies, commencement of legal proceedings to resolve the issue.



### 3 Referral to arbitration

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- (a) If the Project Owner determines that the issue will be resolved by referral to arbitration, then any referral of the issue to arbitration must be in accordance with the *Commercial Arbitration Act 2011 (Vic)*.
- (b) The arbitration will be held in Melbourne, Victoria or any other place as agreed by the ALT.
- (c) The arbitrator of the issue is to be selected by the ALT, which must in Good Faith confer to attempt to agree on an arbitrator within 5 Business Days of the Project Owner notifying the Participants that the issue be referred to arbitration in accordance with this clause 3 of this Schedule.
- (d) If the identity of the arbitrator cannot be agreed by the ALT within the 5 Business Day period referred to in clause 3(c) of this Schedule, the arbitrator will be nominated by the President of The Institute of Arbitrators and Mediators Australia.
- (e) The determination of the arbitrator in respect of the issue made in accordance with this clause 3 of this Schedule will be final and binding on the Participants except where there is a manifest error or the arbitrator has acted in bad faith and a Participant challenges the determination within 5 Business Days of the determination being made by the arbitrator.

### 4 Determination by Expert

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- (a) If the Project Owner determines that the issue will be determined by an Expert, then the Expert is to be selected by the ALT, which must in Good Faith confer to attempt to agree on an independent industry expert within 5 Business Days of the Project Owner notifying the Participants that the issue be determined by an Expert in accordance with this clause 4 of this Schedule.
- (b) If the identity of the Expert cannot be agreed by the ALT within the 5 Business Day period referred to in clause 4(a) of this Schedule, the Expert will be nominated by the President of The Institute of Arbitrators and Mediators Australia.
- (c) The Participants must enter into an agreement with the nominated or agreed expert on such terms as the Expert may require which are consistent with clause 4(d) of this Schedule and which do not in any way modify or vary the requirements of clause 4(d) of this Schedule.
- (d) The process required for determination of the issue by the Expert must be administered as follows:
  - (1) the Participants must:
    - (i) deliver to the Expert a notice setting out the parameters of the determination to be made by the Expert;
    - (ii) not communicate with the Expert without the prior written consent of the other Participants; and
    - (iii) provide the Expert with all of the information, documents and assistance necessary for the Expert to make a determination in respect of the issue and ensure that such information is made available to all of the other Participants;
  - (2) the Expert will:
    - (i) act as an expert and not as an arbitrator;
    - (ii) proceed in any manner he or she thinks appropriate, without being bound by the rules of evidence, but whilst observing the rules of natural justice;

- (iii) take into consideration all of the documents, information and other material which the Participants give the Expert including all of the documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute;
  - (iv) not be expected or required to obtain or refer to any other documents, information or material, but may do so if he or she thinks appropriate;
  - (v) be permitted to conduct inspections upon the giving of reasonable notice to the Participants;
  - (vi) use his or her own knowledge and expertise in forming his or her conclusion;
  - (vii) make his or her determination concerning the issue within 30 Business Days from the acceptance by the Expert of the appointment, or such extended period as the Expert and the ALT may agree; and
  - (viii) not communicate with one Participant without the knowledge of the other Participants;
- (3) the Expert may, if he or she thinks appropriate, arrange to meet or otherwise have discussions with the Participants, together but not separately, and in connection with any such meetings or discussions:
- (i) a Participant may be accompanied by legal or other advisors; and
  - (ii) the Participants and the ALT agree to be bound by such procedural directions as may be given by the Expert, both in preparation for and during the course of the meeting or discussions;
- (4) the Participants and the ALT agree and undertake to produce such information and documents as the Expert may from time to time direct in such place and at such time as the Expert may direct;
- (5) the Expert may commission his or her own advisors or consultants, including lawyers, accountants, bankers, engineers, surveyors or other technical consultants, to provide information to assist the Expert in reaching his or her determination in respect of the issue;
- (6) the Participants must indemnify (in equal shares) the Expert for the reasonable cost of retaining those advisors or consultants;
- (7) the Expert will disclose to all of the Participants and the ALT any relationship or interest with the Participants or their respective officers, employees, contractors, consultants or agents who were involved in the reaching of the Expert's determination in respect of the issue and any interest the Expert has in the matters in dispute; and
- (8) if the Expert becomes aware of any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert will immediately inform the Participants.
- (e) The determination of the Expert in respect of the issue made in accordance with this clause 4 of this Schedule will be final and binding on the Participants except where there is a manifest error or the Expert has acted in bad faith and a Participant challenges the determination within 5 Business Days of the determination being made by the Expert.

## Schedule 17 – Parent company guarantee

### This Deed of Guarantee and Indemnity

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is made on \_\_\_\_\_ by the following party:

**[insert name of Non-Owner Participant Guarantor]**  
ABN **[insert ABN of NOP Guarantor]**  
of **[insert address of NOP Guarantor]**  
(Guarantor)

#### Recitals

- A. On or about the date of this deed, The Roads Corporation, of 60 Denmark Street, Kew, Victoria 3101 (**Principal**) entered into a Project Alliance Agreement (**Agreement**) with **[insert details]** (**Non-Owner Participant or NOP**), **[insert details]**, Public Transport Victoria and Metro Trains Melbourne Pty Ltd.
- B. It is a requirement under clause 30.1 of the Agreement that the Guarantor enter into, execute and deliver this deed.

#### This deed witnesses

that in consideration of the Principal accepting this deed in satisfaction of the NOP's obligations under clause 30.1 of the Agreement, the Guarantor agrees:

## 1 Definitions and interpretation

---

### 1.1 Definitions

In this deed, unless the context otherwise requires, a word or phrase defined in the Agreement has the same meaning as in the Agreement.

### 1.2 Interpretation

In this deed (including the Recitals), unless a contrary intention appears:

- (a) headings and under linings are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association or other body corporate;
- (e) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or

replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;

- (f) all prices and sums of money and all payments made under this deed are in Australian currency;
- (g) a reference to the word “including” means “including without limitation” and references to “includes” means “includes without limitation”; and
- (h) a reference to a document (including this deed) is that document as varied, amended, novated, ratified or replaced from time to time.

## 2 Guarantee

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The Guarantor unconditionally and irrevocably guarantees to the Principal the due and punctual performance of the obligations of the NOP under the Agreement including:

- (a) the discharge of the obligations and liabilities of the NOP under the Agreement; and
- (b) the payment of all debts and monetary liabilities of the NOP to the Principal under the Agreement.

## 3 Guarantor to perform

---

If, in the Principal's opinion, the NOP fails to perform any of the NOP's obligations or discharge any of the NOP's liabilities under the Agreement, the Guarantor must forthwith:

- (a) upon receipt of notice from the Principal requiring it to do so, perform, or cause to be performed, those obligations or discharge those liabilities (as the case may be) and thereafter continue to perform, or cause to be performed, those obligations and discharge those liabilities (as the case may be) until the termination of the Agreement by the effluxion of time or otherwise; and
- (b) upon demand, pay to the Principal all losses, damages, costs (including legal costs on a full indemnity basis) and expenses suffered or incurred by the Principal arising from or connected with the NOP's failure to perform any of the NOP's obligations or to discharge any of the NOP's liabilities under the Agreement.

## 4 Indemnity

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The Guarantor indemnifies the Principal against all claims, losses, actions, damages, costs (including legal costs on a full indemnity basis) and expenses that the Principal may suffer or incur arising from or in connection with the Agreement by reason of:

- (a) any default in or breach or failure to perform or observe any of the terms and conditions of the Agreement by the NOP; or
- (b) the relevant NOP being wound up (except for the purpose of reconstruction or amalgamation the terms of which have previously been approved in writing by the Principal) or becoming insolvent or bankrupt or entering into a composition with its

creditors or having an administrator, a receiver, a receiver/manager, liquidator appointed or any other external controller (as that term is defined in the Corporations Act) appointed.

## 5 Payments

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All payments which the Guarantor is required to make under this deed must be made without any set-off, counterclaim, condition or deduction, and must be paid within [REDACTED] Business Days of a demand being made by the Principal on the Guarantor. Any such demand must:

- (1) be in writing and served in accordance with clause 12;
- (2) state that it is made under clause 5; and
- (3) provide details of the amount being demanded.

## 6 Certificate

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A certificate signed by an authorised representative of the Principal, or any person authorised in writing by an authorised representative of the Principal, stating the amount payable under this deed is prima facie evidence of that amount.

## 7 Representations and warranties

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- (a) The Guarantor represents and warrants that:
- (1) it has full power and authority to enter into and perform its obligations under this deed;
  - (2) it has taken all necessary action to authorise the execution, delivery and performance of this deed;
  - (3) this deed constitutes legal, valid and binding obligations;
  - (4) each of its representations and warranties contained in this deed is true, correct and not misleading when made or repeated or regarded as made or repeated; and
  - (5) all information provided to the Principal by or on behalf of the Guarantor is true and correct in all material respects and is not, whether by omission of information or otherwise, misleading.
- (b) The representations and warranties in this clause 7 survive the execution of this deed.

## 8 Continuing obligation

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The guarantee and indemnity contained in this deed are continuing obligations of the Guarantor, despite any settlement of account or the occurrence of any other thing and remains in full force and effect until all the obligations of NOP under the Agreement have been performed.

## 9 Independent obligation

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- (a) The guarantee and indemnity contained in this deed are separate and independent obligations of the Guarantor and neither limits the generality of the other.
- (b) Subject to clause 11, but otherwise notwithstanding any other provision of this deed, the liability of the Guarantor to the Principal under this deed is no greater than the liability of the NOP to the Principal under the Agreement or any liability the NOP would have had to the Principal under the Agreement if the obligations of the NOP were not found to be illegal, void or otherwise unenforceable.

## 10 Nature of Guarantor's obligations

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### 10.1 Principal obligations

The obligations of the Guarantor under this deed in respect of the Agreement are principal obligations and are not released, discharged or otherwise affected by anything which but for this provision might have that effect, including:

- (a) the grant to any person of any time, concession, waiver, covenant not to sue or other indulgence or release;
- (b) any arrangement made between the Principal and the relevant NOP;
- (c) any alteration, amendment or variation of the Agreement; or
- (d) any assignment, novation, assumption or transfer of, or other dealing with, any rights or obligations under the Agreement.

### 10.2 Application of Clause 10.1

Clause 10.1 applies irrespective of the consent or knowledge, or lack of consent or knowledge, of the Principal, the Guarantor or any other person of any event described in clause 10.1 or of any rule of law or equity to the contrary.

## 11 Costs and expenses

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The Guarantor must pay all taxes, duties, fees, costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration and discharge of this deed and the enforcement or protection or attempted enforcement or protection of any

rights or powers of the Principal under this deed, including any legal costs and expenses and any professional consultant's fees in respect of any of the above on a full indemnity basis.

## 12 Notices

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### 12.1 How and where notices may be sent

A notice or other communication (**Notice**) under this deed must be in writing and delivered by hand or sent by pre-paid post or fax to a party to this deed at the address or the fax number for that party specified in clause 12.5 or as otherwise specified by a party by Notice.

### 12.2 Notices sent by company

A Notice sent by a company must be signed by a duly authorised officer or representative of the sender.

### 12.3 Email not to be used

Email or similar electronic means of communication must not be used to give Notices under this deed.

### 12.4 When Notices are taken to have been given and received

- (a) A Notice sent by post is regarded as given and received on the second Business Day following the date of postage.
- (b) A fax is regarded as given and received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the recipient's fax number, unless the recipient informs the sender that the Notice is illegible or incomplete within 4 hours of it being transmitted.
- (c) A Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

### 12.5 Contact details

Any Notice must be addressed as below:

- (a) Guarantor  
Address: **[insert details]**  
Attention: **[insert details]**  
Facsimile: **[insert details]**; and
- (b) Principal  
Address: **[redacted]**  
Attention: **[redacted]**

Facsimile: 

## 13 General

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### 13.1 Governing law and jurisdiction

This deed is governed by the laws of Victoria and the Guarantor irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### 13.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this deed which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

### 13.3 Waivers

Waiver of any right, power, authority, discretion or remedy arising upon default under this deed must be in writing and signed by the party granting the waiver.

### 13.4 Cumulative rights

The rights, powers and remedies provided in this deed are cumulative and are not exclusive of any rights, powers or remedies provided by law.



## Executed as a deed

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### **Guarantor**

The common seal of

### **Guarantor**

is fixed to this document in the presence of

*sign here* ▶ \_\_\_\_\_ *sign here* ▶  
Company Secretary/Director

*print name* \_\_\_\_\_ *print name*

*sign here* ▶ \_\_\_\_\_ *sign here* ▶  
Director

*print name* \_\_\_\_\_ *print name*

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# Schedule 18

Schedule 18 – Not used

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## Schedule 19 – Completion documentation

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### 1 Practical Completion Report

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The Practical Completion Report must contain all documents and other information associated with the Works essential for all use, operation and maintenance of the Works including:

- (a) asset handover, consent to operate and transition into service plans, procedures and protocols for the Works;
- (b) Defects Correction Period plan, including a register of all Defects, detailing planned resourcing and management arrangements to meet the Participants' obligations during the Defects Correction Period;
- (c) drawings and other documents and other information required which are essential for the use, operation and maintenance of the Works;
- (d) 'as built' drawings which comply with the current version of the VRIOGS Infrastructure Drafting Standards and requirements of PTV's drawing management system, the content of which has been 'certified as built' and signed by the relevant certifier;
- (e) all documentation required for PASS assets in accordance with the current version of the VRIOGS PASS Assets Data Standards;
- (f) all documentation, including Ellipse data, [REDACTED];
- (g) all documentation required by PTV's rail infrastructure geographic information system (GIS) application (including updated PASS assets train data);
- (h) asset register of items being handed back to the Project Owner and MTM (as the case may be) including any spare parts lists;
- (i) all third party guarantees, warranties and service agreements (including an afterhours list of all relevant personnel);
- (j) all approvals and certificates, including all structural certificates, structural calculations, mechanical certificates, electrical certificates, monitoring and fire rating certificates, compliance certificates within the meaning of section 221ZH of the *Building Act 1993 (Vic)*, environmental approvals and certificates;
- (k) rail infrastructure and rail service approvals and certificates, including those required by the Project Owner, by VicTrack or under the MTM Infrastructure Lease, MTM Franchise Agreement, ARTC Lease or the Rail Safety National Law; and
- (l) any certificates of occupancy required under the *Building Act 1993 (Vic)*;
- (m) any other notices, permits, approvals, consents, certificates, manuals, documents or information which in the opinion of the Project Owner are reasonably necessary for the use, operation and maintenance of the Works;

- (n) any other documentation necessary for the reliable, safe and efficient operation of all items of plant and equipment to eliminate the possibility of incorrect operation or use or handling; and
- (o) any other documentation that the Project Owner reasonably requires or the ALT agrees to provide.

## 2 Post Practical Completion Documentation

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The Post Practical Completion Documentation must contain, to the extent not already contained in the Practical Completion Documentation:

- (a) all documentation demonstrating compliance with all relevant aspects of the quality assurance system including, but not limited to, having undertaken all final inspections and Testing of the Works required by that system;
- (b) all documents and information about the design and construction of the Works including all design documentation, surveys and as constructed information and drawings, to the extent not already provided in the Practical Completion Report;
- (c) all documentation required to be transferred to the Project Owner as set out in the Document Control and Documentation Management Plan included in the Project Management System so that the Project Owner may comply with its obligations under the Public Records Act 1973 (Vic);
- (d) key data and information regarding the Alliance, the Works and performance of the Works as required by the Project Owner for use in the Value For Money Report, in the form of a comprehensive draft of the Value For Money Report;
- (e) sustainability management plan for the performance of the Works and for the future operation of the asset;
- (f) all documentation required and accepted by PTV [REDACTED] including all as-built drawings accepted into DMS and all asset data accepted into Ellipse and PASS;
- (g) written notice from landowners or occupiers whose properties have been utilised and occupied by the Participants for the purpose of carrying out the Works, confirming that the land has been left in a satisfactory condition (i.e. in no worse condition than prior to use or occupation by the Participants) and no items remain outstanding; and
- (h) any other documentation that the Project Owner reasonably requires or the ALT agrees to provide.

## Schedule 20 – Form of payment statutory declaration

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I, **[Insert name]**

of **[Insert address]**

DO SOLEMNLY AND SINCERELY DECLARE that:

- (a) I am **[insert description of position]** and I am authorised to make this declaration on behalf of **[insert NOP]** in respect of payment claims under the Burke Road, Glen Iris, North Road, Ormond, McKinnon Road, McKinnon and Centre Road, Bentleigh Level Crossing Removal Project Alliance Agreement (**PAA**).
- (b) **[Insert NOP]** has submitted payment claim number **[insert]** under the PAA.
- (c) I declare on behalf of **[insert NOP]** that I am in a position to be aware of the facts declared herein and have not withheld any relevant information in connection with the subject matter of this declaration.
- (d) I make this declaration after making all due enquiries and reviewing all relevant documents and materials in the possession, custody or control of **[insert NOP]**.
- (e) I declare that, as at **[insert date of payment claim]**:
  - (i) all persons who have at any time been employed or retained by **[insert NOP]** to provide goods and services to **[insert NOP]** for work:
    - A. performed to the date of **[insert NOP]**'s payment claim accompanying this declaration, being **[insert date]**; and
    - B. in connection with the PAA,  
  
(collectively, work under the PAA), have been paid all moneys, entitlements and prerequisites due and payable to them in respect of the work under the PAA as at the date of making this declaration; and
  - (ii) **[insert NOP]** has complied with all of its obligations under all Statutory Requirements or any industrial instrument (an award or an agreement that has been certified, approved or lodged under the *Fair Work Act 2009* (Cth)) that is binding on **[insert NOP]** in respect of all of its employees.
- (f) I declare that **[insert NOP]** has not made (nor intends to make) any legal or equitable set-off deduction or counterclaim (unless such deduction is made pursuant to a legal obligation arising from statute or court order) in respect of any moneys otherwise payable to any worker of, or supplier to, **[insert NOP]** in connection with the work under the PAA performed for **[insert NOP]**, **[except for the following – insert details of any deduction with reasons]**.
- (g) I declare that following making all due and diligent enquiries I am not aware (nor could not have been aware after making such enquiries) of any

Subcontractor not being paid all moneys due and payable to them in respect of each of their respective agreements with **[insert NOP]**.

- (h) I declare after making all due and diligent enquiries that I am not aware of any circumstances which would give rise to any claim or demand upon **[insert NOP]** by a person in respect of or in connection with that person's work under the PAA.
  
- (i) I declare after making all due and diligent enquiries that none of the following:
  - (i) any Subcontractor;
  - (ii) any other person engaged by **[insert NOP]** arising out of or in connection with the Agreement; or
  - (iii) **[insert NOP]**,has a Security Interest in respect of any of the Works, Rail Infrastructure or Road Infrastructure to which payment claim number **[insert]** under the PAA relates.
  
- (j) For the avoidance of doubt, a term which has a defined meaning in the PAA has the same meaning when used in this declaration unless it is expressly defined in this declaration or the context otherwise requires.

I ACKNOWLEDGE that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties for perjury.

Declared at  
this                      day of                      20  
Before me:

\_\_\_\_\_  
Signature of person before whom the declaration is made

\_\_\_\_\_  
Signature of declarant

\_\_\_\_\_  
Full name, qualification and address of person before whom declaration is made

# Schedule 21

Schedule 21 – Not used

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Schedule 22 – LIDP Monitoring Tables

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**ANZ value-added activity**

Item description	Company	Location	VIPP ANZ activity commitments %	ANZ activity in progress %	Secured ANZ activity %	Comments

**Employment**

Existing jobs		New jobs		Total jobs (commitment)	Total jobs (actual)	Difference
Commitment	Actual	Commitment	Actual			

**Skills and technology transfer**

Commitment description	Status	Completion %

**Apprentices/ trainees**

Existing apprentices/ trainees		New apprentices/ trainees		Total apprentices/ trainees (commitment)	Total apprentices/ trainees (actual)	Difference
Commitment	Actual	Commitment	Actual			



# Signing page

## Executed as a deed

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**Executed with the Official Seal of The Roads Corporation** in accordance with the *Transport Integration Act 2010* (Vic) 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 authorised officer

\_\_\_\_\_  
Full name of authorised officer

**Executed by an authorised representative of the Public Transport Development Authority** (operating as **Public Transport Victoria**) (ABN: 37 509 050 593) in the presence of:

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Signature of authorised officer

\_\_\_\_\_  
Full name of authorised officer

\_\_\_\_\_  
Title of authorised officer

**Executed by Metro Trains Melbourne Pty Ltd** ACN 136 429 948 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

**Executed by John Holland Pty Ltd** ACN 004 282 268 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

**Executed by Kellogg Brown & Root Pty Ltd**  
ACN 007 660 317 in accordance with section 127  
of the *Corporations Act 2001* (Cth):

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Signature of director

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Full name of director

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Signature of company secretary/director

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Full name of company secretary/director