

Alliance Special Conditions – Level Crossing Removal Project

SC1 DEFINITIONS AND INTERPRETATION

In these Alliance Special Conditions:

‘Aboriginal Heritage’ means 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 *Environment Protection and Biodiversity Conservation Act 1999* (Cth), the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) or the *Aboriginal Heritage Act 2006* (Vic).

‘Acts of Parliament’ means 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 of this Contract.

‘Alliance’ means one or more collaborative arrangements between the Purchaser, the Project Owner and various Participants formed to deliver a specific package (or packages) of works to remove road/rail level crossings.

‘Alliance Manager’ means any person so notified to the Supplier by the Purchaser from time to time (and if no person is so notified, means the Purchaser).

‘Alliance Works’ means works and services to be performed and delivered by the Participants from time to time under a PAA.

‘ALT’ means an Alliance leadership team so notified to the Supplier by the Purchaser from time to time (and if no leadership team is so notified, means the Purchaser).

‘Associate’ means 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.

‘Authorisation’ means any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency or a third party.

‘Authorised Officer’ has the same meaning under the BCI Act and includes, without limit:

- (a) the Australian Building and Construction Commissioner;
- (b) a Federal Safety Officer; or
- (c) an Australian Building and Construction Inspector.

‘Authority’ means 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:

- (a) all or part of the Alliance Works;
- (b) a Participant;

- (c) the Supplier;
- (d) the Site; or
- (e) any land external to the Site on which the Alliance Works may be carried out.

'BCI Act' means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

'Building Code' means either the:

- (a) Building Code 2013 and the Building Code 2013 – Supporting Guidelines for Commonwealth Funding Entities; or
- (b) Code for the Tendering and Performance of Building Work 2016,

as is applicable in the circumstances.

'Construction Plant' means apparatus, facilities, plant, equipment, materials, products, processes, temporary works, machinery and other things used in performing the Subcontract Works but not forming part of the completed Subcontract Works.

'Contract' means the contract between the Supplier and the Purchaser for the provision of the Subcontract Works and which shall include the following (in order of precedence):

- (a) any agreed formal contract and other documents directly referencing that contract (including but not limited to variations, directions, notices etc.);
- (b) these Alliance Business Special Conditions;
- (c) any Franchise Business Special Conditions;
- (d) the general terms and conditions applicable to any Purchase Order;
- (e) any Purchase Order; and
- (f) any other agreed document, representation or statement.

'Environment' has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

'Franchise Business' in relation to Metro, has the meaning in the Metro Franchise Agreement.

'Franchise Business Special Conditions' means the special conditions identified as such in any contract between the Supplier and the Purchaser for the provision of the Subcontract Works.

'Goods' means the goods (if any) identified in the Purchase Order and includes any goods or materials supplied by the Supplier to the Purchaser as part of the Services.

'Government Agency' means any government, parliament or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, government minister, agency or entity.

'Intellectual Property' means 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.

'Local Industry Development Plan' or **'LID Plan'** means the local industry development plan for the purposes of the VIPP.

'Materials' means materials, plant, machinery, equipment and products for incorporation into the Subcontract Works and Alliance Works.

'Metro Franchise Agreement' means the Franchise Agreement -Train between PTV and Metro for the provision of metropolitan passenger rail services and maintenance services.

'Native Title Laws' means the *Native Title Act 1993* (Cth), the *Land Titles Validation Act 1994* (Vic) and the *Aboriginal & Torres Strait Islander Heritage Protection Act 1984* (Cth) and any secondary legislation under those Acts.

'PAA' means one or more agreements between the Purchaser, the Project Owner and Participants under which an Alliance has been formed in respect of a Project.

'Participants' means the participants to an Alliance relating to the Project, as notified to the Supplier from time to time.

'Person' includes an individual, a body corporate, company, firm, joint venture, partnership, trust, association or unincorporated body.

'Personal Information' means 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.

'Privacy Laws' means the *Privacy Act 1988* (Cth), the *Privacy and Data Protection Act 2014* (Vic) and any other legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information.

'Project' means a package of works to deliver level crossing removals and associated works and services as notified to the Supplier by the Purchaser from time to time and carried out under a PAA

'Project Owner' means the Level Crossing Removal Project (or **LXRP**), a division of the Major Transport Infrastructure Authority, an administrative office in relation to the Department of Transport (ABN 69 981 208 782) of Level 9, 121 Exhibition Street Melbourne VIC 3000, being the client for the performance of the Alliance Works.

'PTV' means the Public Transport Development Authority (ABN 37 509 050 593), a body corporate established under the *Transport Integration Act 2010* (Vic) trading as Public Transport Victoria of 750 Collins Street, Docklands VIC 3008.

'Purchase Order' means a purchase order issued by the Purchaser to the Supplier for the Goods and Services (as applicable).

'Purchaser' or **'Metro'** means Metro Trains Melbourne Pty Ltd.

'Rail Infrastructure' means the infrastructure required to maintain and operate the Melbourne metropolitan rail network.

'Rail Operations' means the:

- (a) provision, maintenance, movement, shunting, storage, fuelling, loading and unloading of rolling stock for rail services;
- (b) provision of Rail Infrastructure to enable rail services;
- (c) maintenance, storage, building, rebuilding, servicing, replacing and repairing of Rail Infrastructure and rolling stock; and
- (d) conduct of the business of providing rail services.

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

'Related Body Corporate' has the meaning given to that term in the *Corporations Act 2001* (Cth).

'Related Entity' means a related entity of a Participant as that term is defined under section 9 of the *Corporations Act 2001* (Cth) and includes a subsidiary and a related party as those terms are defined in the *Corporations Act 2001* (Cth).

'Related Works' means any works or services performed or undertaken or to be performed or undertaken by:

- (a) the Project Owner or PTV;
- (b) Metro;
- (c) contractors, consultants or suppliers (other than a Participant) to the Project Owner, PTV or Metro;
- (d) 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 Alliance Works; or
- (e) persons arising out of or in connection with Rail Operations,

either concurrently or sequentially with the Alliance Works:

- (f) at, on, over, under, in or adjacent to the Site; or
- (g) which may be connected to, associated with, ancillary to or otherwise related or relevant to the Alliance Works,

and may include:

- (h) sidings works adjacent to the Alliance Works;
- (i) procurement of long lead time items (such as signalling conduits); and
- (j) relocation of utility services including rail related utility services.

'Road Infrastructure' has the meaning given to that term in section 3 of the *Road Management Act 2004* (Vic).

'Safety Legislation' means:

- (a) any legislation applicable to health and safety, environment protection, electrical safety and dangerous goods, including the *Occupational Health and Safety Act 2004* (Vic), the *Occupational Health and Safety Regulations 2007* (Vic) and the Rail Safety National Law; and
- (b) any directions on safety or notices issued by any relevant authority or any code of practice or compliance code appropriate or relevant to the performance of the Subcontract Works,

as amended from time to time.

'Services' means the services (if any) identified in the Purchase Order

'Site' means any land, or any part of land, where Alliance Works are to be performed.

'Standards' means the various standards with which the Subcontract Works must comply, specified in this Contract, and including:

- (a) the Purchaser's (and/or the Project Owner's) standards; and
- (b) standards in respect of Rail Infrastructure (including the Victorian Rail Industry Operators Group Standards and any technical standards and specifications published by the Purchaser from time to time relevant to the work to be performed under this Contract).

'State' means the State of Victoria.

'Stated Purpose' means the intended purpose of the Subcontract Works and the Alliance Works:

- (a) stated by the Purchaser and the Project Owner (including performance, design and functional requirements) or those purposes necessarily inferred from the contents of this Contract; and
- (b) includes any purpose which, having regard to the nature of the Subcontract Works and the Alliance Works and what is stated in this Contract, could be reasonably inferred by a person experienced and competent in the performance of or implementation of works or rail infrastructure similar to the Subcontract Works and the Alliance Works.

'Statutory Requirements' means

- (a) Acts of Parliament;
- (b) Authorisations;
- (c) directions given under a statute that affect the performance of the Alliance Works; and
- (d) all other laws, regulations, conventions, orders, directions, codes, guidelines and policies given by or on behalf of any Government Agency which may apply to the Alliance Works and Subcontract Works including the National Code.

'Subcontract Works' means the Goods and/or Services and/or works to be supplied by the Supplier under this Contract, forming part of the Alliance Works.

'Supplier' means the supplier named in the Purchase Order and includes that person's employees, agents and consultants.

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

'**VicTrack**' means Victorian Rail Track, a body corporate established under the *Transport Integration Act 2010* (Vic).

'**VIPP**' means the Victorian Industry Participation Policy established under section 4 of the *Victorian Industry Participation Policy Act 2003* (Vic).

SC2 GENERAL

(a) The Supplier acknowledges and accepts that the Purchaser is contracting in both its own right as principal and:

- (i) as agent for and on behalf of the Participants; and
- (ii) where the Subcontract Works relates to:
 - (A) Rail Infrastructure, as agent for VicTrack; and
 - (B) Road Infrastructure, as agent for VicRoads,

such that all rights, obligations and indemnities of the Purchaser under this Contract are able to be exercised by the other Participants and, where the work relates to Rail Infrastructure, VicTrack.

(b) The Supplier must ensure that all persons employed in connection with the performance of the Subcontract Works:

- (i) 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 Subcontract Works;
- (ii) are registered and licensed as necessary under any Statutory Requirements for the purposes of, or incidental to, the performance of the Subcontract Works;
- (iii) are competent to carry out the work for which they are engaged for the purposes of the Safety Legislation;
- (iv) have been inducted in accordance with the Alliance (or Purchaser's) induction program; and
- (v) comply with this Contract.

(c) The Supplier acknowledges and accepts that the Purchaser (or the Alliance Manager) may immediately require that any person engaged by the Supplier be removed from the Site and/or the Subcontract Works for any reason.

(d) The Supplier has reviewed and has allowed for all things necessary to comply with relevant requirements of certain management plans as may be notified by the Purchaser to the Supplier such as:

- (i) Alliance Team Integration Plan;

- (ii) Commissioning Management Plan;
- (iii) Communications and Stakeholder Relations Management Plan;
- (iv) Completion and Handover Management Plan;
- (v) Construction Management Plan;
- (vi) Design and Engineering Management Plan;
- (vii) Document Control and Document Management Plan;
- (viii) Emergency Response and Incident Plan;
- (ix) Environmental Management Plan;
- (x) Financial Control Management Plan;
- (xi) Hazardous Substances and Dangerous Goods Control Plan;
- (xii) Health and Safety Management Plan;
- (xiii) Human Resources Management Plan;
- (xiv) Industrial Relations Management Plan;
- (xv) Interface Management Plan;
- (xvi) Information Technology (IT) Management Plan;
- (xvii) KRA Performance Management and Monitoring Plan;
- (xviii) Mobilisation Plan;
- (xix) Procurement Management Plan;
- (xx) Progress Control and Reporting Management Plan;
- (xxi) Project Management Plan;
- (xxii) Quality Management Plan;
- (xxiii) Rail Access Management Plan;
- (xxiv) Risk Management Plan;
- (xxv) Services Management Plan;
- (xxvi) Site Safety Strategy and Site Safety Plan;
- (xxvii) Social Procurement Plan;
- (xxviii) Sustainability Management Plan;

- (xxix) Systems Engineering Management Plan;
- (xxx) Systems and Safety Assurance Plan;
- (xxxi) Traffic Management Plan; and
- (xxxii) Workforce Development Plan.

SC3 WARRANTIES AND STANDARDS OF WORK

- (a) The Supplier warrants and ensures for the benefit of both the Purchaser and the Project Owner that:
 - (i) all Materials are new and of merchantable quality, of correct design and workmanship as specified in this Contract, or if not so specified, suitable for the Stated Purpose;
 - (ii) suitable guarantees and warranties are provided in the name of Metro, PTV or VicTrack as the case may be, to the satisfaction of the Purchaser;
 - (iii) unencumbered title in the Materials will pass to the Purchaser, or the Purchaser as agent for VicTrack or for the relevant road authority as the case may be, upon payment (or part thereof) for the Materials to the Supplier or delivery to the Purchaser whichever occurs earlier;
 - (iv) it maintains an up to date register of all assets including a register of all express and implied warranties pertaining to those Materials provided by its suppliers, or prescribed by a Statutory Requirement.
- (b) The Supplier must:
 - (i) in performing the Subcontract Works exercise 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 Subcontract Works;
 - (ii) construct the Subcontract Works to meet the requirements set out in:
 - (A) the Standards; and
 - (B) this Contract;
 - (iii) perform the Subcontract Works such that rectification work necessary to make good any defects in the Subcontract Works arising before and during the defects correction period are promptly rectified to the satisfaction of the Purchaser before the end of the defects correction period; and
 - (iv) exercise 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 Subcontract Works 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 Subcontract Works so as to ensure that the

Subcontract Works are fit for the Stated Purpose, and of the quality and standard of work that is stated in the Standards and this Contract.

SC4 AUDIT

- (a) The Supplier acknowledges and agrees that the Purchaser, the Participants, the Project Owner, the State, the Victorian Auditor-General, or any person appointed by any one of them, may at any time inspect, audit or investigate any existing records, documentation or information prepared or maintained in any form by the Supplier that relate to the Subcontract Works.
- (b) The obligation to make records, documentation or information available does not apply to records or documentation that may be the subject of legal professional privilege or are confidential lawyer/client communications.

SC5 INDUSTRIAL RELATIONS

- (a) The Supplier acknowledges and agrees that it is, and will ensure that any subcontractors engaged in respect of the performance of the Subcontract Works under this Contract 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 the Supplier or its subcontractors (as applicable) are performing the Subcontract Works under this Contract.
- (b) The Supplier must implement and comply with any 'Workplace Relations Management Plan' as notified by the Purchaser to the Supplier in performing the Subcontract Works, which must comply with relevant Statutory Requirements, codes of practice and guidelines (including the National Code), and upon request, provide the Purchaser with evidence of such compliance.
- (c) The Supplier must cooperate with parties carrying out any Related Works, stakeholders or other persons on the Site in order to maintain a stable industrial relations environment.

SC6 STAKEHOLDER AND COMMUNITY RELATIONS

- (a) The Supplier must:
 - (i) be committed to developing sensitive and responsive stakeholder consultation and communication practices to any local and broader community issue which relates to the performance of the Subcontract Works; and
 - (ii) promptly follow any direction from the Purchaser in respect of that issue.
- (b) The Supplier must take all steps necessary to meet the Purchaser's obligations and commitments to the local community and stakeholders as they relate to the performance of the Subcontract Works and Alliance Works.

SC7 OCCUPATIONAL HEALTH AND SAFETY

- (a) The Supplier and any person engaged in carrying out any part of the Subcontract Works for whom the Supplier is responsible for, or over whom the Supplier is capable of exercising control, must:
 - (i) comply with and implement:

- (A) the safety requirements, Site procedures, security requirements and health, safety and Environment conditions as notified by the Purchaser (including any applicable requirements under the 'Health and Safety Management Plan' established under the PAA);
 - (B) the State's occupational health, safety and rehabilitation management systems and guidelines; and
 - (C) their respective obligations under any relevant occupational health and safety, and environmental laws; and
- (b) attend any Project safety forums that are coordinated by the Project Owner and held regularly throughout the performance of the Subcontract Works.

SC8 PROTECTION OF ABORIGINAL HERITAGE AND ABORIGINAL RIGHTS

- (a) The Supplier is committed to the protection of Aboriginal Heritage and Aboriginal rights and must ensure that the Supplier, its employees, agents, subcontractors, consultants and suppliers comply with:
- (i) all applicable Statutory Requirements relating to Aboriginal Heritage and Native Title Laws;
 - (ii) any agreements or arrangements between the Purchaser or the Project Owner and Aboriginal people in relation to Aboriginal Heritage;
 - (iii) the Purchaser or the Project Owner's instructions reasonably required to enable the Purchaser or 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
 - (iv) the cultural heritage management plan as notified by the Purchaser to the Supplier in performing the Subcontract Works, and upon request, provide the Purchaser with evidence of such compliance.
- (b) In performance of the Subcontract Works the Supplier will ensure that:
- (i) those for whom it is responsible for will 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 as notified by the Purchaser to the Supplier, or with the prior written approval of the Project Owner; and
 - (ii) if any indigenous or cultural heritage site is identified on the Site, the Supplier will immediately cease all activities which could impact on such site.
- (c) The Supplier must immediately inform the Purchaser of any claim received under the *Native Title Act 1993* (Cth) and then promptly follow any directions from the Purchaser.

SC9 SECURITY OF PAYMENT

- (a) The Supplier agrees to immediately provide the Purchaser, the Project Owner and the ALT with a copy of any notice that the Supplier receives from another party, under any section of the *Building and Construction Industry Security of Payment Act 2002* (Vic).

SC10 CONFIDENTIALITY

- (a) Subject to clause SC10(b), the Supplier agrees that this Contract, and any information relating to or arising from the Contract, is confidential, and that the Supplier will not disclose the Contract, or any information relating to or arising from the Contract, to any person, unless that disclosure or that information:

- (i) is at the material time in the public domain;
- (ii) is required by any Statutory Requirement to be communicated to a person who is authorised by any Statutory Requirement to receive it;
- (iii) 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 Supplier concerned first obtains from each other party to those proceedings an undertaking, enforceable by any party, that each party must similarly not divulge or communicate, without the Purchaser's written consent, any information referred to in this clause;
- (iv) 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);
- (v) is to a servant, employee, agent or contractor of the parties, when that disclosure is reasonably necessary for the conduct of this Contract;
- (vi) is to a Related Body Corporate of the parties;
- (vii) the Purchaser releases, or releases 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);
- (viii) the Purchaser releases information to the IBAC Commissioner or the Victorian Inspector;
- (ix) 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;
- (x) is necessary to comply with any approved policy guidelines of the State (including the VIPP);
- (xi) was consented to in writing by each of the parties; or
- (xii) is required to be disclosed to the Australian Stock Exchange Limited (ABN 98 008 624 691).

- (b) The Purchaser may determine to publish or disclose (on the internet or otherwise):
- (i) a brief description of the Subcontract Works;
 - (ii) the names of the parties;
 - (iii) the terms of the Contract;
 - (iv) any documentation arising out of or in connection with the Contract; and
 - (v) any other information that the Purchaser determines to publish or disclose,

except to the extent that the Purchaser determines, after consultation with the Supplier, any such documentation is commercial-in-confidence or financially sensitive.

- (c) A failure by the Supplier to comply with the requirements of this clause confers on the Purchaser 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 Contract, under that Statutory Requirement.

SC11 INTELLECTUAL PROPERTY

SC11.1 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:
- (i) required by this Contract; and
 - (ii) existing prior to the date of this Contract,

relating to or connected with the Subcontract Works (**Pre-Existing Intellectual Property Materials**) remains with the person who created the Pre-existing Intellectual Property Materials.

- (b) Any enhancement, adaptation, change, modification or development of the Intellectual Property in the Pre-Existing Intellectual Property Materials (**Enhancements**) will be the property of the person that owns the Pre-Existing Intellectual Property Materials. Ownership will vest immediately upon the creation of the Enhancement.

SC11.2 Licence to use Intellectual Property

- (a) The Supplier grants to the Purchaser, the Project Owner and each Participant (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 Supplier's Pre-Existing Intellectual Property Materials and any Enhancements for:
- (i) the Alliance Works, the Subcontract Works and for any operation, maintenance, upgrade, augmentation, selling or decommissioning of the Project;
 - (ii) the purposes of Rail Operations and the operation of the Franchise Business;

- (iii) the purposes of road operations as that term is defined in the *Road Management Act 2004* (Vic); and
 - (iv) otherwise, only to the extent necessary to use the Intellectual Property Assets (as that term is defined in SC11.3(a).
- (b) The Supplier must, at its own cost, do everything necessary to effect the grant of the licences set out in SC11.2.
- (c) The Supplier warrants that:
- (i) it owns, or it has a licence to use and a right to licence as required by this Contract, the Intellectual Property in those of the Pre-Existing Intellectual Property Materials (and anything contributed by them in the preparation of the Pre-Existing Intellectual Property Materials); and
 - (ii) the Pre-Existing Intellectual Property Materials and the Subcontract Works do not infringe any other person's Intellectual Property.

These warranties survive the termination of this Contract.

- (d) The Supplier must notify the Purchaser immediately if it becomes aware of any claim by any person that any aspect of the Subcontract Works infringes on any other person's Intellectual Property.

SC11.3 Ownership of Intellectual Property created during subcontract works

- (a) Intellectual Property in any:
- (i) drawings, documents, Project proposal, design, and any other information, samples, models, patterns and the like required by this Contract; and
 - (ii) idea, policy, procedure, method, process, materials or any other tangible or intangible thing first discovered or developed during the course of performing the Subcontract Works,

created on or after the date of this Contract and relating to or connected with the Subcontract Works (together, the '**Intellectual Property Assets**') vests in the **Purchaser**, and the Purchaser grants to the Supplier an irrevocable, non-exclusive, world-wide, perpetual, transferrable, sub-licensable, royalty free licence to use the Intellectual Property Assets for the Subcontract Works.

- (b) For the avoidance of doubt, Enhancements are not, and will not be deemed to be, Intellectual Property Assets.

SC11.4 Moral Rights

- (a) The Supplier must procure that each individual involved in the creation of any work or subject matter delivered by the Supplier as part of the Subcontract Works ('**Grantor**') provides his or her irrevocable and unconditional consent to the use, disclosure, reproduction or publication of such work or subject matter by the Purchaser, a Participant or their representatives anywhere in the world in whatever form the Purchaser thinks fit and without making any identification of the Grantor in relation to that work or subject matter.

SC12 INFORMATION PRIVACY

- (a) The Supplier must, in performing the Subcontract Works:
- (i) comply with all Privacy Laws in relation to Personal Information, whether or not the Supplier is an organisation bound by the *Privacy Act 1988* (Cth); and
 - (ii) immediately notify the Purchaser if it becomes aware of a breach of clause SC12(a)(i) by any personnel or subcontractors engaged by the Supplier.

SC13 INSURANCE

- (a) The Supplier must effect and maintain the insurances referred to in SC13.1(a), SC13.2(a) and SC13.3(a) on or prior to the commencement of the Subcontract Works and in each case the Supplier must maintain the relevant insurance for the period for which a claim could be made.
- (b) The Supplier must make available for inspection by the Purchaser and other Participants certificates of currency for insurance required by this Contract to be taken out by the Supplier and any subcontractors engaged by the Supplier.
- (c) The Supplier must ensure that every insurance policy taken out by it and its subcontractors under this Contract includes a provision that requires the Supplier, whenever the insurer gives to or serves upon the Supplier or its 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 Purchaser in writing that the notice has been given to or served upon that Supplier or subcontractor.
- (d) The Purchaser may provide, when reasonably requested by the Supplier, evidence of the insurance (if any) applying to the Supplier which the Purchaser is obliged to effect and maintain under the PAA.
- (e) The Supplier acknowledges that:
- (i) it has satisfied itself as to the nature and extent of the Purchaser's insurance (including any exclusions, conditions and excesses noted on the policies);
 - (ii) may if it requires, take out insurance to insure any risks not insured by the Purchaser's insurance or to cover any exclusions, conditions or excesses in that insurance; and
 - (iii) must bear the cost of any excesses in the Purchaser's insurance;
 - (A) to the extent the Supplier makes a claim against the Purchaser's insurance; or
 - (B) where the Purchaser makes a claim against the Purchaser's insurance as a result of an act or omission by the Supplier or the Subcontract Works; and
 - (iv) the cost of any excess for any such claim against the Purchaser's insurance shall be a debt due from the Supplier to the Purchaser; and the Purchaser may deduct such a debt from moneys otherwise due to the Supplier under this Contract.
- (f) The Supplier must:

- (i) as soon as possible inform the Purchaser in writing of any occurrence that may give rise to a claim under either:
 - (A) any insurance policy required by this Contract; or
 - (B) any insurance policy which must be provided and maintained by the Purchaser under the PAA;
- (ii) keep the Purchaser informed of subsequent developments concerning the claim; and
- (iii) ensure that its Suppliers similarly inform the Supplier and the Purchaser in respect of occurrences which may give rise to a claim by them.

SC13.1 Construction and equipment insurance

- (a) The Supplier 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 Supplier for use in connection with the performance of the Subcontract Works. The insurance effected and maintained pursuant to this SC13.1 must be:
 - (i) for the insured property's market value;
 - (ii) extended to include the interest, if any, of the Purchaser and the Project Owner;
 - (iii) against all risks and physical loss or damage arising from any cause which:
 - (A) occurs during the period commencing on the date of commencement of the Subcontract Works and ending on the date the Participants have completed demobilisation from every Site; or
 - (B) becomes apparent after the Date of Practical Completion (as specified in the Certificate of Practical Completion) and before the date notified to the Supplier as the date on which Final Completion has occurred under the PAA, 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 Subcontract Works.

SC13.2 Motor vehicle insurance

- (a) The Supplier 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 Supplier and used in connection with the Subcontract Works, for any obligation under a Statutory Requirement for insurance relating to motor vehicles.

SC13.3 Workers' compensation

- (a) The Supplier must:
 - (i) insure its liability as required under any Statutory Requirement, to its employees engaged in doing anything for the purpose of exercising or performing the Supplier's rights or obligations under this Contract; and
 - (ii) ensure that each subcontractor engaged by the Supplier insures its liability as required under any Statutory Requirement to its employees engaged in doing anything for the purpose of executing the Subcontract Works.

SC14 NOVATION

- (a) The Supplier acknowledges, and agrees that under the PAA the Purchaser or the Project Owner may, at any time, novate all of its rights, benefits and obligations under this Contract.

SC15 STATUTORY COMPLIANCE

- (a) The Supplier shall in all matters arising in the performance of the Contract comply with all applicable Statutory Requirements, laws, regulations, by-laws and codes of practice (including in relation to rail safety, occupational health and safety, product safety and product labelling) that affect or relate to the performance of the Subcontract Works, including obtaining and complying with all Authorisations necessary to perform each particular portion of the Subcontract Works, prior to undertaking that particular portion of the Subcontract Works.
- (b) A failure by a Supplier to comply with the requirements of clause SC15(a) confers on the Purchaser 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 Contract, under that Act of Parliament.
- (c) The Supplier indemnifies the Purchaser against any loss suffered by the Purchaser as a result of the Supplier's failure to comply with clauses SC15, SC16 (Compliance with the National Code) or SC17 (VIPP).

SC16 COMPLIANCE WITH NATIONAL CODE

- (a) Where applicable, the Supplier must, and must ensure that all of its subcontractors and Related Bodies Corporate, comply with the National Code.
- (b) The Supplier acknowledges and agrees that compliance with the National Code does not relieve it from responsibility to perform its obligations under this Contract or from any liability for any defect in the Subcontract Works arising from compliance with the National Code.
- (c) Where any amendment to this Contract is proposed and that amendment would affect compliance with the National Code, the Supplier must submit a report to the Purchaser specifying the extent to which the Suppliers compliance with the National Code will be affected.

- (d) The Supplier must maintain adequate records of compliance with the National Code by:
 - (i) the Supplier;
 - (ii) the Supplier's subcontractors; and
 - (iii) its Related Bodies Corporate.
- (e) The Supplier warrants that at the time of entering into this Contract, neither it, nor any of its Related Bodies Corporate, are subject to a sanction in connection with the National Code that would have precluded it from tendering for work to which the National Code apply.
- (f) The Supplier acknowledges that if it does not comply with, or fails to meet any obligation imposed by, the National Code, a sanction may be imposed against it in connection with the National Code.
- (g) The Supplier must notify the Purchaser of any alleged breaches of the National Code, including any voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach.
- (h) If the Supplier is sanctioned for breach of the requirements of the National Code in the performance of this Contract, without prejudice to any rights that would otherwise accrue, a record of that non-compliance may be kept and taken, or required to be taken, into account in the evaluation of any future tenders that may be lodged by the Purchaser or a Related Body Corporate of the Purchaser in respect of work funded by the Government of the Commonwealth of Australia or any Government Agency.
- (i) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Supplier may give preference to subcontractors that have demonstrated commitment to:
 - (i) adding and/or retaining trainees and apprentices;
 - (ii) increasing the participation of women in all aspects of the industry; or
 - (iii) promoting employment and training opportunities for indigenous Australians in regions where significant indigenous populations exist.
- (j) A subcontractor in relation to the Project must not be engaged where:
 - (i) the appointment would breach a sanction imposed as consequence of breach of the requirements of the National Code; or
 - (ii) the subcontractor has had a judicial decision against them relating to employee entitlements (not including decisions under appeal) and has not paid the claim.
- (k) The Supplier must, and must ensure that its subcontractors and its Related Bodies Corporate will, provide any person or entity authorised under or in connection with the National Code, including any Authorised Officers, with access to:
 - (i) inspect the Subcontract Works and the Construction Plant;

- (ii) inspect and copy any record relevant to the Project and Subcontract Works the subject of this Contract; and
 - (iii) interview any person,
- as is necessary to demonstrate their compliance with the National Code or related legislation.
- (l) The Supplier and its Related Bodies Corporate must comply with a request from any person or entity authorised under or in connection with the National Code, including any Authorised Officers, to produce a specified document within a specified period, in person, by fax, by post or by electronic means.
 - (m) The Supplier acknowledges and agrees that:
 - (i) it will not (nor will it seek to) enter or take any steps towards entering any project agreements, nor will any such project agreements apply in relation to, the whole or any part of the Subcontract Works;
 - (ii) the bargaining for and making of "unregistered written agreements" is not permitted unless the agreement falls within one of the exemptions specified in the National Code;
 - (iii) the Commonwealth will not be requested or required to approve the negotiation or the application of any project agreement or unregistered written agreements; and
 - (iv) it will not (nor will it seek to) have any subcontractor or consultant comply with, or apply the terms of any:
 - (A) project agreements entered into by the Supplier that are inconsistent with the National Code; or
 - (B) unregistered written agreements entered into by the Supplier unless the unregistered written agreement falls within one of the exceptions specified in the National Code.
 - (n) The Supplier must ensure that all subcontracts impose obligations on the subcontractors equivalent to the obligations set out under clauses SC16(a) to SC16(m) (inclusive).
 - (o) The Supplier agrees that it will bear the cost of ensuring its compliance with this clause SC16, the National Code, including in respect of any positive steps it is obliged to take to meet its any of its obligations under the National Code.

SC17 VICTORIAN INDUSTRY PARTICIPATION POLICY

- (a) The Project is a strategic project for the purposes of the VIPP.
- (b) The Supplier must, if requested by the Purchaser, complete and submit to the Purchaser a VIPP Plan, and any LID Plan, and must comply with any VIPP Plan submitted as part of the Supplier's tender or otherwise provided by the Supplier to the Purchaser.
- (c) The Supplier acknowledges and agrees that information contained in the VIPP Plan and the measures of the Supplier's compliance with the VIPP Plan shall be provided to the Department

of Economic Development, Jobs, Transport and Resources to be included in a register of VIPP performance.

- (d) The Purchaser will monitor the Supplier's performance in accordance with any monitoring provisions in the VIPP Plan and measure the Supplier against the VIPP outcomes set out in VIPP Plan.
- (e) The Supplier must allow an auditor or other nominated representative of the Purchaser to have access to and to obtain information from the Supplier's records and officers, employees, consultants and advisers for this purpose.
- (f) The Supplier authorises the Purchaser or its nominated representative to obtain information from the persons, firms or corporations nominated in the VIPP Plan as to compliance with the VIPP Plan.
- (g) The Purchaser will exercise its reasonable discretion in assessing the Supplier's performance under this clause and shall take into account any issue raised by the Supplier which fairly represents a cause of failure to comply beyond the Supplier's reasonable control.

SC18 PERSONAL PROPERTY SECURITIES ACT

SC18.1 Definitions

In this clause SC18:

- (a) **'PPS Act'** means the *Personal Property Securities Act 2009* (Cth);
- (b) **'PPS Law'** means:
 - (i) the PPS Act and any regulations made at any time under the PPS Act, as amended from time to time;
 - (ii) any relevant amendment made at any time to any other legislation as a consequence of paragraph (i);
 - (iii) any provision of the PPS Act or regulations referred to in SC18(b)(i);
 - (iv) any amendment to any of the above, made at any time; or
 - (v) any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation in connection with the implementation or as a consequence of the PPS Act,
- (c) **'Security Interest'** has the meaning given to it in the PPS Law; and
- (d) **'Transaction Document'** means:
 - (i) this Contract;
 - (ii) any guarantee by which any person guarantees the Supplier's compliance with its obligations under any of the Transaction Documents;
 - (iii) agreements between the Supplier and any subcontractors or;

- (iv) any agreement which the Participants agree is a Transaction Document for the purposes of the Contract;
- (v) any agreement or instrument created under any of the above documents; and
- (vi) each document entered into for the purpose of amending, novating, restating or replacing any of the above documents.

SC18.2 Enforcement of liquid assets

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

SC18.3 Application of PPS Law

- (a) If:
 - (i) the Purchaser determines 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
 - (ii) in the reasonable opinion of the Purchaser, the PPS Law:
 - (A) adversely affects or would or may adversely affect the Purchaser's security position or the rights or obligations of the Purchaser under or in connection with the Transaction Documents or any of the transactions contemplated by them; or
 - (B) enables or would enable the Purchaser's security position to be improved without adversely affecting the Supplier in a material respect,

the Purchaser may give notice to the Supplier requiring the Supplier to do anything (including amending any Transaction Document or executing any new Transaction Document) that in the Purchaser's reasonable opinion is necessary to ensure that, to the maximum possible extent, the Purchaser's security position, and rights and obligations, are not adversely affected as contemplated by clause SC18.3(a)(ii)(A) (or that any such adverse effect is overcome), or that the Purchaser's security position is improved as contemplated by clause SC18.3(a)(ii)(B).
- (b) The Supplier must comply with the requirements of a notice given by the Purchaser under clause SC18.3(a) within the time stipulated in the notice.

SC18.4 Supplier's obligations

- (a) In respect of any Security Interest with a value in excess of \$100,000 which the Supplier acquires under or in respect of the Transaction Documents or any of the transactions contemplated by them, the Supplier must:
 - (i) identify, protect and perfect with the highest priority available that Security Interest;
 - (ii) register that Security Interest in its name immediately upon title in the Subcontract Works passing to it;

- (b) For any payment claim which relates to any of the Subcontract Works, Rail Infrastructure or Road Infrastructure, which has:
- (i) been paid for by the Supplier prior to the submission of that payment claim, the Supplier must ensure that prior to submitting that payment claim no subcontractor or any other person engaged by it arising out of or in connection with the Contract has a Security Interest in respect of the relevant Subcontract 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 Supplier; and
 - (ii) not been paid for by the Supplier, the Supplier must ensure that it pays the relevant subcontractor for those Subcontract 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 Subcontract Works, Rail Infrastructure or Road Infrastructure to which the relevant payment relates is extinguished.

SC18.5 Supplier to extinguish Security Interests

- (a) The Supplier must remove any Security Interest from the PPS Register it previously had in the relevant Subcontract Works, Rail Infrastructure or Road Infrastructure.

SC19 TERMINATION OF THE CONTRACT

- (a) In addition to and without limiting any of the Purchaser's rights set out in the Contract or Purchase Order, if the PAA is terminated or suspended for any reason, the Purchaser may terminate this Contract and any amount payable to the Supplier under this Contract will be limited to the Supplier's reasonable direct costs arising out of or in connection with that termination or suspension.

SC20 PAYMENT TERMS AND SECURITY

- (a) Title to all unfixed Materials and equipment on Site supplied by the Supplier and that will form part of the Subcontract Works, shall upon payment, immediately pass to:
- (i) the Purchaser as agent on behalf of VicTrack, if the unfixed Materials and equipment forms part of the Rail Infrastructure; and
 - (ii) the Project Owner or the relevant road authority, as the case may be, if the unfixed Materials and equipment forms part of Road Infrastructure, as that term is defined in the *Road Management Act 2004* (Vic),

unencumbered and free of any security interests held or claimed by any third parties.

- (b) Despite anything else in this Contract the Supplier must not invoice the Purchaser for any Materials and equipment under this Contract until those Materials and equipment are delivered or supplied in accordance with the Contract, unless:
- (i) the Purchaser has first agreed in writing; and

- (ii) the Supplier provides to the Purchaser security in the form of an unconditional bank undertaking in favour of the Purchaser (from a financial institution and in a form acceptable to the Purchaser) equal to the amount claimed for the Materials and equipment.
- (c) A bank guarantee provided by the Supplier under SC20(b) will be returned by the Purchaser following delivery of the relevant Materials and equipment in accordance with this Contract.
- (d) In respect of any Subcontract Works with a value in excess of \$5,000,000, the Supplier acknowledges that:
 - (i) if the Purchaser receives or retains from the Supplier security in cash, or converts security to cash; or
 - (ii) if the Purchaser receives payment under the PAA for, or on account of, work done or materials, plant, equipment or other goods supplied by the Supplier and does not pay the Supplier the whole amount the Purchaser received or to which the Supplier is entitled,

the Purchaser must hold the cash under clause SC20(d)(i) or the difference under clause SC20(d)(ii) in a joint account in the name of the Purchaser and the Project Owner in a bank determined by the Project Owner.