D&C Contractor Direct Deed

[Project]

**[#] [State]**

(**State**)

**[#]**

(**Project Co**)

**[#]**

(**D&C Contractor**)

**[#]**

(**D&C Guarantor**)

***[Note: This document assumes that the D&C Contractor will be the principal contractor. If this is not the case, then a separate appointment document between the proposed principal contractor and the State will be required. If an entity other than the State is the owner of all or part of the Development Phase Area, then that entity will need to be party to this Deed for the purposes of appointing the principal contractor.]***

***[Note: The Services Contractor Direct Deed will be in a form substantially similar to this document (with appropriate changes in terminology).]***

Contents

[1. Defined terms and interpretation 1](#_Toc145593576)

[1.1 Project Deed definitions 1](#_Toc145593577)

[1.2 Definitions 1](#_Toc145593578)

[1.3 Interpretation 3](#_Toc145593579)

[1.4 Priority of documents 5](#_Toc145593580)

[1.5 State Project Documents 5](#_Toc145593581)

[1.6 Inconsistency 5](#_Toc145593582)

[1.7 Prior approval or consent 6](#_Toc145593583)

[1.8 Action without delay 6](#_Toc145593584)

[1.9 Provisions limiting or excluding Liability, rights or obligations 6](#_Toc145593585)

[1.10 Relationship of the parties 6](#_Toc145593586)

[1.11 State's rights, duties and functions 6](#_Toc145593587)

[1.12 Reasonable endeavours of State 7](#_Toc145593588)

[1.13 Final and binding 7](#_Toc145593589)

[1.14 Proportionate liability 7](#_Toc145593590)

[2. Conditions Precedent 7](#_Toc145593591)

[3. Acknowledgements 8](#_Toc145593592)

[3.1 By D&C Parties concerning the State Security 8](#_Toc145593593)

[3.2 By the D&C Parties concerning the State's rights 8](#_Toc145593594)

[3.3 By Project Co 9](#_Toc145593595)

[3.4 Information 10](#_Toc145593596)

[3.5 Subcontract not to affect State rights 10](#_Toc145593597)

[3.6 D&C Contractor Construction Bond  *[Note: In Services Direct Deed, delete this clause.]* 11](#_Toc145593598)

[4. Representations and warranties by D&C Parties 11](#_Toc145593599)

[5. Undertakings of D&C Parties 12](#_Toc145593600)

[5.1 Undertakings 12](#_Toc145593601)

[5.2 State access to Site 14](#_Toc145593602)

[5.3 Appointment of D&C Contractor as principal contractor *[Note: For use in Victoria only.]* 14](#_Toc145593603)

[5.4 Appointment of D&C Contractor as principal contractor *[Note: For use in NSW only]* 15](#_Toc145593604)

[6. Right to cure before termination of D&C Contract 16](#_Toc145593605)

[6.1 State's cure rights 16](#_Toc145593606)

[6.2 Termination or suspension with cause 16](#_Toc145593607)

[6.3 Early suspension 17](#_Toc145593608)

[6.4 D&C Contractor Statements 18](#_Toc145593609)

[6.5 Warranty of accuracy and waiver 18](#_Toc145593610)

[6.6 Verification of D&C Contractor Statements 19](#_Toc145593611)

[6.7 D&C Contractor Statements to be conclusive evidence 19](#_Toc145593612)

[7. Step-In by the State 20](#_Toc145593613)

[7.1 Step-In Right 20](#_Toc145593614)

[7.2 Step-In by the State 20](#_Toc145593615)

[7.3 Step-In using Additional Obligor 21](#_Toc145593616)

[7.4 Indemnity 22](#_Toc145593617)

[8. State's option to novate to the State or third party 22](#_Toc145593618)

[8.1 Option 22](#_Toc145593619)

[8.2 Novation to Substitute Party 23](#_Toc145593620)

[8.3 Additional requirements where Substitute Party is not the State 24](#_Toc145593621)

[8.4 Accrued obligations and liabilities 25](#_Toc145593622)

[8.5 Amendments to the Financial Reporting regime *[Note: This clause only applies to the D&C Contractor Direct Deed for NSW projects.]* 25](#_Toc145593623)

[9. Dispute resolution procedure 26](#_Toc145593624)

[9.1 Procedure 26](#_Toc145593625)

[9.2 Senior negotiations 27](#_Toc145593626)

[10. Expert determination 27](#_Toc145593627)

[10.1 Referral and selection of expert 27](#_Toc145593628)

[10.2 Rules of expert determination 29](#_Toc145593629)

[10.3 Expert finding 29](#_Toc145593630)

[10.4 Proportionate liability 30](#_Toc145593631)

[10.5 Liability of expert 30](#_Toc145593632)

[10.6 Costs 30](#_Toc145593633)

[11. Arbitration 30](#_Toc145593634)

[11.1 Reference to arbitration 30](#_Toc145593635)

[11.2 Arbitration 31](#_Toc145593636)

[11.3 Appointment of arbitrator 31](#_Toc145593637)

[11.4 General principles for conduct of arbitration 31](#_Toc145593638)

[11.5 Proportionate liability 32](#_Toc145593639)

[11.6 Extension of ambit of arbitration proceedings 33](#_Toc145593640)

[11.7 Award final and binding 33](#_Toc145593641)

[11.8 Continue to perform 33](#_Toc145593642)

[11.9 Governing law of arbitration agreement 33](#_Toc145593643)

[11.10 Interlocutory relief 33](#_Toc145593644)

[11.11 Consolidation 33](#_Toc145593645)

[12. Termination of this Deed 33](#_Toc145593646)

[13. Insurances 34](#_Toc145593647)

[14. Goods and Services Tax (GST) 34](#_Toc145593648)

[15. Notices 36](#_Toc145593649)

[15.1 Notices 36](#_Toc145593650)

[16. Confidential Information and disclosure 38](#_Toc145593651)

[16.1 Confidential Information and disclosure by the State 38](#_Toc145593652)

[16.2 Confidential Information and disclosure by Project Co and the D&C Parties 39](#_Toc145593653)

[16.3 Personal Information 39](#_Toc145593654)

[16.4 Disclosure by the D&C Parties 39](#_Toc145593655)

[17. Return of documents 40](#_Toc145593656)

[18. Miscellaneous 40](#_Toc145593657)

[18.1 Governing Law and jurisdiction 40](#_Toc145593658)

[18.2 Entire agreement 40](#_Toc145593659)

[18.3 Further acts and documents 41](#_Toc145593660)

[18.4 Survival of certain provisions 41](#_Toc145593661)

[18.5 Waiver 41](#_Toc145593662)

[18.6 Consents and approvals 42](#_Toc145593663)

[18.7 Amendments 42](#_Toc145593664)

[18.8 Expenses 42](#_Toc145593665)

[18.9 Severance 42](#_Toc145593666)

[18.10 Counterparts 42](#_Toc145593667)

[18.11 Moratorium Legislation 43](#_Toc145593668)

[18.12 Indemnity held on trust 43](#_Toc145593669)

[18.13 Assignment 44](#_Toc145593670)

[18.14 Set off 44](#_Toc145593671)

[19. Limitation of Liability 44](#_Toc145593672)

[1. Defined terms and interpretation 46](#_Toc145593673)

[1.1 Novated Document definitions 46](#_Toc145593674)

[1.2 Definitions 46](#_Toc145593675)

[1.3 Interpretation 46](#_Toc145593676)

[1.4 Proportionate liability 47](#_Toc145593677)

[1.5 Relationship of the parties 47](#_Toc145593678)

[1.6 State's rights, duties and functions 47](#_Toc145593679)

[2. Novation 48](#_Toc145593680)

[2.1 Novation 48](#_Toc145593681)

[2.2 Assumption of rights and obligations 48](#_Toc145593682)

[2.3 Release of Retiring Party 49](#_Toc145593683)

[2.4 Release of Continuing Party 50](#_Toc145593684)

[2.5 Accrued right to suspend no longer effective 50](#_Toc145593685)

[2.6 No set off 50](#_Toc145593686)

[2.7 Security 50](#_Toc145593687)

[3. Representations and warranties 50](#_Toc145593688)

[4. GST 51](#_Toc145593689)

[5. Miscellaneous 51](#_Toc145593690)

[5.1 Governing Law and jurisdiction 51](#_Toc145593691)

[5.2 Entire agreement 51](#_Toc145593692)

[5.3 Further acts and documents 52](#_Toc145593693)

[5.4 Survival of certain provisions 52](#_Toc145593694)

[5.5 Waiver 52](#_Toc145593695)

[5.6 Amendments 52](#_Toc145593696)

[5.7 Expenses 52](#_Toc145593697)

[5.8 Severance 52](#_Toc145593698)

[5.9 Counterparts 53](#_Toc145593699)

[5.10 Moratorium Legislation 53](#_Toc145593700)

[5.11 Assignment 53](#_Toc145593701)

D&C Direct Deed

**Dated**

**Parties** [#] (**State**)

* 1. [#] (**Project Co**)
	2. [#] (**D&C Contractor**)
	3. [#] (**D&C Guarantor**)

**Background**

1. The background to the Project is set out in the Project Deed.
2. Project Co and the D&C Contractor are or will become parties to the D&C Contract.
3. The D&C Contractor has agreed to grant to the State certain rights in relation to the D&C Contract.
4. Project Co and the D&C Guarantor are or will become parties to the D&C Guarantee.
5. The D&C Guarantor has agreed to grant to the State certain rights in relation to the D&C Guarantee.

Operative provisions

# Defined terms and interpretation

## Project Deed definitions

1. Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Deed.

## Definitions

1. In this Deed, unless the context otherwise requires:
2. **Additional Obligor** means a company or other entity which is wholly owned by the State.
3. **Additional Obligor Step-In Notice** has the meaning given in clause 7.1(a)(iv).
4. **Additional Obligor Step-Out Date** has the meaning given in clause 7.3(d).
5. **Agreed Amount** has the meaning given in clause 14(c)(i).
6. **Assumption Date** has the meaning given in clause 7.3(a).
7. **Cost** has the meaning given in clause 14(h).
8. **D&C Contractor Associate** means any:
	1. D&C Contractor Relevant Person in respect of the D&C Contractor only (excluding the Project Co Representative); and
	2. Subcontractor, officer, agent, adviser, consultant, contractor or employee of the D&C Contractor.

**D&C Contractor Relevant Person** means any officer or employee, consultant, contractor or agent of a D&C Party who:

* + 1. has the ability to exercise influence or control over the decisions or actions of the D&C Party or in matters relating to the Project;
		2. works in any role in connection with the Project, including undertaking any task for the purpose of a D&C Document or this Deed; or
		3. has, or will reasonably be expected to have, access to Confidential Information held in connection with the Project or Users.
1. **D&C Contractor Statement** has the meaning given to it in clause 6.4.
2. **D&C Document** means:
	* 1. in respect of the D&C Contractor:
			1. the D&C Contract; and
			2. the D&C Contractor and Services Contractor Interface Deed; and
		2. in respect of the D&C Guarantor, the D&C Guarantee.
3. **D&C Guarantee** means the parent guarantee dated on or about the date of this Deed between the D&C Guarantor and Project Co.
4. **D&C Parties** means:
	* 1. the D&C Contractor; and
		2. the D&C Guarantor,

and **D&C Party** means each of them.

1. **Deed** means this deed and includes all schedules, attachments and annexures to it.
2. **Default Event** means:
	1. any breach by Project Co of any of its obligations under a D&C Document; or
	2. any other event or circumstance,
3. which alone or with the giving of notice or passage of time or both, would entitle a D&C Party to terminate, rescind, accept the repudiation of, or suspend any or all of its obligations under, a D&C Document.
4. **Default Event Notice** has the meaning given in clause 6.2(a).
5. **Dispute** has the meaning given in clause 9.1.
6. **Disputing Parties** has the meaning given in clause 9.1.
7. **Material Adverse Effect** means a material adverse effect on:
	1. the ability of each of Project Co or a D&C Party to perform and observe their respective obligations under any Project Document to which it is a party;
	2. the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document; or
	3. the performance of, or cost of undertaking, the Functions.
8. **Novation Notice** has the meaning given in clause 8.1(a).

**Novation Notice Date** means:

* 1. in relation to clause 8.3, the later of the date of the Novation Notice and the date the D&C Contractor consents or is deemed (in accordance with clause 8.3(d)) to have consented to the novation and assignment; and
	2. otherwise, the date of the Novation Notice.
1. **Other Party** has the meaning given in clause 18.10(a).
2. **Project Co's Rights** has the meaning given in clause 7.3(b)(i)A.
3. **Project Deed** means the document entitled [#Iinsert] between the State and Project Co dated [#insert].
4. **Receiver** means a receiver or receiver and manager appointed by the State under the State Security or under Law in connection with the State Security, and, if more than one, then each of them, and also any employee, contractor, servant, agent or delegate of any of them.
5. **Recipient** has the meaning given in clause 14(c)(ii).
6. **Representatives** has the meaning given in clause 9.2(a).
7. **Resolution Institute** means Resolution Institute Ltd ACN 008 651 232.
8. **Revenue** has the meaning given in clause 14(g).
9. **State Cure Notice** has the meaning given in clause 6.2(c).
10. **Statement Beneficiary** means the State, an Additional Obligor or Receiver appointed under clause 7.
11. **Step-In Period** has the meaning given in clause 7.1(b).
12. **Step-In Right** has the meaning given in clause 7.1(a).
13. **Substitute Party** has the meaning given in clause 8.1(a).
14. **Supplier** has the meaning given in clause 14(c).

## Interpretation

1. In this Deed:

### (**headings**): headings and subheadings (including those of the type in this paragraph) are for convenience only and do not affect interpretation;

### (**number and gender**): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

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

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

#### a section or part is a reference to a section or part of the Schedule or the PSDR (as applicable) in which they are located,

unless expressly provided otherwise;

### (**Appendix**): a reference to an Appendix is a reference to an Appendix of the PSDR;

### (**document as amended**): a reference to a Project Document, or to any other deed, agreement, document or instrument means a reference to such Project Document, or other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

### (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation and, in the case of a trustee, includes a substituted or additional trustee;

### (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, a body corporate, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, an Entity and a trust (including a trustee);

### (**replacement person**): a reference to a person appointed under this Deed or any other Project Document includes that person's replacement or delegate appointed in accordance with this Deed or other Project Document (as applicable);

### (**Standards**): unless otherwise expressly stated, a reference to a Standard includes that Standard as amended or updated from time to time;

### (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes:

#### all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation; and

#### consolidations, amendments, re-enactments and replacements;

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

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

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

### (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

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

### (**Business Day**): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;

### (**time**): a reference to time is a reference to time in [Melbourne, Victoria / Sydney, New South Wales], Australia;

### (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

### (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

### (**absolute discretion**): unless the State or the State Representative is expressly required under a State Project Document to act reasonably in exercising a power, right or remedy, the State can exercise any power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

### (**"may"**): without limiting clause 1.3(t), unless the State or the State Representative is expressly required under a State Project Document to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

### (**replacement** **Authorities**): where there is a reference to an Authority, institute association or other body referred to in a State Project Document which:

#### is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, that State Project Document is deemed to refer to that other entity; or

#### ceases to exist, that State Project Document is deemed to refer to the new entity (if any) which serves substantially the same purpose or object as the former entity; and

### (**no bias against drafter**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proposed that provision.

## Priority of documents

1. If there is an inconsistency, ambiguity or discrepancy between this Deed and a D&C Document, this Deed prevails.

## State Project Documents

1. Each of the D&C Parties acknowledges that it has received (or is deemed to have received) a copy of the Project Deed, the State Security and the Finance Direct Deed.

## Inconsistency

1. If there is an inconsistency, ambiguity or discrepancy between this Deed and any other State Project Document, then the order of precedence in clause 2.4 of the Project Deed applies.

## Prior approval or consent

1. If Project Co or a D&C Party (as applicable) is required by a State Project Document to obtain the State's or the State Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained as a condition precedent to the action, document or thing occurring or coming into effect.

## Action without delay

1. Unless there is a provision in this Deed which specifies a period of time in which something must be done by Project Co or a D&C Party, all things must be done by Project Co or the D&C Party (as applicable) without undue delay.

## Provisions limiting or excluding Liability, rights or obligations

### (**No limitation**): A right or obligation of a party under this Deed will not limit or exclude any other right or obligation of a party under this Deed unless otherwise expressly stated.

### (**Limitation permitted by Law**): Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

## Relationship of the parties

Nothing in any Project Document:

### (**no additional relationship**): creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or

### (**no good faith**): imposes any duty of good faith on the State,

1. unless otherwise expressly stated.

## State's rights, duties and functions

### (**State's own interests**): Unless otherwise expressly stated in the State Project Documents, nothing in the State Project Documents gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations under the State Project Documents.

### (**State's rights**): Notwithstanding anything expressly stated or implied in the State Project Documents to the contrary:

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

#### nothing expressly stated or implied in the State Project Documents has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its executive or statutory rights, duties or functions.

### (**No Claim**): Subject to clause 1.11(d), Project Co and the D&C Parties will not be entitled to make any Claim against the State in connection with any exercise or failure of the State to exercise any of its legal, executive or statutory rights, duties or functions.

### (**Liability for breach**): Clauses 1.11(a) and 1.11(b) do not exclude or limit any Claim that Project Co or the D&C Parties may have against the State or a State Associate, or any Liability the State or any State Associate may have to Project Co, any Project Co Associate, the D&C Parties or any Associate of the D&C Parties under the State Project Documents or at Law:

### for damages for breach of a State Project Document by the State or any State Associate; or

### in respect of Project Co’s, any Project Co Associate's, any D&C Party's or any Associate of any D&C Party's Liability to a third party in respect of death, personal injury or damage to property, to the extent that the Liability of Project Co, any Project Co Associate, any D&C Party or any Associate of any D&C Party is a consequence of a fraudulent, reckless, unlawful or malicious act or omission of the State or any State Associate.

## Reasonable endeavours of State

1. A statement in a State Project Document providing that the State or any of its officers, employees or agents will or must use or exercise "best endeavours", "reasonable endeavours", "act reasonably" or "act in good faith" in relation to an outcome, means that the State must take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities but does not mean that the State or any of its officers, employees or agents:

### (**no guarantee**): guarantees the relevant outcome will be brought about; or

### (**no obligation**): is required to:

#### exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;

#### exercise a power or discretion or otherwise act in a manner that the State regards as not in the public interest;

#### develop or implement new policy or a change in policy; or

#### procure any new Legislation or a change in Legislation.

## Final and binding

1. If a determination, decision, opinion or direction is stated in this Deed to be "final and binding", neither party is entitled to challenge that determination, decision, opinion or direction on any basis other than that it is an indisputable error in complete disregard of the facts of the case, the applicable Law or credible evidence.

## Proportionate liability

1. The operation of [Part IVAA of the *Wrongs Act 1958* (Vic) / Part 4 of the *Civil Liability Act 2002* (NSW)] is excluded in relation to all and any rights of either party under this Deed, whether such rights are sought to be enforced in contract, tort or otherwise.

# Conditions Precedent

1. The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 of the Project Deed, is a condition precedent to the coming into operation of this Deed (other than this clause 2 and clauses 1.1 to 1.5, 1.9 to 1.12, 4, 9, 10, 11 and 15 to 18).

# Acknowledgements

## By D&C Parties concerning the State Security

1. The D&C Parties each acknowledge and agree:

### (**grant of security by Project Co**): that Project Co may give a security interest in the form of the State Security, in favour of the State over all assets and undertakings of Project Co including Project Co's right, title and interest under the D&C Documents or assign Project Co's right, title and interest under the D&C Documents to the State by way of security, and the D&C Parties each consent to the State Security and any such assignment;

### (**exercise of rights**): to the State's rights under the State Security including the appointment by Project Co of the State as attorney of Project Co to do, perform and exercise all things, acts and rights under the D&C Documents on behalf of and for the account of Project Co;

### (**no Default Event**): that the grant of, or exercise by the State of its rights under, the State Security will not itself contravene, or constitute a Default Event under, a D&C Document or entitle a D&C Party to exercise any right (including termination) under it;

### (**Liabilities and obligations**): that nothing in the State Security will cause the State or any State Associate to assume any Liabilities or obligations under a D&C Document except any Liabilities as may result from its own acts or omissions in exercising rights or in performing or failing to perform obligations under a D&C Document as expressly provided by this Deed;

### (**notice of any other assignment**): that with the exception of the Security Interests under the Finance Documents, it has not received notice of any other assignment or charge by Project Co of any right, title, interest in or benefit of Project Co under the D&C Documents; and

### (**set off**): that as of the date of this Deed, it has no knowledge of any right of set off or counterclaim which it may have against Project Co so as to diminish any money payable by it to Project Co under a D&C Document, except only where the right of set off or counterclaim is contained within the D&C Document.

## By the D&C Parties concerning the State's rights

### (**State's rights**): The D&C Parties each acknowledge the State's rights under:

#### clauses 27, 38.2, 39.1, 45 and 46 of the Project Deed; and

#### the other relevant clauses and sections listed in clause 9.3(e) of the Project Deed.

### (**Facilitation of rights**): The D&C Contractor must exercise its rights under the D&C Contract in a way that facilitates the effective exercise by the State of the rights referred to in clause 3.2(a) and will on reasonable notice permit the State or any State Associate to have access to, and take copies of, the records, reports, documents and other papers to which the State is entitled to have access in accordance with the State's rights referred to in clause 3.2(a).

### (**Continued performance**): During the period in which the State is exercising a right referred to in clause 3.2(a)(i), the State may in accordance with the Project Deed and the D&C Contract, require the suspension or the continuation of performance by the D&C Contractor of its obligations under the D&C Contract, and if it does so, the D&C Contractor will comply with this requirement and with all reasonable directions of the State in relation to the performance of the D&C Contract by the D&C Contractor during such period.

### (**State not liable**): The requirement of the State that the D&C Contractor suspend or continue to perform its obligations under the D&C Contract and the giving of any direction under clause 3.2(c) by the State will not be construed as an assumption by the State of any obligations of the D&C Contractor under the D&C Contract.

### (**Subcontracting**): The D&C Contractor will not subcontract any of its obligations under the D&C Contract without the prior consent of the State, where so required in accordance with clause 9 of the Project Deed.

### (**Probity Investigations**): Without limiting clauses 3.2(a) to (e), the D&C Parties each acknowledge and agree that:

#### in accordance with clauses 9, 39.1 and 39.2 of the Project Deed, the State from time to time may or may require Project Co to conduct Probity Investigations of:

##### the D&C Parties;

##### D&C Contractor Relevant Persons; or

##### other persons in relation to any further subcontracting by the D&C Contractor of any of its obligations under the D&C Contract;

#### it will procure the consent of each person who will be the subject of a Probity Investigation:

##### to any Probity Investigation; and

##### to the extent that the State is entitled to do so under the Project Deed, to such other probity and security investigations that the State may require of each person who will be the subject of a Probity Investigation in respect of whom the State advises the relevant D&C Party that it requires a Probity Investigation; and

#### it:

##### will not appoint, or retain the appointment of; and

##### will ensure that no other person appoints, or retains the appointment of,

* + 1. a person to the position of a D&C Party or D&C Contractor Relevant Person in relation to the management or performance of the D&C Contract by the D&C Contractor unless the State has given approval otherwise (which may be withdrawn at any time in accordance with the Project Deed) following any Probity Investigation that Project Co elects to conduct and other such investigations that the State may require under clauses 9, 39.1 and 39.2 of the Project Deed.

## By Project Co

1. Project Co is bound by, and must cooperate in the implementation of, this Deed. It acknowledges that this Deed is intended to benefit only the D&C Parties and the State and does not in any way affect any right or obligation of Project Co under the D&C Contract or under any Project Document except as expressly set out herein.

## Information

1. Project Co and the D&C Parties each acknowledge and agree that:

### (**information purpose**): any information, data or document provided by the State or any State Associate:

#### is provided for information purposes only and all of the State and the State Associate's Intellectual Property Rights therein remain the property of the State or those State Associates (as the case may be); and

#### does not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or any State Associate; and

### (**no Liability**): to the extent permitted by Law, neither the State nor any State Associate will have any Liability to the D&C Parties or any D&C Contractor Associate, nor will a D&C Party or any D&C Contractor Associate be entitled to make any Claim against the State or a State Associate, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or any State Associate arising in connection with:

#### the provision of, or purported reliance upon, or use of any information, data or document referred to in clause 3.4(a) by the D&C Parties, or any other person to whom such information is disclosed by the D&C Parties, the D&C Contractor Associates or any person on behalf of a D&C Party or any D&C Contractor Associate;

#### any reference to the State in a D&C Document; or

#### any review of, comments upon, acceptance, approval or certification of the form or substance of a D&C Document by the State.

## Subcontract not to affect State rights

1. Project Co and the D&C Parties each acknowledge and agree that:

### (**rights not affected**): where the D&C Contractor is expressed in the D&C Contract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Project Deed or an equivalent or similar right of Project Co:

#### this does not of itself expand Project Co's rights, or the State's Liability, under the Project Deed to include the compensation or relief to which the D&C Contractor is or may become entitled under the D&C Contract; and

#### Project Co's rights, and the State's Liability, under the Project Deed will be determined solely in accordance with the terms of the Project Deed;

### (**risk of discrepancy**): as between the State (on the one hand) and Project Co and the D&C Parties (on the other hand), Project Co and the D&C Parties accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the D&C Contract and the Project Deed; and

### (**dealing directly with State**): notwithstanding anything to the contrary in the D&C Contract, neither D&C Party has any right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:

#### expressly provided to the contrary in the Project Deed or this Deed; or

#### the State consents.

## D&C Contractor Construction Bond  *[Note: In Services Direct Deed, delete this clause.]*

### (**Demand under the D&C Contractor Construction Bond**): The State may require Project Co to make a demand under the D&C Contractor Construction Bond in accordance with the Project Deed and the Finance Direct Deed.

### (**Inform State**): The D&C Contractor must inform the State when a demand is made under the D&C Contractor Construction Bond promptly after it becomes aware of such demand.

### (**State Liability**): Without limiting the D&C Contractor's rights against Project Co, if a demand is made by the State under the D&C Contractor Construction Bond that is not permitted under the D&C Contract, the State will have no Liability to the D&C Contractor, and the D&C Contractor releases the State from and against any Claim the D&C Contractor may have, arising in connection with the State requiring Project Co to make a demand under the D&C Contractor Construction Bond as contemplated by clause 3.6(a).

# Representations and warranties by D&C Parties

1. The D&C Parties each represent and warrant for the benefit of the State that:

### (**power to execute and perform**): it has the power to execute, deliver and perform its obligations under this Deed, the D&C Contract and each other Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;

### (**legality**): the execution, delivery and performance of this Deed, the D&C Contract and each other Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;

### (**validity**): each of its obligations under this Deed, the D&C Contract and each other Project Document to which it is a party is valid and legally binding on it in accordance with its terms;

### (**registration**): it is duly registered, properly constituted and remains in existence;

### (**necessary licences**): it holds and will continue to hold all licences, registrations, accreditations and certifications that it is required by Law to hold in order to lawfully execute, deliver and perform its obligations under this Deed, the D&C Contract and each other Project Document to which it is a party;

### (**information true and correct**): all information provided by it to the State is true and correct at the time it was provided to the State;

### (**material facts**): no D&C Party is aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or to consent to the entry into the D&C Contract;

### (**litigation**): no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a material adverse effect upon it or its ability to perform its financial and other obligations under this Deed, the D&C Contract or any other Project Document to which it is a party;

### (**Insolvency Event**): no Insolvency Event has occurred in respect of it;

### (**accounts**): in respect of its accounts:

#### its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;

#### there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and

#### such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;

### (**no default**):

#### it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and

#### nothing has occurred, which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement,

* 1. and which would have a Material Adverse Effect;

### (**no immunity**): neither it nor any of its assets enjoys any immunity from set off, suit or execution; and

### (**own investigations**): in entering into this Deed, the D&C Contract and any other Project Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, Project Co or any other person unless in respect of Project Co or any other person, other than the State or any State Associate, it is expressly permitted to do so in accordance with a Project Document to which it is a party.

# Undertakings of D&C Parties

## Undertakings

1. The D&C Parties each undertake to the State as follows:

### (**notification of Default Event**): in the case of the D&C Contractor, it will notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with the D&C Contract;

### (**documents in relation to Default Event**): in the case of the D&C Contractor, it will promptly give the State a copy of all documents issued by the D&C Contractor to Project Co in relation to a Default Event;

### (**no amendment without consent**): it will not, without first obtaining the consent of the State:

#### make or permit any amendment, replacement of, or addition to;

#### subject to clause 6.2, terminate, surrender, rescind or accept repudiation of;

#### permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause [6.6] of the Finance Direct Deed; or

#### allow any express waiver of its material rights and obligations under,

* 1. a D&C Document, provided that the State will not withhold its consent where the State has given, or is required to give, an equivalent consent under the Project Deed;

### (**deed of accession**): without limiting clause 5.1(c), it will not novate, assign or substitute any of its rights, obligations or interest in a D&C Document without first procuring that the proposed novatee, assignee or substitute executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the novatee, assignee or substitute agrees to accept and be bound by this Deed as if it were the D&C Contractor or D&C Guarantor (as the case may be);

### (**attend meetings and inspections**): it will (when reasonably requested by the State):

#### attend, where reasonable and appropriate, meetings with the State or any State Associate;

#### provide the State, any State Associate and any other person authorised to enter the Site by the State (including the Independent Reviewer) with:

##### in the case of the D&C Contractor, full access to the Site to the extent provided in the Project Deed and to the extent that the D&C Contractor has access or is granted access under the D&C Contract; and

##### any other information, records or documents that the State or any State Associate (acting reasonably) or the Independent Reviewer require in relation to the carrying out of the Development Activities or performance of the obligations under or compliance with the D&C Contract or any information required by the State to comply with requests from the [Victorian / New South Wales] Auditor-General; and

#### in the case of the D&C Contractor, to the extent provided in the Project Deed, permit the State or any State Associate to attend all tests and inspections to be carried out in connection with the Project in accordance with the terms of the D&C Contract; and

### (**access to records**): in the case of the D&C Contractor, at the request of the State, the D&C Contractor will:

#### permit the State or any State Associate to inspect all records, reports, plans, programs, specifications and technical documents prepared or kept by or on behalf of the D&C Contractor in relation to the performance of its obligations under this Deed, the D&C Contract or any other Project Document to which it is a party or otherwise relating to the Project; and

#### supply the State or any State Associate with a copy of any such report or document which they may require from time to time.

## State access to Site

When entering the Site in accordance with clause 5.1(e)(ii)A, the State agrees to comply with, and ensure that any State Associate and any other person authorised to enter the Site by the State comply with clause 15.1 of the Project Deed.

## Appointment of D&C Contractor as principal contractor *[Note: For use in Victoria only.]*

### (**Definitions**): In this clause 5.3, the terms "construction project", "construction work", "workplace" and "Principal Contractor" have the same meanings given to those terms under the OHS Legislation. For the purposes of the OHS Legislation and this Deed:

#### any Development Activities, including work under any Subcontract; and

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

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

##### which interfaces with the Development Activities,

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

### (**Appointment**): From Financial Close and up to the Date of Commercial Acceptance, in respect of the Development Activities, and for the rectification of Defects and the undertaking of any Works during the Operational Phase, where the D&C Contractor undertakes such work: ***[Note: in Services Direct Deed, replace this paragraph with "In respect of the Services, from the Operational Commencement Date until the Expiry Date:".]***

#### (**accepts appointment**): the D&C Contractor accepts the appointment by the owner of the Development Phase Area as, and must comply with all the obligations of, a Principal Contractor under the OHS Legislation;

#### (**manage or control**): the D&C Contractor must, and the State authorises the D&C Contractor to, manage or control each workplace at which the D&C Contractor carries out construction work and must discharge the duties of a Principal Contractor under the OHS Legislation in respect of the construction work at that workplace;

#### (**skill and expertise**): the D&C Contractor warrants that it has the skill and expertise to discharge and satisfy the duties arising out of or in connection with its appointment; and

#### (**accepts revised appointment**): the D&C Contractor accepts any revised appointment as Principal Contractor that may be necessary as a result of a Change in Law or Change in Policy (as the case may be).

### (**Functions and obligations of Principal Contractor**): If the appointment of the D&C Contractor as Principal Contractor under this Deed is not effective for any reason, the D&C Contractor must exercise and fulfil the functions and obligations of the Principal Contractor under the OHS Legislation as if it had been validly appointed and authorised as Principal Contractor under this Deed.

## Appointment of D&C Contractor as principal contractor *[Note: For use in NSW only]*

### (**Definitions**): In this clause 5.4, the terms 'construction project', 'construction work', 'principal contractor', 'workplace' and 'WHS management plan' have the same meanings given to those terms under the WHS Act and WHS Regulations. For the purposes of the WHS Act and WHS Regulations and this Deed:

#### any Development Activities, including work under any Subcontract; and

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

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

##### which interfaces with the Development Activities,

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

### (**Engagement**): From Financial Close, the State:

#### engages the D&C Contractor as the principal contractor for any construction project forming that part of the Development Activities for which the D&C Contractor is engaged; and

#### authorises the D&C Contractor to have management or control of that part of the workplace to which any construction project for which it is engaged relates and to discharge the duties of a principal contractor under the WHS Regulation in relation to the construction project forming that part of the Project Activities for which they are engaged.

### (**Term of engagement and appointment**): The D&C Contractor's engagement and appointment as principal contractor by the State in respect of any construction project in relation to the Development Phase Area will continue until the earlier of:

#### the Date of Commercial Acceptance;

#### the termination of the Project Deed; and

#### the termination of this Deed.

### (**Acceptance of engagement**): The D&C Subcontractor:

#### (**accepts engagement**): accepts the engagement in clause 5.4(b), and will have management and control of that part of the workplace to which any construction project for which it is engaged relates and must discharge the duties imposed on a principal contractor under the WHS Legislation, the D&C Contract, this Deed and the D&C Contractor's WHS management plan for the construction project;

#### (**compliance**): must carry out, and ensure compliance with, its obligations as principal contractor under the WHS Legislation in respect of the engagement;

#### (**skill and expertise**): warrants that it has the skill and expertise to discharge and satisfy the duties arising out or in connection with its appointment;

#### (**hazards**): warrants that it has received information with respect to hazards and risks at or in the vicinity of the workplace where construction work is to be carried out to its satisfaction; and

#### (**accepts revised engagement**): the D&C Contractor accepts any revised engagement as principal contractor that may be necessary as a result of a Change in Law or Change in Policy (as the case may be).

### (**Functions and obligations of Principal Contractor**): If the engagement of the D&C Contractor as principal contractor under this Deed is not effective for any reason:

#### the D&C Contractor must exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if it had been validly engaged and authorised as the Appointed Principal Contractor under this Deed; and

#### the State authorises the D&C Contractor to have management and control of any workplace at which construction work the subject of the Development Activities and this Deed is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation.

# Right to cure before termination of D&C Contract

## State's cure rights

### (**Provide State with notices**): The D&C Contractor must give the State:

#### Default Event Notices; and

#### State Cure Notices,

* 1. as required by clause 6.2.

### (**State Cure Notice**): On receiving a State Cure Notice, and subject to the Finance Direct Deed, the State may (but is not obliged to) take steps to:

#### remedy, or procure the remedy of, that Default Event; or

#### if the Default Event is not capable of remedy, commence and continue to perform the obligations of Project Co under the D&C Contract.

## Termination or suspension with cause

1. The D&C Contractor may only exercise a right to terminate, rescind, accept the repudiation of, or without limiting clause 6.3, suspend the performance of any or all of its obligations under the D&C Contract if:

### (**prior notice**): the D&C Contractor has given to the State prior notice setting out details of the Default Event giving rise to that proposed exercise in accordance with clause 6.4 (**Default Event Notice**);

### (**remedy period**): any remedy period available to the Financiers in respect of the Default Event under the D&C Contractor Consent Deed has expired without a remedy being achieved;

### (**expiration of remedy period**): the D&C Contractor has given notice to the State (**State Cure Notice**) confirming that any remedy period available to the Financiers in respect of the Default Event under the D&C Contractor Consent Deed has expired without a remedy being achieved; and

### (**Default Event remedy**): allowing for the operation of clause 6.7(d), where:

#### the Default Event is capable of remedy within 20 Business Days after the date on which the State received the State Cure Notice, the Default Event has not been remedied within that 20 Business Day period;

#### the Default Event is not capable of remedy within 20 Business Days after the date on which the State received the State Cure Notice but is nevertheless capable of remedy, the State (or an Additional Obligor or Receiver appointed under clause 7) has not commenced remedying the Default Event within that 20 Business Day period and has not continued to diligently pursue that remedy;

#### the Default Event is not capable of remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, Project Co or the State (or another person on behalf of either of them) has not paid or otherwise provided that compensation to the D&C Contractor:

##### to the extent that the relevant amount of compensation has been referred to dispute resolution under clauses 9 to 11, within 20 Business Days after that Dispute is resolved; or

##### otherwise within 20 Business Days after the date on which the State received the State Cure Notice;

#### the Default Event is not capable of remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, the State (or an Additional Obligor or Receiver appointed under clause 7) does not commence and continue to perform Project Co's obligations under the D&C Contract within 20 Business Days after the date on which the State received the State Cure Notice; or

#### the State notifies the D&C Contractor that it elects not to remedy, or procure the remedy of, the Default Event.

## Early suspension

1. The D&C Contractor may suspend performance of the Development Activities or its obligations under the D&C Contract before the expiry of the relevant remedy period under clause 6.2(d) if at that time:

### (**right to suspend**): the D&C Contractor, but for the operation of clause 6.2, would have a right under the D&C Contract to suspend performance of its obligations with respect to a Default Event under the D&C Contract and under clause 6.2;

### (**State Cure Notice**): the D&C Contractor has issued a State Cure Notice to the State with respect to that Default Event;

### (**Dispute, non-payment or expired period**): either:

#### the State has not at that time undertaken to satisfy the condition in clause 6.2(d)(i) by paying to the D&C Contractor the amounts payable under the D&C Contract within 20 Business Days:

##### subject to clause 6.3(c)(ii), after the date of receipt of the State Cure Notice; or

##### if the State refers the amounts in the Default Event Notice to dispute resolution under clauses 9 to 11, after the Dispute being determined; or

#### without limiting clause 6.2(d), the State has at that time undertaken to pay the D&C Contractor amounts payable under the D&C Contract for a stated period from the date on which the right to suspend would have arisen (but for the operation of clause 6.2) and that period has expired without that period being extended by the State; and

### (**not remedied**): the Default Event has not otherwise been remedied.

1. For the avoidance of doubt, if a Default Event is subsisting at the end of the remedy period referred to in clause 6.2, the D&C Contractor may exercise its right to suspend under clause 6.2 notwithstanding that the State may have given and complied with the undertakings referred to in clause 6.3(c)(ii).

## D&C Contractor Statements

1. As part of any Default Event Notice, the D&C Contractor must include a statement of:

### (**all** **amounts due and payable**): all amounts due and payable to the D&C Contractor under the D&C Contract on or before the date of the Default Event Notice but remaining unpaid at such date;

### (**Claim**): the nature and, to the best of the D&C Contractor’s knowledge and belief, the amount of any Claim asserted by the D&C Contractor arising in connection with the D&C Contract against Project Co; and

### (**intention to terminate**): where the D&C Contractor intends to terminate the D&C Contract due to a default or breach of condition of a non-financial nature or intends to claim damages or to seek some other form of relief:

#### the provisions of the D&C Contract alleged to have been breached or not fulfilled;

#### sufficient information to enable the State to identify the material facts;

#### the steps reasonably required to remedy the Default Event (if reasonably capable of remedy);

#### the time within which the specified steps can reasonably be expected to be taken;

#### if applicable, the amount of damages claimed and the manner in which they have been calculated; and

#### if applicable, the other relief to be sought,

1. (being the **D&C Contractor Statement**).

## Warranty of accuracy and waiver

1. The D&C Contractor:

### (**warranty**): warrants to the State that each D&C Contractor Statement will, subject to unintended error which the D&C Contractor agrees to rectify, be a true, complete and accurate statement of the amounts or other relief to which the D&C Contractor considers itself entitled; and

### (**waiver**): waives and abandons all Claims then known or which ought reasonably to have been known to the D&C Contractor arising in connection with the D&C Contract prior to the date of the Default Event Notice other than the claims disclosed in the D&C Contractor Statement.

## Verification of D&C Contractor Statements

1. The State may appoint one or more independent chartered accountants, technical advisers or other appropriately qualified persons to verify (at the cost of Project Co) a D&C Contractor Statement, and the D&C Contractor must, subject to such persons executing an appropriate confidentiality agreement as the D&C Contractor may reasonably request, permit such persons to have access to and to make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such D&C Contractor Statement.

## D&C Contractor Statements to be conclusive evidence

### (**Reliance**): Each Statement Beneficiary is entitled to rely on a D&C Contractor Statement for the purpose of determining the extent of the matters occurring prior to a Default Event which are required to be remedied and the requirements to effect the remedy of that Default Event by a Statement Beneficiary.

### (**Conclusive evidence**): A D&C Contractor Statement will, to the extent provided for in clause 6.4 and/or 6.5, be conclusive evidence in favour of any Statement Beneficiary that the D&C Contractor has waived and abandoned all Claims then known or which ought reasonably to have been known to the D&C Contractor arising in connection with the D&C Contract prior to the date of the Default Event Notice other than the Claims disclosed in the D&C Contractor Statement.

### (**Claims against Project Co**): Clauses 6.7(a) and 6.7(b) are without prejudice to the rights of the D&C Contractor to pursue any Claims against Project Co following termination or novation of the D&C Contract in accordance with this Deed.

### (**Disputes**): For the avoidance of doubt, a D&C Contractor Statement will not prevent any Statement Beneficiary from disputing the amount of any Claim or other relief sought by the D&C Contractor or the existence of any default by Project Co under the D&C Contract. In the case of any such Dispute:

#### the relevant Statement Beneficiary must pay the amount or perform the obligations (if any) not in Dispute in accordance with this Deed and the D&C Contract where the State has undertaken to do so under clause 6.3;

#### the time periods set out in clause 6.2(d) will continue to apply to any amounts and obligations (if any) which are not in Dispute;

#### the Dispute must be referred to dispute resolution under clauses 9 to 11; and

#### during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Project Documents.

# Step-In by the State

## Step-In Right

### (**Exercise**): Following receipt of a State Cure Notice or if the State is entitled to exercise any of the rights referred to in clause 3.2(a)(i) or is otherwise permitted under any Project Document, the State may:

#### if permitted under the State Security or the Finance Direct Deed, appoint a Receiver over Project Co or any or all of its assets (including the D&C Documents);

#### itself enter into possession of any or all of the assets of Project Co;

#### take such other action as it is permitted to take under:

##### clause 38 of the Project Deed; or

##### the Project Documents, to exercise all or any of the rights or carry out all or any of the obligations of Project Co; or

#### by notice to the D&C Contractor (**Additional Obligor Step-In Notice**), procure that an Additional Obligor assumes jointly and severally with Project Co all of Project Co's rights and obligations under the D&C Documents,

* 1. (each a **Step-In Right**).

### (**Step-In Period**): The period from the date on which the D&C Contractor receives notice of the exercise of any Step-In Right to the earliest of:

#### the Additional Obligor Step-Out Date;

#### the date on which the D&C Contractor terminates the D&C Contract;

#### the date of any transfer under clause 8;

#### the date which the State has notified the D&C Contractor that the State will cease to exercise its Step-In Rights; and

#### any other date on which the State ceases to continue to exercise its Step-In Rights,

* 1. is the **Step-In Period**.

### (**Acknowledgement**): The D&C Parties each acknowledge that the exercise by the State of a Step-In Right will not of itself contravene the D&C Documents or constitute a Default Event under the D&C Contract or entitle a D&C Party to exercise any right (including termination) under a D&C Document.

## Step-In by the State

### (**Rights**): Subject to the Finance Direct Deed, the State may at any time during a Step-In Period, exercise all or any of its rights and carry out all or any of the obligations of Project Co in connection with the D&C Documents, as if it were Project Co to the exclusion of Project Co.

### (**No Liability**): Subject to clause 7.3(b), Project Co and the D&C Parties each agree that none of:

#### the State or any State Associate will have any Liability; and

#### Project Co or the D&C Parties will be entitled to make, continue or enforce any Claim against the State or any State Associate,

* 1. in each case arising in connection with the D&C Documents or this Deed by reason only of the State or any State Associate exercising any of Project Co's rights, or performing any of Project Co's obligations under the D&C Documents other than, and then only to the extent of, Liability for fraudulent, reckless, unlawful or malicious acts or omissions, or wilful misconduct of the State or any State Associate.

## Step-In using Additional Obligor

### (**Assumption Date**): If clause 7.1(a)(iv) applies, the Additional Obligor will become a party to the D&C Documents on the date on which the Additional Obligor Step-In Notice is given to the D&C Contractor or such later date as the D&C Contractor and the State may agree (**Assumption Date**).

### (**Rights and obligations of Additional Obligor**): During a Step-In Period in respect of which the State has exercised a Step-In Right under clause 7.1(a)(iv):

#### subject to clause 7.3(b)(ii), the Additional Obligor and Project Co will be jointly and severally:

##### entitled to exercise the rights of Project Co under the D&C Documents (excluding any accrued rights of Project Co in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (**Project Co's Rights**); and

##### liable for the performance or non-performance of all Project Co's obligations under the D&C Documents arising on or after the Assumption Date except as released in accordance with clause 7.3(e);

#### as between Project Co, the D&C Parties and the Additional Obligor, only the Additional Obligor is authorised to deal with the D&C Parties and to exercise Project Co's Rights;

#### Project Co acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the D&C Parties and in exercising Project Co's Rights;

#### the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;

#### clause 15 will apply to the D&C Parties and the Additional Obligor as if the address and email address of the Additional Obligor were set out in addition to those of Project Co; and

#### the D&C Parties will owe their respective obligations under the D&C Documents to Project Co and the Additional Obligor jointly but the performance by a D&C Party in favour of either Project Co or the Additional Obligor will be a good discharge of the relevant obligations under the D&C Documents.

### (**No Liability**): Without prejudice to the D&C Contractor's rights under clauses 6.2 and 6.3, the Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of Project Co under the D&C Documents arising prior to the Assumption Date.

### (**Additional Obligor Step-Out Date**): The Additional Obligor may at any time give the D&C Contractor notice terminating the Additional Obligor's rights and obligations under the D&C Documents (without affecting the continuation of Project Co's rights, obligations or liabilities towards the D&C Parties under the D&C Documents). Such notice must specify the date on which it takes effect, which must be:

#### at least 30 days after the date of the notice; or

#### if a Novation Notice has been given, the Novation Notice Date,

* 1. (**Additional Obligor Step-Out Date**).

### (**Release**): On and from the Additional Obligor Step-Out Date, as between the D&C Parties and the Additional Obligor, each of the D&C Parties and the Additional Obligor will be released from all obligations under the D&C Documents (except for those obligations owed to each other which have arisen during the relevant Step-In Period), whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed. For the avoidance of doubt, on and from the Additional Obligor Step-Out Date, the D&C Parties will continue to owe their obligations under the D&C Contract to:

#### Project Co; or

#### if a Novation Notice has been given, to the Substitute Party.

## Indemnity

1. Project Co must indemnify the State, each State Associate and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State, any State Associate or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 7.2 or clause 7.3, except to the extent that such Claim or Liability is caused or contributed to by any of the events set out in clause 43.6 of the Project Deed or (subject to clause 43.11(d) of the Project Deed) is Indirect or Consequential Loss.

# State's option to novate to the State or third party

## Option

### (**Novation Notice**): The State may require a novation of the D&C Documents upon the termination of the Project Deed, by giving a notice (**Novation Notice**) to the D&C Contractor. The Novation Notice must specify the person to whom the State intends to novate the D&C Documents whether this be the State or another person (**Substitute Party**).

### (**D&C Contractor's obligations to continue**): If the State issues a Novation Notice, then (without prejudice to the D&C Contractor's rights under clauses 6.2 and 6.3) the D&C Parties must continue to perform their respective obligations under the D&C Documents until the Novation Notice Date.

### (**D&C Contractor to continue work):** If the D&C Contractor has exercised any rights it has to suspend the Development Activities or the performance of any of its obligations under the D&C Contract, the D&C Contractor must recommence performance of those obligations from the Novation Notice Date or the date on which the cause of the suspension is remedied (whichever is the earlier).

### (**Acknowledgement**): The D&C Parties each acknowledge that the giving of a Novation Notice by the State and the completion of the transactions contemplated by a Novation Notice will not of itself contravene, or constitute a Default Event under, a D&C Document or entitle a D&C Party to exercise any power (including termination) under it.

### (**Right to suspend**): Without prejudice to any then accrued rights against Project Co (other than termination), any right of the D&C Contractor to suspend under the D&C Contract that exists at the Novation Notice Date will be of no further effect.

## Novation to Substitute Party

### (**Novation Deed**): Subject to clause 8.3(e), on or prior to the Novation Notice Date:

#### Project Co, the D&C Contractor, (where the D&C Contractor and Services Contractor Interface Deed is in effect) the Services Contractor and the Substitute Party must enter into a novation deed in or substantially in the form specified in Attachment 1 to this Deed reflecting the novation of the D&C Documents referred to in paragraph (a) of that definition and take such other action as is required to vest in the Substitute Party full legal and equitable title to any retention account, bank guarantee, performance bond, letter of credit or other security held by Project Co to secure the obligations of the D&C Contractor under those D&C Documents;

#### the D&C Guarantor must provide a replacement guarantee and indemnity (in or substantially in the form of the D&C Guarantee) in favour of the Substitute Party, provided that any caps on Liability in the D&C Guarantee will continue to apply, but so that any Liability of the D&C Guarantor incurred to Project Co prior to the Novation Notice Date is taken into account in respect of any ongoing Liability of the D&C Guarantor to the Substitute Party;

#### where the Substitute Party:

##### is the State, this Deed will terminate; and

##### is not the State, the State must procure that the Substitute Party executes a deed in favour of the State and the D&C Parties (in form and substance approved by the State) pursuant to which the Substitute Party agrees to accept and be bound by this Deed as if it was Project Co; and

#### the D&C Parties and Project Co must provide such customary legal opinions in favour of the State, the Substitute Party and the Security Trustee in connection with the due execution and enforceability of the documents referred to in clause 8.2(a)(i) and 8.2(a)(ii).

### (**D&C Guarantee**): The D&C Guarantee in favour of Project Co will terminate on provision of the replacement guarantee and indemnity in accordance with clause 8.2(a)(ii) (but without prejudice to any accrued rights of Project Co in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that those rights arose prior to the Novation Notice Date and are the subject of any unresolved dispute referred to in clause 2.2(a)(iii)B.2) of the novation deed referred to in clause 8.2(a)).

### (**Amendments**): The D&C Parties will promptly negotiate in good faith and agree with the Substitute Party any amendments to the D&C Documents that are necessary to reflect the termination of the Project Deed.

### (**Attorney**): For valuable consideration, Project Co and the D&C Parties each irrevocably appoint the State, on its behalf and in its name or otherwise, as its attorney to do anything which Project Co or a D&C Party is obliged to do (but has not done within 5 Business Days of request) under clause 8.2(a). Each of Project Co and the D&C Parties ratifies and confirms and agrees to ratify and confirm whatever any such attorney lawfully does in the exercise of the power of attorney in this clause 8.2(d).

### (**Novation under Services Contractor Direct Deed**): If clause 8.2(a) of the Services Contractor Direct Deed applies, at the request of Project Co or the State:

#### the D&C Contractor must enter into a novation deed in relation to the novation by the State of the D&C Contractor and Services Contractor Interface Deed (among other documents), and which will be in or substantially in the form specified in Attachment 1 to the Services Contractor Deed; and

#### clauses 8.2(a)(ii), 8.2(a)(iii) and 8.2(a)(iv) will apply.

## Additional requirements where Substitute Party is not the State

### (**Information to be provided by the State**): If the State gives a Novation Notice which provides that Project Co must novate the D&C Documents to a Substitute Party other than the State, the State must, at the time it gives the Novation Notice, provide to the D&C Parties the following particulars of the Substitute Party:

#### its name, place of incorporation and identity of shareholder(s) (including, unless a shareholder is listed on a securities exchange, the ultimate shareholders);

#### if available, its most recent published audited accounts; and

#### sufficient particulars of the finance available to the Substitute Party to enable the D&C Parties to decide whether to grant its consent to the Substitute Party.

### (**Consent by D&C Parties**): The giving of a Novation Notice with respect to a Substitute Party other than the State or a State Associate in accordance with this clause 8 will only be effective, and the D&C Parties will only be required to enter into a novation deed under clause 8.2(a), if the D&C Parties each consent to that novation (such consent not to be unreasonably withheld or delayed) or are deemed to have consented in accordance with clause 8.3(d).

### (**Further information**): The State must as soon as practicable supply the D&C Parties with such additional information to that provided under clause 8.3(a) as the D&C Parties each reasonably require to enable it to decide whether to grant consent under clause 8.3(b), and the D&C Parties must each consider such information expeditiously and inform the State promptly if it reasonably requires further information.

### (**Deemed consent**): The D&C Parties' consent to a novation referred to in clause 8.3(b) will be deemed to be given if the D&C Parties have not notified the State under clause 8.3(e)(ii) within 10 Business Days of the later of:

#### the receipt of the Novation Notice; and

#### the receipt of the State's response to the D&C Parties' request for information under clause 8.3(c).

### (**Unreasonably withholding consent**): A D&C Party is not entitled to withhold or delay consent to the novation unless:

#### the grounds for withholding or delay are reasonable and are based on:

##### the Substitute Party not having the legal capacity, power and authorisation to become a party to and perform the obligations of Project Co in accordance with the D&C Documents including any necessary authorisations and consents;

##### the technical competence or financial standing of the Substitute Party being insufficient for it to meet the obligations of Project Co in accordance with the D&C Documents; or

##### a D&C Party being placed in breach of any Laws by the proposed novation; and

#### it has notified the State of such reasons.

### (**If a D&C Party withholds consent**): If either D&C Party withholds its consent to a Novation Notice under this clause 8.3, this will not prejudice the ability of the State to give one or more subsequent Novation Notices, and information under clause 8.3(a), containing changed particulars relating to the same Substitute Party or particulars relating to another Substitute Party.

## Accrued obligations and liabilities

1. Clause 8.2 does not operate to:

### (**State not to assume obligations or Liabilities**): require the State to assume any obligations or Liabilities arising from, or which are required to be performed in connection with the D&C Documents prior to the Novation Notice Date unless expressly provided in the novation deed referred to in clause 8.2(a); or

### (**release Project Co**): release Project Co from such obligations or Liabilities unless expressly provided in the novation deed referred to in clause 8.2(a).

## Amendments to the Financial Reporting regime *[Note: This clause only applies to the D&C Contractor Direct Deed for NSW projects.]*

If the D&C Contract is novated to the State as contemplated by clause 8.2(a), the parties acknowledge and agree that with effect on the Novation Notice Date the following clause will be inserted into Schedule [##] (*Financial Reporting Schedule*) of the D&C Contract:

***3.7 Restructure Event - Termination***

### *If, subject to clause 3.7(b):*

#### *a Restructure Event occurs; and*

#### *the D&C Contractor has failed to demonstrate to the satisfaction of the State (acting reasonably) that the remaining or replacement entities comprising the D&C Contractor or the Parent Guarantor of the D&C Contractor (as relevant) are of sufficient commercial and financial standing to meet their obligations under this deed or the relevant Parent Company Guarantee (as relevant);*

### *the State may, whether or not the D&C Contractor is then in breach of this Deed and without giving prior notice, terminate this Deed.*

### *The State may not terminate this Deed pursuant to clause 3.7(a) of this Schedule [##] where the D&C Contractor demonstrates (and continues to demonstrate) to the satisfaction of the State (acting reasonably), that the remaining or replacement entities comprising the D&C Contractor or Parent Guarantors of the D&C Contractors (as relevant) are of sufficient commercial and financial standing to meet its obligations under this deed or the Parent Company Guarantee (as relevant).*

### *The D&C Contractor must use its best endeavours to notify the State in writing of any Restructure Event as soon as reasonably practicable (and in any event, 10 Business Days) prior to the Restructure Event occurring, and use its best endeavours to provide all information necessary for the State to determine whether to exercise its rights under clause 3.7(b), in relation to the Restructure Event.*

# Dispute resolution procedure

## Procedure

1. Unless a State Project Document provides otherwise or the parties otherwise agree, the parties acknowledge and agree that any dispute between the parties to that dispute (each, a **Disputing Party**) arising in connection with this Deed (including questions concerning its existence, meaning or validity) (**Unresolved Dispute**) must only be resolved in accordance with the following procedure:

### (**negotiation**): first, the Dispute must be the subject of negotiation as required by clause 9.2;

### (**expert determination or arbitration**):second, if the Dispute remains unresolved (in whole or in part) after the expiration of the relevant period for resolution referred to in clause 9.2(c)(i), and any Disputing Party wishes to pursue the Dispute:

#### if the Dispute is expressly referred to in a State Project Document to be a Dispute which may be referred to expert determination, the Dispute must be referred to expert determination and then only in accordance with clause 10; or

#### if clause 9.1(b)(i) does not apply:

##### the Disputing Parties may either agree that the Dispute will be referred to expert determination in accordance with clause 10; or

##### if the Disputing Parties do not agree in accordance with clause 9.1(b)(ii)A to refer the Dispute to expert determination, either party may refer the Dispute to arbitration in accordance with clause 11.1; and

### (**arbitration**): third, if the Dispute has been referred to expert determination in accordance with clause 9.1(b)(i) or clause 9.1(b)(ii)A, any Disputing Party may subsequently refer the Dispute to arbitration in the circumstances stated in clause 11.1.

## Senior negotiations

### (**Notification**): If an Unresolved Dispute arises, then a Disputing Party must, if it wants to pursue the Unresolved Dispute, give notice to each other party, requesting that the Unresolved Dispute be referred for resolution by negotiation between the Chief Executive Officers or Managing Directors (or equivalent) of the Disputing Parties (**Representatives**).

### (**Contents of Notice**): A notice under clause 9.2(a) must:

#### state that it is a notice under clause 9; and

#### include or be accompanied by particulars of the matters which are the subject of the Unresolved Dispute.

### (**Attempt to resolve Dispute**): If an Unresolved Dispute is referred to negotiation under clause 9.2(a), then:

#### the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within [10] Business Days after the date on which the notice under clause 9.2(a) is received or such later date as the Disputing Parties may agree; and

#### any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be final and binding on the Disputing Parties.

# Expert determination

## Referral and selection of expert

### (**Referral to expert determination**):If a Dispute

#### remains unresolved (in whole or in part) within 10 Business Days after the date on which the notice under clause 9.2(a) is received or such later date as the Disputing Parties may agree; and

#### either clause 9.1(b)(i) applies or the Disputing Parties agree to refer the Dispute to expert determination under clause 9.1(b)(ii)A,

* 1. then if a Disputing Party wants to pursue the Dispute, that Disputing Party must refer the Dispute to expert determination within 20 Business Days after the date on which the notice under clause 9.2(a) is received or such later date as the Disputing Parties may agree.

### (**Agreement**): Within 5 Business Days after the date on which a Dispute is referred or deemed to be referred to expert determination under clause 10.1(a), the Disputing Parties must endeavour to agree on the expert to be appointed to determine the Dispute.

### (**Exchange of lists of 3 preferred experts**): If the Disputing Parties are unable to agree on an expert to determine the Dispute within the 5 Business Day period referred to in clause 10.1(b), the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 10.1(f) on or before the date which is 10 Business Days after the date on which the Dispute is referred to expert determination under clause 10.1(a).

### (**Appointment of person who appears on both lists**): If:

#### a person appears on the lists of all of the Disputing Parties under clause 10.1(c) that person will be deemed to be the expert to determine the Dispute; or

#### more than one person appears on the lists of all of the Disputing Parties, the person given the highest order of priority by the party that gave the notice under clause 9.2(a) will be deemed to be the expert to determine the Dispute.

### (**Appointment if no person appears on both lists**): If no person appears on the list of all of the Disputing Parties, the party that made the Claim under this Deed must procure:

#### the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline that is the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 10.1(c); or

#### if:

##### there is no governing body for the technical or professional discipline that is the subject of the relevant Dispute;

##### such governing body advises that it will not nominate an expert; or

##### there are multiple technical or professional disciplines that are the subject of the Dispute,

the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 10.1(c),

* 1. within 7 Business Days after the exchange of the lists under clause 10.1(c).

### (**Appropriate skills**): It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in Dispute.

### (**No entitlement to challenge appointment**): No Disputing Party will be entitled to challenge the appointment of an expert under this clause 10.1 on the basis that the expert does not satisfy the requirements of clause 10.1(f).

### (**No conflict of interest**): An expert agreed or determined in this clause 10.1 appointed by the parties cannot have any conflict of interest or any relationship with either party or their Associates that a reasonable person may regard as giving rise to the possibility of bias.

### (**Not an arbitration agreement**): Any agreement for expert determination under this Deed will not constitute an arbitration agreement including for the purposes of the [*Commercial Arbitration Act 2011* (Vic) / *Commercial Arbitration Act 2010* (NSW)].

### (**Agreement**): Within 7 Business Days after the expert has notified the Disputing Parties that they are available to be appointed as the expert in respect of the Dispute, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other terms as the expert may reasonably require.

### (**Expert not available**) If an expert agreed between the Disputing Parties or otherwise deemed or determined to be appointed in respect of the Dispute under clause 10.1(b), 10.1(d) or 10.1(e) is not available to be appointed as the expert for that Dispute, the parties must appoint a different expert by repeating the process in clause 10.1 save that, if the parties have already exchanged a list of 3 persons in accordance with clause 10.1(c) and there is another expert who appears on both lists, the person given the next highest order of priority by the party that made the Claim under this Deed will be deemed to be the expert.

## Rules of expert determination

1. The expert determination process will be administered in accordance with, and the expert will be required to act, under the terms of the Expert Determination Agreement.

## Expert finding

### (**Notification**): The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless:

#### the expert determination includes:

##### payment of compensation and the amount claimed, or subsequently determined by the expert to be payable, is equal to or greater than $2,000,000 (Indexed); or

##### an extension of the Date for Acceptance or rejection of an extension to the Date for Acceptance, where the period of the extension that was claimed is more than 5 Business Days; and

#### within 10 Business Days after receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction with the expert's determination.

### (**Amendment to determination**): Upon submission by any Disputing Party, the expert may amend its determination to correct:

#### a clerical mistake;

#### an error from an accidental slip or omission;

#### a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or

#### a defect in form.

### (**Binding on an interim basis**): Notwithstanding any challenge made under clause 10.3(a) to the determination of an expert, the determination of the expert will be binding on the Disputing Parties until it is overturned, reversed, varied or otherwise changed by the determination of an arbitrator or a court in accordance with this Deed.

## Proportionate liability

The expert will have no power to apply or to have regard to the provisions of any proportionate liability Legislation which might, in the absence of this clause 10.4, have applied to any Dispute referred to expert determination under this clause 10.

## Liability of expert

### (**Liability of expert**): The Disputing Parties agree:

#### that the expert will have no liability in connection with the expert determination; and

#### to indemnify the expert against any liability in connection with the expert determination,

* 1. except in the case of fraud on the part of the expert, in which case a Claim may be made against the expert by any Disputing Party.

### (**Engagement**): The Disputing Parties must jointly engage the expert to provide services in connection with the expert determination process and each Disputing Party will seek a separate Tax Invoice equal to its share of the costs of the expert.

## Costs

1. The Disputing Parties must:

### (**costs of the Disputing Parties**): bear their own costs in connection with the expert determination proceedings; and

### (**costs of expert**): pay an equal portion of the costs of the expert.

# Arbitration

## Reference to arbitration

If:

### (**no referral to expert determination**): a Dispute:

#### which has been referred to the Representatives for negotiation under clause 9.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(i); and

#### is not a Dispute which the Disputing Parties:

##### must refer to expert determination under clause 9.1(b)(i); or

##### have agreed to refer to expert determination under clause 9.1(b)(ii)A,

* 1. any Disputing Party may refer the Dispute to arbitration by notice to that effect to the other party within 30 Business Days after the date on which the notice under clause 9.2(a) is received or such later date as the Disputing Parties may agree; or

### (**after referral to expert determination**): a Dispute has been referred to expert determination under clause 10.1(a) and:

#### a determination is not made by the expert within 22 Business Days after the execution of the Expert Determination Agreement by the expert, either party may refer the Dispute to arbitration by notice to that effect to the other Disputing Parties within 30 Business Days after the execution of the Expert Determination Agreement by the expert;

#### no expert enters into the Expert Determination Agreement with the Disputing Parties in accordance with clause 10.1(j) within 30 Business Days after the date on which the Dispute is referred to expert determination under clause 10.1(a), a Disputing Party may refer the Dispute to arbitration by notice to that effect to the other Disputing Parties within 35 Business Days after the date on which the Dispute was referred to expert determination; or

#### a notice of dissatisfaction in respect of the expert's determination is given under clause 10.3, either Disputing Party may refer the Dispute to arbitration by notice to that effect to the other Disputing Parties, within 35 Business Days after a party gives notice to the other Disputing Parties of its dissatisfaction with the expert's determination in accordance with clause 10.3 in which case the arbitration will be by way of hearing de novo.

## Arbitration

### (**ACICA Rules**): Arbitration in accordance with this clause 11 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) and as otherwise set out in this clause 11.

### (**Seat**): The seat of the arbitration will be [Melbourne, Victoria / Sydney, New South Wales].

### (**Language**): The language of the arbitration will be English.

## Appointment of arbitrator

1. The Disputing Parties will endeavour to agree on the person to be appointed as arbitrator, but if no such agreement is reached within 14 Business Days after the Dispute is referred or deemed to be referred to arbitration under clause 11.1, the arbitrator will be appointed by the Australian Centre for International Commercial Arbitration.

## General principles for conduct of arbitration

### (**Conduct of arbitration**): The Disputing Parties agree that:

#### they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Unresolved Dispute;

#### any arbitration conducted in accordance with this clause 11 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator;

#### specific issues will be identified for preliminary determination, where efficient to do so; and

#### in conducting the arbitration, the arbitrator must take into account the parties' intentions as set out in clauses 11.4(a)(i) and 11.4(a)(ii).

### (**Evidence in writing**): All evidence in chief must be in writing unless otherwise ordered by the arbitrator.

### (**Evidence and discovery**): The rules for evidence and discovery will be the IBA Rules on Evidence, current as at the date of the referral of the Dispute to arbitration.

### (**Oral hearing**): The oral hearing must be conducted as follows:

#### any oral hearing must take place in [Melbourne, Victoria / Sydney, New South Wales] and all outstanding issues must be addressed at the oral hearing;

#### the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 11.4(a) when determining the duration of the oral hearing;

#### oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;

#### the oral hearing must be conducted on a stop clock basis with the effect that the time available to the Disputing Parties must be split equally between the Disputing Parties so that each Disputing Party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the Disputing Parties;

#### not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;

#### in exceptional circumstances the arbitrator may amend the date and extend the time for the oral hearing set in accordance with clause 11.4(d)(ii);

#### a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and

#### each Disputing Party is expected to put its case on significant issues in cross-examination of a relevant witness called by the other Disputing Party or, if it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the written evidence of a witness.

### (**Experts**): Unless otherwise ordered, each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

## Proportionate liability

1. The arbitrator will have no power to apply or to have regard to the provisions of any proportionate liability Legislation which might, in the absence of this clause 11.5, have applied to any Dispute referred to arbitration under this clause 11.

## Extension of ambit of arbitration proceedings

### (**Extending disputes**): If:

#### an Unresolved Dispute is referred to arbitration under this clause 11; and

#### there is some other Unresolved Dispute also between the Disputing Parties to and under this Deed (whenever occurring),

* 1. the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the Dispute that has been referred to arbitration, make an order directing that the arbitration be extended so as to include the other Dispute.

### (**Arbitrator's order**): An arbitrator may make an order under clause 11.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

## Award final and binding

### (**Final and binding**): Subject to clause 11.7(b), any award will be final and binding on the Disputing Parties.

### (**Appeal**): Each Disputing Party consents to any appeal to a court where that appeal is made under the [*Commercial Arbitration Act 2011* (Vic) / *Commercial Arbitration Act 2010* (NSW)] on a question of law arising in connection with an arbitral award made in accordance with this clause 11.

## Continue to perform

1. Notwithstanding the existence of a Dispute, each Disputing Party must continue to perform its obligations under this Deed.

## Governing law of arbitration agreement

1. The Law governing this arbitration agreement is the law of [Victoria / New South Wales], Australia.

## Interlocutory relief

1. This clause 11 does not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

## Consolidation

1. The parties agree that section 27C of the [*Commercial Arbitration Act 2011* (Vic) / *Commercial Arbitration Act 2010* (NSW)] will apply.

# Termination of this Deed

### (**Satisfaction of obligations under D&C Contract**): This Deed will terminate upon the performance and satisfaction of all of the obligations under the D&C Contract.

### (**Does not affect rights of parties**): The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

# Insurances

### (**Development Phase Insurances**): Notwithstanding anything else contained in the D&C Contract, the D&C Contractor will:

#### take out all insurances as are required to be taken out by it under the D&C Contract on and from the time at which they are required to be taken out under the D&C Contract; and

#### otherwise comply with all of its obligations in relation to insurance in the D&C Contract.

### (**Not to prejudice**): Project Co and the D&C Contractor must each ensure that it does not do or omit to do anything or does not permit anything to be done or omitted to be done whereby any insurance policy required under the D&C Contract may be prejudiced.

### (**Void or voidable**): If the D&C Contractor breaches any of its obligations in effecting or maintaining such insurance policy or if any such insurance policy becomes void or voidable, the State may (but is not obliged to) effect or maintain that insurance policy at the cost of the D&C Contractor or, failing it, Project Co.

### (**State to be covered**): If required by the Project Deed, in respect of any Insurance contract entered into by the D&C Contractor as contemplated by clause 13(a), the D&C Contractor must ensure that the State and the State Associates are specified as a person to whom the insurance cover provided by that contract extends.

### (**All documents, evidence and information**): Project Co and the D&C Contractor must each do all things necessary and provide all documents, evidence and information necessary to enable the State to collect or recover any moneys due or to become due to the State in respect of any insurance policy required under the D&C Contract at the cost of the D&C Contractor or, failing it, Project Co.

### (**Cancellation, lapse or material change**): Without prejudice to clauses 13(a) to 13(e), neither Project Co nor the D&C Contractor will cause or take any steps to bring about the cancellation, lapse, material change, reduction or any rescinding of any such insurance policy unless it has first obtained the consent of the State.

### (**Notify the State**): Project Co and the D&C Contractor must each immediately notify the State of any cancellation, lapse, material change, reduction, or any rescinding of any such insurance policy, and of the occurrence of any event giving rise to any claim under any such insurance policy in respect of the Development Activities.

### (**Several obligations**): Notwithstanding clause 1.3(s), but subject to the obligations of Project Co under the terms of the Project Deed, the obligations of Project Co and the D&C Contractor in this clause 13 are several.

# Goods and Services Tax (GST)

### (**Revenue**): For the purposes of this clause 14, "Revenue" has the meaning given in clause 14(g).

### (**GST exclusive amounts**): Unless otherwise expressly stated all amounts referred to in this Deed, the D&C Contract or any other Project Document are exclusive of GST.

### (**GST payable by Supplier**): If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:

#### any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;

#### an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and

#### the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided under this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 14(c) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply (unless the Recipient is required to issue the Tax Invoice).

### (**Variation in GST payable**): If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 14(c) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as applicable) the amount of this variation. If an adjustment event occurs in relation to a supply and unless the Recipient is required to issue the Adjustment Note:

#### the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and

#### no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.

### (**GST ceasing to be payable**): No amount is payable by a party in accordance with clauses 14(c) or 14(d) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.

### (**Expert Determination**): If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 14 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the Resolution Institute (or if the Resolution Institute advises that it will not nominate an expert or otherwise fails to do so within [20] Business Days of a request to do so, by the President of the Australian Centre for International Commercial Arbitration) for expert determination, which will be final and binding. The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 14 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.

### (**Revenue net of GST**): Any reference in this Deed to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.

### (**Cost net of GST**): Any reference in this Deed to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.

### [Not used]

### (**General obligation**): Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.

### (**GST groups**): For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member, and if a party to this Deed makes a Taxable Supply by virtue of entering into or performing this Deed and the 'recipient' of that Taxable Supply (within the meaning of the GST Act) is an Associate of another party to this Deed that other party to this Deed will be obliged either to pay the amount referred to in clause 14(c)(ii) or procure that the actual recipient pays the relevant amount, and the payer of that amount will be the 'Recipient' for the purposes of this clause 14 in relation to the relevant Taxable Supply.

### (**Project Deed to prevail**): If clause 61 of the Project Deed would apply in respect of a Taxable Supply to which this clause 14 also applies then clause 61 of the Project Deed will apply in connection with that supply and the provisions of this clause 14 (but for this clause 14(l)) will not apply.

### (**Definitions**): In this clause 14 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

# Notices

## Notices

1. All approvals, consents, directions, requirements, determinations, requests, claims, notices, agreements, demands or other communications in connection with this Deed:

### (**in writing**): must be in writing;

### (**addressed**): must be addressed as set out below or to such other addressee as notified by the receiving party to the other party from time to time;

**State:**

Attention: [#]

Address: [#]

Email: [#]

**Project Co:**

Attention: [#]

Address: [#]

Email: [#]

**D&C Contractor:**

Attention: [#]

Address: [#]

Email: [#]

**D&C Guarantor:**

Attention: [#]

Address: [#]

Email: [#]

### (**signed**): must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;

### (**form of delivery**): must be delivered by hand or posted by prepaid express post or emailed to the email address of the addressee as referred to in clause 15.1(b); and

### (**taken to be received**): are taken to be received by the addressee:

#### in the case of delivery by hand, on delivery at the address of the addressee as referred to in clause 15.1(b), unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

#### in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and

#### in the case of email, on the first to occur of:

##### receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;

##### the time that the communication enters an information system which is under the control of the addressee; or

##### the time that the communication is first opened or read by the addressee,

* + 1. unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

**15.2 Notice to Financiers**

1. Each of Project Co and each D&C Party acknowledges that the State may provide to the Financiers a copy of any notice from:

### Project Co and/or a D&C Party to the State; or

### the State to Project Co and/or a D&C Party,

1. in connection with the Project.

# Confidential Information and disclosure

## Confidential Information and disclosure by the State

### Each of the D&C Parties acknowledge and agree that:

### (**Public Disclosure Obligations**): subject to clause 16.1(d), the State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in accordance with its Public Disclosure Obligations and the D&C Parties must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations.

### (**Other purposes**): subject to clause 16.1(d), the State or any Authority may disclose any information in connection with the Project (including any Confidential Information, but excluding the Finance Documents and the Equity Documents) in connection with:

#### any Interface Works or any future infrastructure project or transaction undertaken in [Victoria / New South Wales] that may be investigated, assessed, constructed, operated or maintained from time to time including any equipment, computer hardware, computer software and computer or telecommunications systems and any complementary works or services associated with them but excluding this Project; or

#### the requirements of the State Project Documents (including any tender process required to be conducted under the Termination Payments Schedule, the Change Compensation Principles or the Augmentation Process Schedule).

### (**State's rights**): subject to clause 16.1(d), in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State, the State may publish, disclose or make generally available each Project Document on a [Victorian / New South Wales] Government website.

### (**Commercially sensitive information**): the State will not publish, disclose or otherwise make generally available the information which is specified in the Commercially Sensitive Information Schedule  (including the Financial Model), except if required to do so to comply with the Public Disclosure Obligations or as required under clause 16.1(b)(ii) or in the circumstances set out in clause 55.1(d) of the Project Deed.

### (**Exercise of licence**): nothing in this Deed prevents the State and any sublicensees using or disclosing any information (including Confidential Information) to the extent necessary or desirable for, or in connection with, the exercise of any licence granted under clause 56 or Schedule 18 of the Project Deed.

## Confidential Information and disclosure by Project Co and the D&C Parties

### (**Confidential Information**): Subject to clause 16.2(b), Project Co and the D&C Parties must treat as secret and confidential all Confidential Information in connection with this Deed and any other Project Document.

### (**Disclosure of Confidential Information**): Without limiting Project Co's and the D&C Parties' obligations under clause 16.2(a) and subject to clause 16.2(c), Project Co and the D&C Parties may each disclose Confidential Information to:

#### a Project Co Associate or an Associate of a D&C Party (as applicable) to the extent necessary for the purpose of undertaking the Project; and

#### any Financier, prospective financier or equity investor of the Project, subject to the State having been provided necessary information in respect of the proposed parties and carried out any Probity Investigation that the State considers necessary.

### (**Confidentiality deed**): Before disclosing any Confidential Information, Project Co or the D&C Parties (whichever is disclosing the Confidential Information) must ensure that the person to whom the information is disclosed enters into a confidentiality deed with Project Co or the D&C Parties (whichever is disclosing the Confidential Information) on terms reasonably acceptable to the State.

## Personal Information

1. The D&C Parties must:

### (**collection**): not collect any Personal Information except in accordance with the PSDR, all Laws and Standards; and

### (**disclosure**): not disclose any Personal Information to any person other than as is necessary to perform the Development Activities or to comply with Laws, and then only in accordance with the PSDR, all Laws and Standards.

## Disclosure by the D&C Parties

### (**The D&C Parties' disclosure obligations**): Subject to clause 16.4(b), the D&C Parties must:

#### not make any public disclosures, announcements or statements in relation to the Project or the State's or any State Associate's involvement in the Project without the State's prior consent;

#### comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any State Associate relating to the Project or the State's or any State Associate's involvement in the Project before the relevant disclosure, announcement or statement is made; and

#### as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 16.4(a) or for which the State's consent or approval was not required in accordance with clause 16.4(b).

### (**Permitted disclosure**): For the purposes of clause 16.4(a), the D&C Parties will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:

#### required by Law, provided that it:

##### notifies the State of the requirement to make that disclosure; and

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

#### required to obtain legal or other advice from its advisers;

#### required to be made to a court in the course of proceedings to which any D&C Party is a party;

#### in respect of information that is already in the public domain; or

#### required by a relevant stock exchange, subject to:

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

##### the D&C Parties having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

# Return of documents

1. Each D&C Party must return to the State copies of all plans, drawings, specifications and other similar documents which come into its possession or control for the purpose of any D&C Document or this Deed at the expiration of the D&C Contract.

# Miscellaneous

## Governing Law and jurisdiction

### (**Governing Law**): This Deed is governed by, and must be construed according to, the Laws of[ Victoria / New South Wales], Australia.

### (**Jurisdiction**): Without limiting clauses 9 to 11, each party irrevocably submits to the non-exclusive jurisdiction of the courts of [Victoria / New South Wales], and the courts competent to determine appeals from the courts of [Victoria / New South Wales], with respect to any proceedings which may be brought in connection with this Deed.

## Entire agreement

1. To the extent permitted by Law and in relation to its subject matter, this Deed:

### (**entire understanding**): embodies the entire terms agreed between the parties in connection with the Project; and

### (**prior agreements**): supersedes any prior agreement of the parties in connection with the Project.

## Further acts and documents

1. Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Deed.

## Survival of certain provisions

### (**Surviving clauses**): All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:

#### the State's rights to set-off and recover amounts;

#### confidentiality or privacy;

#### Intellectual Property Rights;

#### any obligation to make any books and accounts and all other records or information available to the State;

#### any indemnity, release or financial security given under this Deed;

#### any limitation on Liability;

#### any obligation which this Deed requires a party to undertake after the rescission, expiration or termination of this Deed; and

#### any right or obligation arising on termination, rescission or expiry of this Deed.

### (**Interpretation**): No provision of this Deed which is expressed to survive the rescission, termination or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the rescission, termination or expiration of this Deed.

### (**Survival of rights and obligations**): No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

## Waiver

### (**Writing**): Other than where the waiver is already given expressly in the terms of this Deed, a waiver that may be given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.

### (**No waiver**): A failure to exercise or enforce, a delay in the exercise or enforcement of or the partial exercise or enforcement of a right provided by Law by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.

### (**No waiver of another breach**): No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

## Consents and approvals

* + 1. (**Conditions**): A consent or approval required under this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless otherwise expressly provided in this Deed.
		2. (**Project Co or D&C Party**): A consent or approval required in accordance with this Deed from Project Co or a D&C Party may not be unreasonably withheld or delayed, unless otherwise expressly provided in this Deed.
		3. (**Compliance**): Each of Project Co and any D&C Party must comply, and must procure that each Project Co Associate and each Associate of a D&C Party respectively complies, with any condition of a consent or approval given by the State.
		4. (**Deemed events**): If Project Co, a Project Co Associate, any D&C Party or Associate of a D&C Party fails to comply with any condition of a consent or approval, where the initial failure to obtain that consent or approval would have resulted in:
			1. a Default Termination Event, the failure to comply will be deemed to be a Default Termination Event; or
			2. a Major Default, the failure to comply will be deemed to be a Major Default.

## Amendments

1. Unless otherwise expressly provided in this Deed, this Deed may only be amended by a deed executed by or on behalf of each party.

## Expenses

1. Unless otherwise expressly provided in this Deed or (as between the State and Project Co) the Project Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## Severance

1. If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

### (**provisions**): any other provision of this Deed; or

### (**other jurisdictions**): that provision under the Law of any other jurisdiction.

## Counterparts

### (**Execution in counterparts**): This Deed may be executed in any number of counterparts or copies, each of which may be executed by physical signature in wet ink or electronically (whether in whole or part). A party who has executed a counterpart of this Deed may exchange it with another party (the **Other Party**) by:

#### emailing a copy of the executed counterpart to the Other Party; or

#### utilising an electronic platform (including DocuSign) to circulate the executed counterpart,

### and will be taken to have adequately identified themselves by so emailing the copy to the Other Party or utilising the electronic platform.

### (**Consent**): Each party consents to signatories and parties executing this Deed by electronic means and to identifying themselves in the manner specified in this clause.

### (**Counterparts constitute an original**): Each counterpart constitutes an original (whether kept in electronic or paper form), all of which together constitute one instrument as if the signatures (or other execution markings) on the counterparts or copies were on a single physical copy of this Deed in paper form. Without limiting the foregoing, if any of the signatures or other markings on behalf of one party are on different counterparts or copies of this Deed, this shall be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this Deed.

## Moratorium Legislation

1. Each of Project Co and each D&C Party waives, and Project Co will procure that each Key Subcontractor waives, any right or remedy it may have under any Law which comes into effect after the date of this Deed if the exercise of such right or remedy would:

### (**no reduction**): lessen any obligation or Liability of Project Co or a D&C Party (as applicable); or

### (**no prejudice**): prejudicially affect the rights, powers or remedies of the State,

1. under a State Project Document to which Project Co, each D&C Party or the relevant Key Subcontractor is a party.

## Indemnity held on trust

### (**Benefit of indemnities**): The State holds on trust for each State Associate the benefit of:

#### each indemnity, release, limitation of Liability and exclusion of Liability given by Project Co or the D&C Parties under this Deed in favour of the relevant State Associate; and

#### each right in this Deed to the extent that such right is expressly provided to be for the benefit of any State Associate.

### (**Project Co and D&C Parties acknowledgement**): Project Co and each D&C Party acknowledges the existence of such trusts and consent to:

#### the State exercising rights in relation to, or otherwise enforcing such indemnities, releases, limitations and rights on behalf of the State Associates; and

#### the State Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.

### (**Consent not required**): The parties agree that the State does not require the consent of any State Associate to amend or waive any provision of any Project Document.

## Assignment

1. Except as expressly contemplated by this Deed, neither Project Co nor the D&C Parties may assign or transfer any of its rights or obligations under this Deed or a D&C Document.

## Set off

1. Without limiting the State's rights under the Project Deed, all moneys which the State may pay or incur and for which Project Co is liable under the terms of the Project Deed or in respect of which it or any D&C Party is under this Deed liable to make reimbursement to or indemnify the State, may be deducted by the State from all moneys due, becoming due or to become due from it to Project Co under the Project Deed or may be recovered from (as applicable) Project Co or the D&C Parties by action at Law or otherwise.

# Limitation of Liability

### Despite any other provision of this Deed, the maximum aggregate liability of each D&C Party to each of the State, Project Co, the Security Trustee and any person to whom a D&C Document is novated or assigned in accordance with the terms of this Deed, in respect of any Claim or Liability in connection with this Deed, the D&C Documents, the Development Activities and the Project:

#### in contract;

#### in tort (including negligence);

#### under any statute; and

#### otherwise at Law,

### and irrespective of how it arises:

#### will not exceed the liability which the relevant D&C Party would have had under the relevant D&C Document to which it is a party (assuming each D&C Document was fully valid, binding and enforceable against the applicable D&C Parties in accordance with its terms); and

#### is otherwise subject to the same limitations on and exclusions of liability, counterclaims and defences (and carveouts to those limitations and exclusions) expressed for the benefit of the relevant D&C Party in the relevant D&C Document to which it is a party (other than that a D&C Document is not valid, binding or enforceable against a D&C Party in accordance with its terms).

### The payment by a D&C Party of any monies owing to Project Co under a D&C Document:

#### to the State in accordance with this Deed; or

#### in accordance with a direction of the State given in accordance with this Deed,

### will be deemed full discharge of that D&C Party's respective obligations in respect of that amount under that D&C Document.

### Nothing in this Deed is intended to make or makes the D&C Contractor and the D&C Guarantor liable for the same loss or liability twice for the same breach.

**Executed** as a deed.

Each signatory executing this Deed (electronically or otherwise) intends by that execution to be bound by this Deed, and where the signatory has signed as an officer or attorney of a party, for that party to be bound by this Deed.

***[Note: Execution blocks to be inserted.]***

**State**

***[#]***

**Project Co**

***[#]***

**D&C Contractor**

***[#]***

**D&C Guarantor**

***[#]***

#### **ATTACHMENT 1 – FORM OF NOVATION DEED**

####

Novation Deed dated

**Parties** [xx] (**Substitute Party**)

[Project Co] (**Retiring Party**)

[xx] (**Continuing Party**)

***[Note: Where the D&C Contractor and Services Contractor Interface Deed is still in effect, as contemplated by clause 8.2(a) of the D&C Contractor Direct Deed, then a novation deed will be entered into with respect to that document and each of the D&C Contractor and Services Contractor will be Continuing Parties for the purposes of that novation deed.]***

Background

1. The Continuing Party and the Retiring Party are parties to a document entitled "[xx]" dated on or about [xx] (**Novated Document**).
2. The parties to this Deed have agreed to the Retiring Party novating the Novated Document to the Substitute Party.

Operative provisions

# Defined terms and interpretation

## Novated Document definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Novated Document.

## Definitions

1. In this Deed, unless the context otherwise requires:
2. **Claim** means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made under the Novated Document or otherwise at Law in connection with the Novated Document, including for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief or remedy.
3. **Effective Date** means [#insert the Novation Notice Date].
4. **Novation** means the novation of the Novated Document contemplated by this Deed.
5. **Other Party** has the meaning given in clause5.9(a).

## Interpretation

1. Clause [xx] of the Novated Document applies to this Deed as if set out in full.

## Proportionate liability

1. The operation of [Part IVAA of the *Wrongs Act 1958* (Vic) / Part 4 of the *Civil Liability Act 2002* (NSW)] is excluded in relation to all and any rights of each party under this Deed, whether such rights are sought to be enforced in contract, tort or otherwise.

## Relationship of the parties

Nothing in this Deed:

### (**no additional relationship**): creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or

### (**no good faith**): imposes any duty of good faith on the Substitute Party,

unless otherwise expressly stated.

## State's rights, duties and functions

### (**State's own interests**): Nothing in this Deed gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations under this Deed or the Novated Document.

### (**State's rights**): Notwithstanding anything expressly stated or implied in the Novated Document to the contrary:

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

#### nothing expressly stated or implied in the Novated Document has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its executive or statutory rights, duties or functions.

### (**No Claim**): Subject to clause 1.6(d), the Continuing Party will not be entitled to make any Claim against the State in connection with any exercise or failure of the State to exercise any of its legal, executive or statutory rights, duties or functions.

### (**Liability for breach**): Clauses 1.6(a) to 1.6(b) do not exclude or limit any Claim that the Continuing Party may have against the State, or any liability which the State may have had to the Continuing Party under this Deed, the Novated Document or at law:

#### for damages for breach of this Deed or the Novated Document by the State; or

#### in respect of the Continuing Party's Liability to a third party in respect of death, personal injury or damage to property, to the extent that the liability of the Continuing Party is a consequence of a fraudulent, reckless, unlawful or malicious act or omission of the State.

### (**Government Party**): For the purposes of this clause 1.6, **Government Party** means the State or any:

#### government;

#### government, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality, or any other person of a like nature; or

#### person having jurisdiction or control over, or ownership of, any utility infrastructure.

# Novation

## Novation

1. The parties agree to novate the Novated Document, such that on and from the Effective Date:

### the Substitute Party is substituted for the Retiring Party under the Novated Document;

### each reference in the Novated Document to the Retiring Party is to be read as if it were a reference to the Substitute Party; and

### each reference in the Novated Document to the Project Deed is to be read as if it were a reference to [#insert details of new project deed between the State and the Substitute Party]. ***[Note: Subject to review of the references to "Project Deed" in the Novated Document.]***

## Assumption of rights and obligations

1. On and from the Effective Date:

### the Substitute Party:

#### will be bound by, and must comply with, the Novated Document as it relates to the Retiring Party;

#### will enjoy all the rights and benefits conferred on the Retiring Party under or in respect of the Novated Document arising on or after the Effective Date (excluding any accrued rights of the Retiring Party in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that those rights arose prior to the Effective Date and are the subject of any unresolved dispute referred to in clause 2.2(a)(iii)B.2); and

#### will assume all the obligations and liabilities of the Retiring Party under or in respect of the Novated Document:

#### arising or accruing on or after the Effective Date (including obligations in relation to payment of amounts for any part of the Development Activities performed before the Effective Date that become due and payable on or after the Effective Date (notwithstanding that such amounts relate to work performed before the Effective Date)), but will not otherwise assume any obligation or liability of the Retiring Party under or in respect of the Novated Document arising or accruing before the Effective Date other than as provided in clause 2.2(a)(iii)B; and

#### arising before the Effective Date insofar as it relates to the payment of an amount of money that:

#### is due and payable under the terms of the D&C Contract;

#### is not the subject of a dispute under the D&C Contract (or is the subject of a dispute under the D&C Contract in which case the Substitute Party will, on the determination of such dispute, assume such obligations in accordance with that determination); and

#### does not relate to the performance of Development Activities for which the State has paid the Retiring Party under the Project Deed;

### the Continuing Party will be bound by, and must comply with, the Novated Document on the basis that the Substitute Party has replaced the Retiring Party under it in accordance with the terms of this Deed; and

### for the avoidance of doubt:

* + - 1. the Continuing Party will be entitled to any extensions of time and other entitlements which accrued to the Continuing Party prior to the Effective Date; and

### any caps on Liability in the Novated Document will continue to apply, but so that any Liability of the Continuing Party incurred to the Retiring Party prior to the Effective Date is taken into account in respect of any ongoing Liability of the Continuing Party to the Substitute Party.

## Release of Retiring Party

### On and from the Effective Date:

### the Continuing Party releases the Retiring Party from:

#### its obligations and liabilities under or in respect of the Novated Document; and

#### all Claims that the Continuing Party may have or claim to have or, but for this release might have had, against the Retiring Party in connection with the Novated Document,

### arising:

#### on or after the Effective Date (including obligations in relation to payment of amounts for any part of the [Development Activities] performed before the Effective Date that become due and payable on or after the Effective Date (notwithstanding that such amounts relate to work performed before the Effective Date)); or

#### arising before the Effective Date and that are assumed by the Substitute Party under clause 2.2(a)(iii)B;

### the Continuing Party does not release the Retiring Party from:

#### any of its obligations or liabilities under or in respect of the Novated Document; or

#### any Claims that the Continuing Party may have or claim to have or, but for this release might have had, against the Retiring Party in connection with the Novated Document,

### accruing or arising before the Effective Date that are not assumed by the Substitute Party under clauses 2.2(a)(iii)A or 2.2(a)(iii)B; and

### the Retiring Party remains liable to the Continuing Party for all its obligations and liabilities and Claims by the Continuing Party under the Novated Document accruing or arising before the Effective Date that are not assumed by the Substitute Party under clauses 2.2(a)(iii)A or 2.2(a)(iii)B.

## Release of Continuing Party

### On and from the Effective Date, the Retiring Party releases the Continuing Party from:

#### its obligations and liabilities under or in respect of the Novated Document; and

#### all Claims that the Retiring Party may have or claim to have or, but for this release might have had, against the Continuing Party in connection with the Novated Document,

#### excluding any accrued rights of the Retiring Party in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that those rights arose prior to the Effective Date and are the subject of any unresolved dispute referred to in clause 2.2(a)(iii)B.2).

## Accrued right to suspend no longer effective

1. Without prejudice to any then accrued rights against the Retiring Party (other than termination), any right of the D&C Contractor to suspend under the D&C Contract that exists at the Effective Date will be of no further effect.

## No set off

### The Continuing Party is not entitled to exercise any right of set off, deduction, abatement or counterclaim against the Substitute Party if, and to the extent that, such right arose prior to the Effective Date or with respect to events occurring prior to the Effective Date.

## Security

1. The Continuing Party and the Retiring Party must take all action as the Substitute Party requires to vest in the Substitute Party full legal and equitable title to any retention account, bank guarantee, performance bond, letter of credit or other security held by the Retiring Party to secure the obligations of the Continuing Party under the Novated Document.

# Representations and warranties

1. Each party represents and warrants to each other party on the date of this Deed and on the Effective Date (with respect to the facts and circumstances then subsisting) that:

### it has power to enter into this Deed and perform its obligations under or as contemplated by this Deed and all necessary action has been taken to authorise its execution, delivery and performance;

### this Deed constitutes its valid and binding obligations enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to the availability of equitable remedies;

### the execution by it, the performance by it of its obligations under and the compliance by it with the provisions of this Deed does not and will not contravene any existing Law to which it is subject;

### in the case of the Retiring Party only:

#### it is not aware of any fact, matter, event or circumstance that would entitle it (with or without the giving of notice or passage of time) to terminate or suspend its obligations under the Novated Document; and

#### there is no fact, matter, event or circumstance that would entitle the Continuing Party (with or without the giving of notice or passage of time) to terminate or suspend its obligations under the Novated Document; and

### in the case of the Continuing Party only:

#### it is not aware of any fact, matter, event or circumstance that would entitle it (with or without the giving of notice or passage of time) to terminate or suspend its obligations under the Novated Document; and

#### there is no fact, matter, event or circumstance that would entitle the Retiring Party (with or without the giving of notice or passage of time) to terminate or suspend its obligations under the Novated Document.

# GST

1. Clause [xx] of the Novated Document applies to this Deed as if set out in full. ***[Note: Subject to confirmation of the GST clause in the Novated Document.]***

# Miscellaneous

## Governing Law and jurisdiction

### (**Governing Law**): This Deed is governed by, and must be construed according to, the Laws of [Victoria / New South Wales], Australia.

### (**Jurisdiction**): Each party irrevocably submits to the non-exclusive jurisdiction of the courts of [Victoria / New South Wales], and the courts competent to determine appeals from the courts of [Victoria / New South Wales], with respect to any proceedings which may be brought in connection with this Deed.

## Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

### (**entire understanding**): embodies the entire terms agreed between the parties in connection with the Project; and

### (**prior agreements**): supersedes any prior agreement of the parties in connection with the Project.

## Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by law or reasonably requested by another party to give effect to this Deed.

## Survival of certain provisions

### (**Surviving clauses**): All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive rescission, termination or expiration of this Deed.

### (**Interpretation**): No provision of this Deed which is expressed to survive the rescission, termination or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the rescission, termination or expiration of this Deed.

### (**Survival of rights and obligations**): No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

## Waiver

### (**Writing**): Other than where the waiver is already given expressly in the terms of this Deed, a waiver that may be given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.

### (**No waiver**): A failure to exercise or enforce, a delay in the exercise or enforcement of or the partial exercise or enforcement of a right provided by Law by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.

### (**No waiver of another breach**): No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

## Amendments

Unless otherwise expressly provided in this Deed, this Deed may only be amended by a deed executed by or on behalf of each party.

## Expenses

Each party must pay its own costs and expenses in connection with negotiating, preparing and executing this Deed.

## Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

### (**provisions**): any other provision of this Deed; or

### (**other jurisdictions**): that provision under the Law of any other jurisdiction.

## Counterparts

### (**Execution in counterparts**): This Deed may be executed in any number of counterparts or copies, each of which may be executed by physical signature in wet ink or electronically (whether in whole or part). A party who has executed a counterpart of this Deed may exchange it with another party (the **Other Party**) by:

### emailing a copy of the executed counterpart to the Other Party; or

### utilising an electronic platform (including DocuSign) to circulate the executed counterpart,

### and will be taken to have adequately identified themselves by so emailing the copy to the Other Party or utilising the electronic platform.

### (**Consent**): Each party consents to signatories and parties executing this Deed by electronic means and to identifying themselves in the manner specified in this clause.

### (**Counterparts constitute an original**): Each counterpart constitutes an original (whether kept in electronic or paper form), all of which together constitute one instrument as if the signatures (or other execution markings) on the counterparts or copies were on a single physical copy of this Deed in paper form. Without limiting the foregoing, if any of the signatures or other markings on behalf of one party are on different counterparts or copies of this Deed, this shall be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this Deed.

## Moratorium Legislation

The Continuing Party and the Retiring Party waives any right or remedy it may have under any Law which comes into effect after the date of this Deed if the exercise of such right or remedy would:

### (**no reduction**): lessen any obligation or Liability of the Continuing Party or the Retiring Party (as applicable); or

### (**no prejudice**): prejudicially affect the rights, powers or remedies of the Substitute Party,

under this Deed or the Novated Document.

## Assignment

Except as expressly contemplated by this Deed, neither the Continuing Party nor the Retiring Party may assign or transfer any of its rights or obligations under this Deed or the Novated Document.

**Executed** as a deed.

Each signatory executing this Deed (electronically or otherwise) intends by that execution to be bound by this Deed, and where the signatory has signed as an officer or attorney of a party, for that party to be bound by this Deed.

***[Note: Execution blocks to be inserted.]***

**Substitute Party**

***[#]***

**Continuing Party**

***[#]***

**Retiring Party**