

## **SC1 DEFINITIONS AND INTERPRETATION**

### **SC1.1 Definitions**

Unless otherwise defined, capitalised terms defined in the General Terms have the same meaning in these Special Conditions and:

**Aboriginal Heritage** means a place, object, remain or any other thing that is of significance to Aboriginal persons in accordance with their practices, observances, customs, traditions, beliefs or history and includes any place or object or thing that is subject to protection under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) or the *Aboriginal Heritage Act 2006* (Vic).

**Alliance** means the Metro Tunnel Project Rail Systems Alliance which the Participants have created to perform the Alliance Works and achieve the requirements of the VFM Statement in accordance with the PAA.

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

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

**Associate** means in relation to a person (including an individual, a body corporate, company, firm, joint venture, partnership, trust, association or unincorporated body), any Related Entity, Subsidiary or Related Party (as defined in the *Corporations Act 2001* (Cth)) of that person or any officer, employee, agent, contractor, consultant, nominee, secondee, licensee or advisor of that person or that Related Entity.

**Authorisation** means any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with an Authority.

**Authority** means any:

- (a) Commonwealth, State or municipal statutory or government body or organisation; or
- (b) any non-government body or organisation that supply utilities or services to,

(and their respective departments, agencies, authorities or officers or representatives) which have authority or jurisdiction over:

- (c) all or part of the Alliance Works;
- (d) a Participant;
- (e) the Supplier; or
- (f) the Site;

but does not include the Purchaser, VicTrack or V/Line.

**Construction Plant** means apparatus, facilities, plant, equipment, materials, products, processes, machinery and other things used in performing the Works (including in respect of any temporary works) but not forming part of the Project Assets.

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**General Terms** means:

- (a) the terms and conditions of a Purchase Order; or
- (b) if a Purchase Order specifies or states that it has been issued in accordance with a separate contract or agreement between the Purchaser and the Supplier, then the terms and conditions of that contract or agreement.

**Government Agency** means any government, parliament or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, or government minister (including any agency or entity related to the above).

**Industrial Action** means labour relations matters and Industrial Relations Matters affecting the Site or the Works, being:

- (a) a strike, lockout, demarcation, ban, limitation on work, industrial dispute or any other action that meets the definition of industrial action in section 19 of the Fair Work Act 2009 (Cth);
- (b) any claim relating to labour or industrial arrangements applicable to the Supplier; or
- (c) any besetting or obstruction of the Site.

**Industrial Relations Laws** means all workplace, employment or industrial relations related Statutory Requirements.

**Industrial Relations Matter** means any industrial relations matter arising out of, or in connection with, the Site or the Works including:

- (a) a claim for payment for or on behalf of the Supplier;
- (b) a claim for payment in the nature of a site allowance;
- (c) a claim arising out of, or in connection with, changes in State or Commonwealth work practices or requirements, including any changes resulting from current State or Commonwealth initiatives, negotiated contracts or agreements, conditions on payments, increases in labour costs, overtime costs, changed work practices or procedures, site allowances and any bonuses allowable or payable within the construction industry; and
- (d) any reduction in the construction industry working hours per week.

**Intellectual Property** means all intellectual property rights existing worldwide and the subject matter of those rights including any patent, design (whether registered or not), copyright, trade mark, protected circuit layout (or similar right), trade secret or other right whether existing under a Statutory Requirement, at common law or in equity.

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

**MTM Franchise Agreement** means the Franchise Agreement -Train dated 2 October 2017 between PTV and MTM for the provision of metropolitan passenger rail services and maintenance services.

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

**PAA or Alliance Agreement** means the Project Alliance Agreement between the State of Victoria, through Rail Projects Victoria, an administrative office in relation to the Department of

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Economic Development, Jobs, Transport and Resources (**RPV**), Metro Trains Melbourne Pty Ltd (ACN 136 429 948) (**MTM**), CPB Contractors Pty Ltd (ACN 000 893 667) and Bombardier Transportation Australia Pty Ltd (ACN 010 699 804) and dated 15 December 2017.

**Participants** means the participants in the Alliance relating to the Project, as notified to the Supplier from time to time.

**Project** means:

- (a) designing and developing certain systems for the newly created Sunshine – Dandenong Line (which is the railway lines between Sunbury and Cranbourne/Pakenham stations via the twin 9 kilometre tunnels and including sidings along the line, the line between Pakenham Pakenham East and the Pakenham East Depot), including HCS, conventional signalling upgrades and modifications, communications systems, platform screen doors, train control and certain operational control systems;
- (b) undertaking civil works required for the rail systems (for example, construction of the Sunshine Signalling Control Centre and construction of new wayside assets) and installing the rail systems in the existing brownfield rail environment;
- (c) systems integration and end-to-end commissioning; and
- (d) any additional works to be carried out under the PAA.

**Project Owner** means the Crown in Right of the State of Victoria, being the client for the performance of the Alliance Works.

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

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

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

**Rail Infrastructure** means the infrastructure required to maintain and operate the Melbourne metropolitan rail network and includes:

- (a) all improvements, plant, equipment, fixtures and fittings installed or erected on, over or under the Land from time to time including track, sidings/stabling facilities and yards, associated track structures (such as points and crossings, track support earthworks cuttings, embankments, track formation and track drainage systems), structures that accommodate and allow the movement of people, rolling stock, plant and equipment (such as tunnels, bridges, subways, platforms, station buildings, at-grade pedestrian crossings, maintenance depots/workshops/facilities), signalling system assets (such as signals, track circuits, point machines, train stops, level crossing protection equipment), traction power assets (such as overhead wiring, structures supporting overhead wiring, substations, tie stations, rectifiers, rectifier transformers, circuit breakers, feeder cables remote control systems), communications systems (such as passenger information display equipment, public address systems, CCTV systems), building services (such as power supply, lighting, air conditioning, water supply, sewerage and storm water drainage), service roads, notices and signs;
- (b) the train control system;
- (c) the train electrical control system;

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- (d) the disaster recovery system;
- (e) the associated infrastructure; and
- (f) the operational control systems.

**Rail Operations** has the meaning given in the Rail Safety National Law.

**Rail Safety National Law** has the meaning given in the *Rail Safety National Law Application Act 2013* (Vic) as amended from time to time including any successor legislation and associated Regulations.

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

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

- (a) the Project Owner or PTV;
- (b) the Purchaser;
- (c) contractors, consultants or suppliers (other than a Participant) to the Project Owner, PTV or Purchaser;
- (d) a public or private utility or statutory or other relevant Authority including any utility companies or Authority engaged by the Alliance as part of the Alliance Works; or
- (e) persons arising out of or in connection with Rail Operations,

either concurrently or sequentially with the Alliance Works:

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

and may include:

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

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

**Safety Incident** means:

- (a) an incident involving damage to property (including services, plant, vehicles, equipment) irrespective of who owns the property (**Property Damage Incident**);
- (b) a failure relating to safework protection and safeworking personnel actions and includes all Category B Incidents as defined under the Rail Safety National Law Regulations 2012 (**Rail SafeWorking Breach**);
- (c) any unplanned event in the workplace that, although not resulting in injury or property damage or discharge to the environment, had the potential to do so and may include first aid injuries (being a work related injury or illness that can be satisfactorily treated within the qualifications of a trained first aid officer) (**Near Miss**); or

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- (d) an unplanned event in the workplace which has been reported and, upon investigation, did not result in an injury or property damage, and did not have the potential to do so (**Report Only Incident**).

**Safety Legislation** means:

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

as amended from time to time.

**Subcontractor** means any person engaged by the Supplier to perform any part of the Works and includes, where it is not inconsistent with the context, that person's employees, agents and consultants.

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

**Standards** means the various standards with which the Works must comply, including:

- (a) the Purchaser (and/or the Project Owner's) standards; and
- (b) standards in respect of Rail Infrastructure (including the VRIOGS and the MTM standards); and
- (c) the standards specified in this Agreement.

**State** means the State of Victoria.

**Stated Purpose** means the intended purpose of the Works and the Alliance Works:

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

**Statutory Requirements** means

- (a) all Acts of the Parliament of the Commonwealth, and of the State of Victoria and includes any ordinance, rule, regulation, by-law, local law, order, code of practice, guideline, instruction and proclamation made or issued under any such Act now in existence or which comes into existence during the term of this Agreement;
- (b) Authorisations;
- (c) directions given under a statute that affect the performance of the Alliance Works; and
- (d) all other laws, regulations, conventions, orders, directions, codes, guidelines and policies given by or on behalf of any Government Agency which may apply to the Alliance Works and Works including the National Code and National Guidelines.

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**Works** means the Goods and/or Services and/or works to be supplied by the Supplier under this Agreement, forming part of the Alliance Works. For the avoidance of doubt, the Supplier includes that person's employees, agents and consultants.

**Workplace Health and Safety Incident** means:

- (a) a **Serious Incident** being an incident that is notifiable under Workplace Health and Safety Laws including an incident that results in the death of a person or exposes a person in the immediate vicinity of the incident to an immediate risk to the person's health and safety through:
  - a. the collapse, overturning, failure or malfunction of, or damage to, any plant that Workplace Health and Safety Laws prescribe must not be used unless the plant is licensed or registered;
  - b. the collapse or failure of an excavation or of any shoring supporting an excavation;
  - c. an implosion, explosion or fire;
  - d. the escape, spillage or leakage of any substance including dangerous goods (within the meaning of the Dangerous Goods Act 1985 (Vic));
  - e. the fall or release from a height of any plant, substance or object; or
  - f. any incident where reporting is required to a Government Agency under Workplace Health or Safety Laws;
- (b) **Rail Safety Incident** being a category A notifiable occurrence as specified in *the Rail Safety National Law Regulations 2012* including, without limitation:
  - a. an accident or incident that has caused death, serious injury or significant property damage;
  - b. a running line derailment;
  - c. a running line collision between rolling stock;
  - d. a collision at a road or pedestrian level crossing between rolling stock and either a road vehicle or a person;
  - e. a suspected terrorist attack;
  - f. an accident or incident involving a significant failure of a safety management system that could have caused death, serious injury or significant property damage; or
  - g. any other accident or incident likely to generate immediate or intense public interest or concern;
- (c) **High Potential Incident** being a Serious Incident, unsafe act and/or unsafe condition, uncontrolled release of damaging energy, event and/or series of events that causes or had a realistic potential to cause significant adverse effects on the safety or health of a person that has a realistic potential to lead to a fatality or permanent impairment.;
- (d) **Lost Time Injury** or **LTI** being a work related injury or illness which results in the person being certified unfit for any duties for one full normally rostered shift or more (not necessarily immediately) by a medical practitioner;
- (e) **Alternate Work Injury** or **AWI** being a work related injury or illness which results in the person being issued with a certificate of capacity by a qualified medical practitioner which requires the person to work alternative, restricted or modified duties for normal or reduced work hours due to the injury for one full shift or more; or

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- (f) **Medical Treatment Injury** or **MTI** being any work injury that requires treatment by, or under specific orders of a qualified medical practitioner, and which is beyond the scope of normal first aid but does not result in a lost time or restricted work injury.

**Workplace Health and Safety Laws** means all safety related:

- (a) Statutory Requirements;
- (b) codes of practice;
- (c) other compliance codes;
- (d) directions on safety or notices issues by any relevant Government Agency; and
- (e) standards,

relevant and applicable to any part of the Works and includes but is not limited to the *Occupational Health and Safety Act 2004* (Vic), the *Heavy Vehicle National Law Application Act 2013* (Vic), the Rail Safety National Law and the *Electricity Safety Act 1998* (Vic) and associated regulations to any applicable Acts as amended from time to time.

**Workplace Health and Safety Requirements** means those matters set out in SC25 and any direction, instruction, request or requirement relevant or necessary for compliance by the Supplier with any applicable Workplace Health and Safety Laws, and including any such matter of which the Supplier has been informed by the Purchaser either orally or in writing.

**WRMP** means the workplace relations management plan developed by the Participants in accordance with the PAA.

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

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

**VicRoads** means the Roads Corporation established under the Transport Integration Act 2010 (Vic), of 60 Denmark Street, Kew, Victoria 3101.

### SC2 GENERAL

- (a) The Supplier acknowledges and accepts that the Purchaser is contracting in both its own right as principal and:
- (i) as agent for and on behalf of the Participants; and
  - (ii) where the Works relates to Rail Infrastructure, as agent for VicTrack; and
  - (iii) where the Works relates to Road Infrastructure, as agent for VicRoads; and

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

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

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- (i) are skilled, qualified and experienced in their respective trades and professions and suitably qualified and experienced in the type and nature of work they are undertaking to perform the Works;
  - (ii) are registered and licensed as necessary under any Statutory Requirements for the purposes of, or incidental to, the performance of the Works;
  - (iii) are competent to carry out the work for which they are engaged for the purposes of the Safety Legislation;
  - (iv) have been inducted in accordance with the Alliance (or Purchaser's) induction program; and
  - (v) comply with this Agreement.
- (c) The Supplier acknowledges and accepts that the Purchaser (or the Alliance Manager) may require that any person engaged by the Supplier be immediately removed from the Site and/or the Works and/or the Alliance Works for any reason.
- (d) The Supplier has reviewed and has allowed for all things necessary to comply with relevant requirements of certain management plans as may be notified by the Purchaser to the Supplier such as:
- (i) Alliance Team Integration Plan;
  - (ii) Commissioning Management Plan;
  - (iii) Communications and Stakeholder Management Plan;
  - (iv) Completion and Handover Management Plan;
  - (v) Construction Management Plan;
  - (vi) Design and Engineering Management Plan;
  - (vii) Document Control and Document Management Plan;
  - (viii) Emergency Response and Incident Plan;
  - (ix) Environmental Management Plan;
  - (x) Finance Control Management Plan;
  - (xi) Hazardous Substances and Dangerous Goods Control Plan;
  - (xii) Health and Safety Management Plan;
  - (xiii) Industrial Relations Management Plan;
  - (xiv) Interface Management Plan;
  - (xv) Information Technology (IT) Management Plan;
  - (xvi) KRA Performance Management and Monitoring Plan;
  - (xvii) Mobilisation Plan;
  - (xviii) Procurement Management Plan;
  - (xix) Progress Control and Reporting Management Plan;
  - (xx) Project Management Plan;
  - (xxi) Quality Management Plan;
  - (xxii) Rail Access Management Plan;
  - (xxiii) Risk Management Plan;
  - (xxiv) Services Management Plan;
  - (xxv) Site Safety Strategy and Site Safety Plan;
  - (xxvi) Social Procurement Plan;
  - (xxvii) Sustainability Management Plan;



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

### **SC3 WARRANTIES AND STANDARD OF WORK**

- (a) The Supplier warrants and ensures for the benefit of both the Purchaser and the Project Owner that:
  - (i) all Materials are new and of merchantable quality, of correct design and workmanship as specified in this Agreement, or if not so specified, suitable for the Stated Purpose;
  - (ii) suitable guarantees and warranties are provided in the name of the Purchaser, PTV VicTrack or VicRoads, as the case may be, to the satisfaction of the Purchaser;
  - (iii) unencumbered title in the Materials will pass to the Purchaser, or the Purchaser as agent for VicTrack or VicRoads as the case may be, upon payment (or part thereof) for the Materials to the Supplier or delivery to the Purchaser whichever occurs earlier;
  - (iv) it maintains an up to date register of all assets including a register of all express and implied warranties pertaining to those Materials provided by its suppliers, or prescribed by a Statutory Requirement.
- (b) The Supplier must:
  - (i) in performing the Works, exercise the degree of skill, care, diligence; and foresight which would from time to time be expected of skilled and experienced professional persons engaged in undertakings of a similar type as the Works;
  - (ii) construct the Works to meet the requirements set out in:
    - (A) the Standards; and
    - (B) this Agreement;
  - (iii) perform the Works such that rectification work necessary to make good any defects in the Works arising before and during the defects correction period are promptly rectified to the satisfaction of the Purchaser before the end of the defects correction period; and
  - (iv) exercise the degree of skill, care, expertise, diligence and foresight which would from time to time be expected of skilled and experienced professional persons engaged in undertakings of a similar type as the Works in the management and execution of all design work, design development, design review, documentation, superintendence, administration, manufacture, fabrication, supply, installation, erection, construction and testing of the Works so as to ensure that the Works are fit for the Stated Purpose, and of the quality and standard of work that is stated in the Standards and this Agreement.

### **SC4 AUDIT**

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

### SC5 INDUSTRIAL RELATIONS

- (a) The Supplier acknowledges and agrees that it is, and will ensure that any subcontractors engaged in respect of the performance of the Works under this Agreement are, accredited under the Australian Government Building and Construction OHS Accreditation Scheme established by section 35 of the *Fair Work (Building Industry) Act 2012* (Cth), at all times that the Supplier or its subcontractors (as applicable) are performing the Works under this Agreement.
- (b) In performing the Works, the Supplier must implement and comply with any 'Workplace Relations Management Plan' as notified by the Purchaser to the Supplier in performing the Works, which must comply with relevant Statutory Requirements, codes of practice and guidelines (including the National Code and the National Guidelines), and upon request, provide the Purchaser with evidence of such compliance.
- (c) The Supplier must cooperate with parties carrying out any Related Works, stakeholders or other persons on the Site in order to maintain a stable industrial relations environment.
- (d) The Supplier acknowledges that it is responsible for the management of employee and industrial relations matters in connection with the performance of the Works including, but not limited to, the resolution of all Industrial Action and all employee and industrial relations matters pertaining to all personnel performing the Works.
- (f) In particular, the Supplier must:
  - (1) ensure that all labour engaged by the Supplier or its Subcontractors in connection with the performance of the Works are paid in accordance with rates of pay and conditions to attract and keep quality labour;
  - (2) ensure that all labour engaged by the Supplier or its Subcontractors in connection with the performance of the Works must be engaged in such a manner which allows the Supplier and the Purchaser to comply with their obligations under the relevant agreement;
  - (3) satisfy the requirements set out, or referred to, in Schedule 31 of the PAA;
  - (4) comply with and ensure that all of its Subcontractors comply with, to the extent relevant, all Industrial Relations Laws and upon request, provide the Project Owner and Purchaser with evidence of such compliance as the Project Owner or Purchaser may reasonably require;
  - (5) comply with and ensure that all of its Subcontractors engaged in the performance of the Works comply with the WRMP and upon request, provide the Purchaser or Project Owner with evidence of such compliance as the Purchaser or Project Owner may reasonably require;
  - (6) cooperate with and ensure that all of its Subcontractors cooperate with contractors carrying out any Related Works, stakeholders or other persons on the Site in order

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to maintain a stable industrial relations environment to the extent permitted by Statutory Requirements;

- (7) upon request by the Purchaser or Project Owner, attend meetings convened by the Purchaser or Project Owner for the purpose of discussing employment matters and Industrial Relations Matters relevant or relating to the Works, the Site or the Metro Tunnel Project;
  - (8) immediately advise the Purchaser in writing of any act, fact or circumstance associated with the activities of the Supplier or any other person that adversely impacts or is likely to adversely impact the ability of the Supplier to perform the Works in a manner consistent with this clause and Schedule 31 of the PAA;
  - (9) immediately notify the Purchaser of the particulars concerning any change to the Labour Conditions;
  - (10) immediately notify the Purchaser of any dispute or disagreement arising in relation to right of entry to the Site or the Works;
  - (11) provide information to the Purchaser for the Monthly WR Report and any amended WRMP; and
  - (12) undertake such monitoring and auditing of the Works as is necessary to ensure that at all times the Works are being performed in compliance with all Industrial Relations Laws, the requirements of this Agreement and the WRMP.
- (g) If Industrial Action by the Supplier's personnel is happening, threatened, impending, probable or being organised, the Supplier must, to the extent permitted by Statutory Requirements:
- (1) take all reasonable measures to prevent the occurrence of, minimise the continuance of, and resolve any Industrial Action;
  - (2) advise the Purchaser immediately of that Industrial Action; and
  - (3) provide the Purchaser with regular updates on the reasonable measures taken or proposed to be taken in accordance with clause SC5(g)(1) and the status of any actual, potential or threatened Industrial Action notified under SC5(g)(2).
- (h) The Supplier must comply with the WRMP in performing the Works.
- (i) Where a non-conformance is identified under this clause, the Supplier must:
- (1) immediately notify the Purchaser of the details of the non-conformance and the steps to be taken to rectify the non-conformance and the time by which such rectification will occur; and
  - (2) after the notification under clause SC5(i)(1), provide confirmation of rectification of that non-conformance and upon request by the Purchaser, provide evidence of such rectification.

### **SC 5A SAFETY**

The Supplier, in performing the Works, must ensure:

- (a) all things reasonably practicable to protect people and property are provided and all measures reasonably practicable to protect people and property are taken;
- (b) the prevention, damage, obstruction or other interference with people or property; and
- (c) the prevention and mitigation of hazards, nuisance and unnecessary interference or disturbance with people or property.

**SC6 STAKEHOLDER AND COMMUNITY RELATIONS**

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

**SC7 OCCUPATIONAL HEALTH AND SAFETY**

- (a) The Supplier and any person engaged in carrying out any part of the Works for whom the Supplier is responsible for, or over whom the Supplier is capable of exercising control, must:
  - (i) comply with and implement:
    - (A) the safety requirements, Site procedures, security requirements and health, safety and environment conditions as notified by the Purchaser (including any applicable requirements under the 'Health and Safety Management Plan' established under the PAA) and all applicable requirements of the Project Owner;
    - (B) the State's occupational health, safety and rehabilitation management systems and guidelines; and
    - (C) their respective obligations under any relevant occupational health and safety, and environmental laws; and
- (b) attend any Project safety forums that are coordinated by the Project Owner and held regularly throughout the performance of the Works.

**SC8 PROTECTION OF ABORIGINAL HERITAGE AND ABORIGINAL RIGHTS**

- (a) The Supplier is committed to the protection of Aboriginal Heritage and Aboriginal rights and must ensure that the Supplier, its employees, agents, subcontractors, consultants and suppliers comply with:
  - (i) all applicable Statutory Requirements relating to Aboriginal Heritage and Native Title Laws;
  - (ii) any agreements or arrangements between the Purchaser or the Project Owner and Aboriginal people in relation to Aboriginal Heritage;
  - (iii) the Purchaser or the Project Owner's instructions reasonably required to enable the Purchaser or the Project Owner to comply with any Statutory Requirements, agreements, arrangements or requirements of any other Authorisation relating to Aboriginal Heritage and Native Title Laws; and

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- (iv) the cultural heritage management plan as notified by the Purchaser to the Supplier in performing the Works, and upon request, provide the Purchaser with evidence of such compliance.
- (b) In the performance of the Works, the Supplier will ensure that:
  - (i) the Supplier and those for whom it is responsible, do not enter indigenous and cultural heritage sites or disturb, interfere with or remove anything from such sites or their vicinity except in accordance with the cultural heritage management plan as notified by the Purchaser to the Supplier, or with the prior written approval of the Project Owner; and
  - (ii) if any indigenous or cultural heritage site is identified on the Site, the Supplier will immediately cease all activities which could impact on such site.
- (c) The Supplier must immediately inform the Purchaser of any claim received under the *Native Title Act 1993* (Cth) and then promptly follow any directions from the Purchaser.

### **SC9 SECURITY OF PAYMENT**

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

### **SC10 CONFIDENTIALITY**

- (a) Subject to clause SC10.1(b) and (c), the Supplier agrees that this Agreement, and any information relating to or arising from the Agreement, is confidential, and that the Supplier will not disclose the Agreement, or any information relating to or arising from the Agreement, to any person, unless that disclosure or that information:
  - (i) is at the material time in the public domain;
  - (ii) is required by any Statutory Requirement to be communicated to a person who is authorised by any Statutory Requirement to receive it;
  - (iii) is necessarily made to a court, or to an arbitrator or administrative tribunal or to legal counsel in the course of proceedings provided that, in the case of any arbitration proceedings, the Supplier concerned first obtains from each other party to those proceedings an undertaking, enforceable by any party, that each party must similarly not divulge or communicate, without the Purchaser's written consent, any information referred to in this clause;
  - (iv) is required to be disclosed to any Government Minister, Parliament or Government Agency whether in connection with the granting of any licence or otherwise (including VicTrack in its role as custodian of strategic rail assets);
  - (v) is to a servant, employee, agent or contractor of the parties, when that disclosure is reasonably necessary for the conduct of this Agreement;
  - (vi) is to a Related Body Corporate of the parties;
  - (vii) the Purchaser may decide to release, or release in order to comply with a decision or request by the Freedom of Information Commissioner or a decision or order of

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the Victorian Civil and Administrative Tribunal under the *Freedom of Information Act 1982* (Vic);

- (viii) the Purchaser releases information to the IBAC Commissioner or the Victorian Inspector;
  - (ix) is to any successor operator, or potential successor operator as determined or nominated by PTV, of metropolitan rail services, or any bidder participating in a tender process for the engagement of an operator of metropolitan rail services;
  - (x) is necessary to comply with any approved policy guidelines of the State (including the VIPP);
  - (xi) was consented to in writing by each of the parties; or
  - (xii) is required to be disclosed to the Australian Stock Exchange Limited (ABN 98 008 624 691).
- (b) The Supplier agrees that all Public Sector Data (including any documents, reports or information produced which contain or use Public Sector Data) is confidential, and that the Supplier may only disclose Public Sector Data in accordance with clause SC10.1(a).
- (c) The Purchaser may determine to publish or disclose (on the internet or otherwise):
- (i) a brief description of the Works;
  - (ii) the names of the parties;
  - (iii) the terms of the Agreement;
  - (iv) any documentation arising out of or in connection with the Agreement; and
  - (v) any other information that the Purchaser determines to publish or disclose,
- except to the extent that the Purchaser determines, after consultation with the Supplier, any such documentation is commercial-in-confidence or financially sensitive.
- (d) A failure by the Supplier to comply with the requirements of this clause confers on the Purchaser an enforceable right at law or in equity to seek any one of or a combination of specific performance, injunction or damages and, to the extent that any right under a Statutory Requirement may be excluded by this Agreement, under that Statutory Requirement.

## SC11 INTELLECTUAL PROPERTY

### SC11.1 Licence of Intellectual Property Rights

- (a) To the extent that any Intellectual Property Rights of the Supplier in relation to any:
- (i) materials which existed as at the date this Agreement was executed (**Pre-existing Intellectual Property Materials**); or
  - (ii) enhancements of those Pre-existing Intellectual Property Materials; or

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- (iii) Agreement Materials or other idea, policy, procedure, method, process, materials or other tangible or intangible thing first discovered or developed during the course of performing the Works,

(together **Intellectual Property Assets**)

are not vested in, assigned to or otherwise become the property of the Purchaser under this Agreement, the Supplier hereby grants to the Project Owner, the Purchaser and each other Participant an irrevocable, non-exclusive, world-wide, perpetual, transferable, sub-licensable, royalty free licence to use those Intellectual Property Assets for:

- (iv) the performance of the Alliance Works or the Works and for any operation, maintenance, upgrade, augmentation, selling or decommissioning of the Project;
  - (v) the purposes of Rail Operations and the operation of the Franchise Business (as defined in the MTM Franchise Agreement); and
  - (vi) the purposes of the learnings, designs, techniques and methodologies for integrating the Works with or deploying the Works on to the existing Rail Infrastructure, and which were developed under the PAA or this Agreement (the **Learnings**), to the extent that those Learnings are relevant to deploy the Works or similar works on the Rail Infrastructure in Victoria; and
  - (vii) otherwise only to the extent necessary to use the Intellectual Property Assets.
- (b) The Supplier warrants to the Purchaser and each other Participant that:
- (i) the Supplier owns, or has a licence to use and a right to licence as required by this Agreement all Intellectual Property Rights in relation to all aspects of the Works; and
  - (ii) the Works (and the performance of the Works) do not infringe any other person's Intellectual Property Rights.
- (c) The Supplier must immediately notify the Purchaser if the Supplier becomes aware of any claim that any aspect of the Works infringes any other person's Intellectual Property Rights.

### SC11.2 Moral Rights

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

### SC12 PRIVACY AND PUBLIC SECTOR DATA

- (a) In this SC12:
- (i) **Code of Practice** means a code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic).
  - (ii) **Data Incident** means any actual, apparent or anticipated:
    - a. collection, holding, management, use, disclosure or transfer of Personal Information or Public Sector Data not authorised by this Agreement;

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- b. breach of SC12;
  - c. request, complaint or enquiry made by the Commissioner for Privacy and Data Protection or any other regulatory authority in relation to collection, holding, management, use, disclosure or transfer of Personal Information or Public Sector Data under or in connection with this Agreement; or
  - d. requirement of any Statutory Requirements which conflicts with the Suppliers obligations under SC12.
- (iii) **Data Subject** means the individual to whom Personal Information relates.
  - (iv) **HPP** means the health privacy principles as defined in the *Health Records Act 2001* (Vic).
  - (v) **IPP** means the information privacy principles as defined in the *Privacy and Data Protection Act 2014* (Vic).
  - (vi) **Organisation** has the meaning given in the *Privacy and Data Protection Act 2014* (Vic).
  - (vii) **Personal Information** means personal information as defined in the *Privacy and Data Protection Act 2014* (Vic) and health information as defined in the *Health Records Act 2001* (Vic), where such information is received, generated or accessible by the Supplier or its employees, agents, officers or contractors under or in connection with this Agreement.
  - (viii) **Privacy Laws** means the *Privacy Act 1988* (Cth) and any other legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information.
  - (ix) **Public Sector Agency** has the meaning given in the *Privacy and Data Protection Act 2014* (Vic).
  - (x) **Public Sector Data** has the meaning given in the *Privacy and Data Protection Act 2014* (Vic).
  - (xi) **Public Sector Data Systems** has the meaning given in the *Privacy and Data Protection Act 2014* (Vic).
  - (xii) **VPDSS** means any standards issued by the Commissioner for Privacy and Data Protection in accordance with section 86 of the *Privacy and Data Protection Act 2014* (Vic).
- (b) The Supplier acknowledges that it:
- (i) is bound by and agrees to comply with the IPPs, HPPs and any applicable Code of Practice with respect to any act done or practice engaged in by the Supplier under or in connection with this Agreement in the same way and to the same extent as the Purchaser or Project Owner would have been bound had it been directly done or engaged in by the Purchaser or Project Owner;
  - (ii) must comply with all Privacy Laws in relation to Personal Information, wither or not the Supplier is an organisation bound by the Privacy Act 1988 (Cth);
  - (iii) must only use Personal Information for the purpose of fulfilling its obligations under this Agreement;
  - (iv) must not disclose Personal Information without the written approval of the Purchaser, except:
    - a. for the purpose of fulfilling its obligations under this Agreement; or
    - b. to the extent required by law, provided that it must immediately notify the Purchaser where such a disclosure is required;



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- (v) must not disclose Personal Information to a third party recipient (wherever located) who is not an Organisation unless the Supplier complies with IPP 9 in respect of that disclosure as if the Supplier was an Organisation and the recipient was someone who is outside Victoria for the purposes of IPP 9;
  - (vi) must immediately notify the Purchaser when it becomes aware of a breach of clause SC12(b)f. by any of its employees, agents, subcontractors, consultants or suppliers;
  - (vii) must, before disclosing Personal Information of any Data Subject to the Purchaser, ensure that:
    - a. the Data Subject has been provided with the Purchaser's Privacy Policy or a privacy notice approved by the Purchaser for that purpose;
    - b. the Data Subject has provided their consent to the disclosure of their Sensitive Information (if any); and
    - c. the Supplier has complied with any data quality principles under the IPPs and HPPs;
  - (viii) must not match or otherwise combine any Personal Information with any other information or opinion about the Data Subject from any other source without the prior written approval of the Purchaser or where required by law or with the Data Subject's consent (in which case the Supplier must notify the Purchaser of that consent); and
  - (ix) take all reasonable measures to ensure the security, quality and integrity of Personal Information, including protecting the Personal Information against loss, and against unauthorised access, copying, use, modification, disclosure or other misuse.
- (c) Notwithstanding any other provisions of this Agreement, the Supplier must:
- (i) on request from the Purchaser, provide the Purchaser with all necessary assistance and information required by the Purchaser to develop, prepare and update parts of the Project Owner's Security Risk Profile Assessment and Protective Data Security Plan;
  - (ii) not do any act or engage in a practice that if done by a Public Sector Agency would contravene a VPDSS in respect of:
    - a. Public Sector Data; or
    - b. Public Sector Data Systems kept by the Supplier and Purchaser under or in connection with this Agreement;
  - (iii) in carrying out all Works, collect, hold, manage, use, disclose and transfer Public Sector Data only:
    - a. for the purposes of meeting the Supplier's express obligations under this Agreement;
    - b. in accordance with the parts of any protective data security plan provided to the Supplier; and
    - c. in accordance with all other security requirements the Purchaser notifies to the Supplier in writing, where those requirements are reasonably necessary to ensure the parties comply with the Privacy and Data Protection Act 2014 (Vic) and VPDSS; and
    - d. implement processes and training to ensure compliance with this clause SC12, including but not limited to mechanisms that will enable Data Subjects to access and correct Personal Information about them that is held by the Supplier, in a manner consistent with IPP 6 and HPP6;
    - e. promptly follow any direction of the Purchaser in relation to Personal Information and Public Sector Data;

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- f. ensure that the design, function and operation of all Works complies with the VPDSS and the parts of the Protective Data Security Plan (as defined in the Privacy and Data Protection Act 2014 (Vic)) relevant to the Supplier;
  - g. immediately notify the Purchaser (providing full details) and co-operate with the Purchaser in the event of a Data Incident;
  - h. not make or publish any statement or communication regarding a Data Incident, including contacting the Commissioner for Privacy and Data Protection or any other relevant regulatory authority, without the Purchaser's prior written consent;
  - i. comply with any recommendation or direction of the Commissioner for Privacy and Data Protection relevant to the Supplier or this Agreement;
  - j. on request from the Purchaser, provide the Purchaser with:
    - (A) reports regarding the Consultant's compliance with SC12;
    - (B) evidence satisfactory to the Purchaser of the Supplier's compliance with this SC12; and
    - (C) access to all premises, the Site, personnel, Materials and systems (including Public Sector Data Systems) to allow the Purchaser to assess the Supplier's compliance with SC12;
  - (iv) where disclosing, transferring or otherwise making accessible Public Sector Data to any third party (including an Associate or subcontractor), ensure that the third party agrees to and complies with this SC12 to the same extent as the Supplier (except that the third party may not further transfer, disclose or otherwise make accessible Personal Information or Public Sector Data without the Purchaser's prior written consent); and
  - (v) on termination or expiry of this Agreement or at any time on request by the Purchaser, return to the Purchaser or securely destroy (at the Purchaser's discretion) all copies or other records containing Personal Information or Public Sector Data.
- (d) This SC12 survives termination of this Agreement until the Supplier and any subcontractors cease to hold any Personal Information or Public Sector Data.

### SC12A Freedom of Information Act

- (a) The Supplier acknowledges and accepts that the Purchaser has obligations under the *Freedom of Information Act 1982* (Vic) in relation to the publication and disclosure of certain documents and provisions and particulars of the Agreement and the PAA.
- (b) In order to comply with the Purchaser's obligations under the *Freedom of Information Act 1982* (Vic), the Supplier:
  - (1) acknowledges and accepts that the documentation within the possession of the Project Owner or Purchaser, whether created by the Project Owner or Purchaser or received by the Project Owner or Purchaser from another party including the Supplier in respect of the performance of the Works may be subject to disclosure under the *Freedom of Information Act 1982* (Vic);
  - (2) acknowledge and consent to the Project Owner or Purchaser making available all information in relation to the Supplier or this Agreement as it decides to release, or releases in order to comply with a decision or order of the Victorian Civil and Administrative Tribunal, under the *Freedom of Information Act 1982* (Vic); and

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- (3) must co-operate and comply with any requests from the Project Owner or Purchaser regarding any application under the *Freedom of Information Act 1982 (Vic)* to access any documentation within the possession of the Project Owner or Purchaser, whether created by the Project Owner or Purchaser or received by the Project Owner or Purchaser from another party including the Supplier in respect of the performance of the Works.
- (c) Possession in this context includes documentation that the Project Owner or Purchaser has an immediate right to possession of, including documents that the Project Owner or Purchaser is entitled to call, request or hold under the PAA or this Agreement.

### SC12B Major Projects Skills Guarantee

- (a) The Supplier must, in performing their obligations under this Agreement, comply with the Major Projects Skills Guarantee Compliance Plan to the extent that it applies to the Supplier.
- (b) In this clause SC12B:
  - (1) **Apprentice** means a person whom an employer has undertaken to train under a Training Contract;
  - (2) **Engineering Cadet** means those persons who are combining formal university training in an engineering or related discipline with practical work experience;
  - (3) **Major Project Skills Guarantee** means the Victorian Government policy applicable from 1 January 2016 titled Major Project Skills Guarantee which requires a minimum of 10% of the total labour hours for the Services be performed by Apprentices, Trainees and Engineering Cadets;
  - (4) **Major Project Skills Guarantee Compliance Plan** means the major project skills guarantee compliance plan annexed to this Agreement or any such plan provided by the Purchaser to the Supplier;
  - (5) **Trainee** means a person (other than an Apprentice) employed under a Training Contract; and
  - (6) **Training Contract** has the meaning given in the *Education and Training Reform Act 2006 (Vic)*.
- (c) The Supplier must provide all information necessary to allow the Purchaser to comply with its reporting obligations in respect of the Major Project Skills Guarantee Compliance Plan.
- (d) The Supplier must permit the Project Owner and the Purchaser to inspect the Supplier's records in order to verify compliance with the Major Project Skills Guarantee Compliance Plan.
- (e) The Supplier must:
  - a. Permit the Project Owner and the Purchaser, from time to time during the ordinary business hours and upon notice, to inspect, verify and make copies at the Project Owner's and the Purchaser's expense of all records maintained by the Supplier for the purposes of this Agreement at the Supplier's premises, or provide copies of those records to the Project Owner or the Purchaser at their request;
  - b. permit the Project Owner and the Purchaser from time to time to undertake a review of the Supplier's performance in accordance with the Major Projects Skills Guarantee Compliance Plan; and

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- c. ensure that the Supplier gives all reasonable assistance to any person authorised by the Project Owner or the Purchaser to undertake such audit or inspection.
- (d) The Supplier acknowledges and agrees that the Project Owner is authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Supplier's compliance with the Major Projects Skills Guarantee Compliance Plan.
- (e) The obligations set out in this clauses SC12B are in addition to, and do not derogate from any other rights or obligations under this Agreement (including any reports and audit rights).

### SC12C Priority Jobseeker Requirement

(a) In this clause SC12C:

- (1) **Aboriginal Persons** means persons who:
  - (A) Are descended from an Australian Aboriginal or Torres Strait Islander;
  - (B) Identify as an Australian Aboriginal or Torres Strait Islander; or
  - (C) Are accepted as an Australian Aboriginal or Torres Strait Islander by an Australian Aboriginal or Torres Strait Islander community (as applicable);
- (2) **Priority Jobseeker** means persons designated, in accordance with the Jobs Victoria Employment Network Program Guidelines dated May 2016 (or replacement scheme), as falling within any of the following priority target groups:
  - (A) long term unemployed;
  - (B) living with a disability;
  - (C) living with a mental illness;
  - (D) retrenched workers including workers retrenched from the automotive manufacturing and supply chain industry;
  - (E) Aboriginal Persons;
  - (F) refugees or asylum seekers;
  - (G) young people in out-of-home care;
  - (H) young people who are disengaged from education, training and employment;
  - (I) youth justice clients; or
  - (J) ex-offenders.
- (3) **Priority Jobseeker Requirement** means the requirement that at least a percentage of the Supplier's workforce as notified by the Purchaser will be Priority Jobseekers undertaking the Works in Victoria.

(b) The Supplier acknowledges and agrees that:

- (1) the Purchaser has developed the Priority Jobseeker Requirement; and
- (2) the Supplier will use all reasonable endeavours to meet the Priority Jobseeker Requirement throughout the delivery of the Works.

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- (c) The Supplier will comply with all requirements of the Workforce Development and Training Management Plan (as provided to the Supplier by the Purchaser) with respect to the Priority Jobseeker Requirement, including complying with all reporting and compliance obligations.

### SC12D Supplier Code of Conduct

- (a) In this clause SC12D **Supplier Code of Conduct** means the document titled 'Procurement - Supplier Code of Conduct' issued by the Project Owner (as amended from time to time) and, as at the date of this Agreement, available at <http://www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct>.
- (b) The Supplier acknowledge and agree that:
- (1) the Supplier Code of Conduct is an important part of the Project Owner's approach to procurement and describes the Project Owner's minimum expectations regarding the conduct of its suppliers;
  - (2) they have read and aspire to comply with the Supplier Code of Conduct; and
  - (3) the expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the Supplier, whether under this Agreement or at law.

### SC13 INSURANCE

- (a) The Supplier must:
- (i) insure its liability, as required under any Statutory Requirement, to its employees engaged in doing anything for the purpose of exercising or performing the Supplier's rights or obligations under this Agreement; and
  - (ii) ensure that each subcontractor engaged by the Supplier insures its liability as required under any Statutory Requirement to its employees engaged in doing anything for the purpose of executing the Works.
- (b) The Supplier must insure Construction Plant, equipment, tools, facilities, hutments, services, construction aids and the like, belonging to it or under its physical or legal care, custody or control and including its employees' effects whilst on a Site or being mobilised to the Site or being demobilised from a Site, supplied, leased or hired by the Supplier for use in connection with the performance of the Works. The insurance effected and maintained pursuant to this SC13(b) must be:
- (i) for the insured property's market value;
  - (ii) extended to include the interest, if any, of the Purchaser and the Owner Participant;
  - (iii) against all risks and physical loss or damage arising from any cause which:
    - (A) occurs during the period commencing on the date of commencement of the Works and ending on the date the Participants have completed demobilisation from every Site; or
    - (B) becomes apparent after the Date of Practical Completion (as specified in the Certificate of Practical Completion) and before the date notified to the Supplier as the date on which Final Completion has occurred under the

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

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

- (c) The Supplier must effect motor vehicle third party liability insurance against property damage and injury to and death of persons, arising from the use of motor vehicles belonging to or in the care, custody or control of the Supplier and used in connection with the Works, for any obligation under a Statutory Requirement for insurance relating to motor vehicles.
- (d) The Supplier must effect the insurances referred to in SC13(a), (b) and (c) on or prior to commencement of the Works and in each case the Supplier must maintain the relevant insurance for the period for which a claim could be made.
- (e) The Supplier must make available for inspection by the Purchaser and other Participants certificates of currency for insurance required by this Agreement to be taken out by the Supplier and any subcontractors engaged by the Supplier.
- (f) The Supplier must ensure that every insurance policy taken out by it and its subcontractors under this Agreement includes a provision that requires the Supplier, whenever the insurer gives to or serves upon the Supplier or subcontractor a notice of cancellation or any other notice under or in relation to the policy of insurance, as soon as possible, to inform the Purchaser in writing that the notice has been given to or served upon that Supplier or subcontractor.
- (g) The Purchaser may provide, when reasonably requested by the Supplier, evidence of any insurance applicable to the Works which is effected and maintained under the PAA.
- (h) The Supplier acknowledges that:
  - (i) it has satisfied itself as to the nature and extent of the Purchaser's insurance (including any exclusions, conditions and excesses noted on the policies);
  - (ii) may if it requires, take out insurance to insure any risks not insured by the Purchaser's insurance or to cover any exclusions, conditions or excesses in that insurance; and
  - (iii) must bear the cost of any excesses in the Purchaser's insurance;
    - (A) to the extent the Supplier makes a claim against the Purchaser's insurance; or
    - (B) where the Purchaser makes a claim against the Purchaser's insurance as a result of an act or omission by the Supplier or the Works; and
  - (iv) the cost of any excess for any such claim against the Purchaser's insurance shall be a debt due from the Supplier to the Purchaser and the Purchaser may deduct such a debt from moneys otherwise due to the Supplier under this Agreement.
- (i) The Supplier must:
  - (i) as soon as possible inform the Purchaser in writing of any occurrence that may give rise to a claim under either:
    - (A) any insurance policy required by this Agreement; or

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- (B) any insurance policy which must be provided and maintained by the Purchaser under the PAA;
- (ii) keep the Purchaser informed of subsequent developments concerning the claim; and
- (iii) ensure that its subcontractors similarly inform the Supplier and the Purchaser in respect of occurrences which may give rise to a claim by them.

### **SC14 NOVATION**

The Supplier acknowledges and agrees that under the PAA the Project Owner may, at any time, novate all of its rights, benefits and obligations under this Agreement.

### **SC15 STATUTORY COMPLIANCE**

- (a) The Supplier shall in all matters arising in the performance of the Agreement comply with all applicable Statutory Requirements, laws, regulations, by-laws and codes of practice (including in relation to rail safety, occupational health and safety, product safety and product labelling) that affect or relate to the performance of the Works, including obtaining and complying with all Authorisations necessary to perform each particular portion of the Works, prior to undertaking that particular portion of the Works.
- (b) A failure by a Supplier to comply with the requirements of clause SC15(a) confers on the Purchaser an enforceable right at law or in equity to seek any one of or a combination of specific performance, injunction or damages and, to the extent that any right under an Act of Parliament otherwise may be excluded by this Agreement, under that Act of Parliament.
- (c) The Supplier indemnifies the Purchaser against any loss suffered by the Purchaser as a result of the Supplier's failure to comply with clauses SC15(a), SC16 (Compliance with the National Code and the National Guidelines) or SC17

### **SC16 COMPLIANCE WITH THE NATIONAL CODE AND THE NATIONAL GUIDELINES**

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

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



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including personnel of the Code Monitoring Group, to produce a specified document within a specified period, in person, by fax, by post or by electronic means.

- (m) For the avoidance of doubt, clause SC16A(k) applies in relation to the new privately funded construction projects (in accordance with section 4.1.5 of the National Guidelines).
- (n) The Supplier acknowledges and agrees that:
  - (i) it will not (nor will it seek to) enter or take any steps towards entering any project agreements, nor will any such project agreements apply in relation to, the whole or any part of the Works;
  - (ii) the bargaining for and making of "unregistered written agreements" is not permitted unless the agreement falls within one of the exemptions specified in section 10(2) of the National Code;
  - (iii) the Commonwealth will not be requested or required to approve the negotiation or the application of any project agreement or unregistered written agreements; and
  - (iv) it will not (nor will it seek to) have any subcontractor or consultant comply with, or apply the terms of any project agreements entered into by the Supplier that are inconsistent with the National Code or unregistered written agreements entered into by the Supplier unless the unregistered written agreement falls within one of the exceptions specified in section 10(2) of the National Code.
- (o) The Supplier must ensure that all subcontracts impose obligations on the subcontractors equivalent to the obligations set out under clauses SC16A(a) to SC16A(n) (inclusive).
- (p) The Supplier agrees that it will bear the cost of ensuring its compliance with this clause SC16A, the National Code and National Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the National Guidelines.

### **SC17 Victorian Industry Participation Policy**

- (a) In this clause SC17 LID Plan means the local industry development plan prepared by the Purchaser, which has been certified by Industry Capability Network Victoria.
- (b) The Project is a strategic project for the purposes of the VIPP.
- (c) The Supplier must:
  - (i) where directed to do so by the Purchaser, assist with any revision of the LID Plan;
  - (ii) implement and comply with the LID Plan (to the extent relevant to the Works);
  - (iii) prepare and maintain records demonstrating its compliance with the LID Plan (as applicable); and
  - (iv) where directed to do so by the Purchaser, demonstrate the progress of the Supplier towards implementing the LID Plan (to the extent relevant to the

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Works), including completing monitoring tables or forms provided by the Purchaser.

### SC18 PERSONAL PROPERTY SECURITIES ACT

#### SC18.1 Definitions

In this clause SC18:

- (a) **PPS Act** means the *Personal Property Securities Act 2009* (Cth);
- (b) **PPS Law** means:
  - (i) the PPS Act and any regulations made at any time under the PPS Act, as amended from time to time;
  - (ii) any relevant amendment made at any time to any other legislation as a consequence of paragraph (i);
  - (iii) any provision of the PPS Act or regulations referred to in (i);
  - (iv) any amendment to any of the above, made at any time; or
  - (v) any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation in connection with the implementation or as a consequence of the PPS Act,
- (c) **Security Interest** has the meaning given to it in the PPS Law; and
- (d) **Transaction Document** means:
  - (i) this Agreement;
  - (ii) any guarantee by which any person guarantees the Supplier's compliance with its obligations under any of the Transaction Documents;
  - (iii) agreements between the Supplier and any subcontractors or;
  - (iv) any agreement which the parties agree is a Transaction Document for the purposes of the Agreement;
  - (v) any agreement or instrument created under any of the above documents; and
  - (vi) each document entered into for the purpose of amending, novating, restating or replacing any of the above documents.

#### SC18.2 Enforcement of liquid assets

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

#### SC18.3 Application of PPS Law

- (a) If:

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

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

- (b) The Supplier must comply with the requirements of a notice given by the Purchaser under clause SC18.3(a) within the time stipulated in the notice.

### **SC18.4 Supplier's obligations**

- (a) In respect of any Security Interest with a value in excess of \$100,000 which the Supplier acquires under or in respect of the Transaction Documents or any of the transactions contemplated by them, the Supplier must:
  - (i) identify, protect and perfect with the highest priority available that Security Interest;
  - (ii) register that Security Interest in its name immediately upon title in the Works passing to it;
- (b) For any payment claim which relates to any of the Works, Rail Infrastructure or Road Infrastructure, which has:
  - (i) been paid for by the Supplier prior to the submission of that payment claim, the Supplier must ensure that prior to submitting that payment claim no subcontractor or any other person engaged by it arising out of or in connection with the Agreement has a Security Interest in respect of the relevant Works, Rail Infrastructure or Road Infrastructure in respect of which that payment claim is being made, other than a Security Interest which will be extinguished upon payment to the Supplier; and
  - (ii) not been paid for by the Supplier, the Supplier must ensure that it pays the relevant subcontractor for those subcontract works, Rail Infrastructure or Road Infrastructure on or before the due date for payment and in accordance with the terms under which payments are to be made under the relevant subcontract and, upon payment ensure that any Security Interest that the relevant subcontractor has

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in respect of those subcontract works, Rail Infrastructure or Road Infrastructure to which the relevant payment relates is extinguished.

### **SC18.5 Supplier to extinguish Security Interests**

The Supplier must remove any Security Interest from the PPS Register it previously had in the relevant Works or Rail Infrastructure.

### **SC19 TERMINATION OF THE CONTRACT**

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

### **SC20 TITLE AND SECURITY**

- (a) Title to all unfixed Materials and equipment on Site that will form part of the Works supplied by the Supplier, shall, upon payment, immediately pass to:
- (i) the Purchaser as agent on behalf of VicTrack, if the unfixed Materials and equipment forms part of the Rail Infrastructure; and
  - (ii) the Project Owner or the relevant authority, as the case may be, if the unfixed Materials and equipment forms part of the Project infrastructure,
- unencumbered and free of any security interests held or claimed by any third parties.
- (b) Despite anything else in this Agreement the Supplier must not invoice the Purchaser for any Materials and equipment under this Agreement until those Materials and equipment are delivered or supplied in accordance with the Agreement, unless:
- (i) the Purchaser has first agreed in writing; and
  - (ii) the Supplier provides to the Purchaser security in the form of an unconditional bank undertaking in favour of the Purchaser (from a financial institution and in a form acceptable to the Purchaser) equal to the amount claimed for the Materials and equipment.
- (c) A bank guarantee provided by the Supplier under SC20(b) will be returned by the Purchaser following delivery of the relevant Materials and equipment in accordance with this Agreement.
- (d) In respect of any Works with a value in excess of \$5,000,000, the Supplier acknowledges that:
- (i) if the Purchaser receives or retains from the Supplier security in cash, or converts security to cash; or
  - (ii) if the Purchaser receives payment under the PAA for, or on account of, work done or materials, plant, equipment or other goods supplied by the Supplier and does not pay the Supplier the whole amount the Purchaser received or to which the Supplier is entitled,

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

### **SC21 Probity**

The Supplier must:

- (i) acknowledges that under the PAA, a probity or financial advisor, auditor or investigator may be appointed to ensure that the standards of probity and degree of transparency will satisfy the requirements of the Project Owner; and
- (ii) co-operate fully with any probity or financial advisor, auditor or investigator that the Purchaser notifies the Supplier has been appointed for the purposes of this clause SC21.

### **SC22 Wilful Default**

- (a) The Supplier acknowledges that, under the PAA, the Purchaser will be in wilful default of the PAA (Wilful Default) if:
  - (i) the Supplier carries out a deliberate and purposeful act or omission, or there is real and substantial evidence of the Supplier carrying out a deliberate and purposeful act or omission, with a reckless disregard or calculated regard for the consequences of the act or omission by the Supplier, and that act or omission, or evidence of the act or omission:
    - (A) causes the Purchaser to be in breach of a duty or obligation, term or condition arising out of, or in connection with, the PAA; or
    - (B) causes the Purchaser to be in breach of a duty or obligation owed to another party under the PAA howsoever arising; or
  - (ii) the Supplier commits a fraudulent act or omission under, arising out of or in connection with the PAA.
- (b) The Supplier must not cause the Purchaser to be in Wilful Default.
- (c) Without limiting any other provision of the Agreement or any other right or remedy of the Purchaser, the Supplier indemnifies the Purchaser against all actions, claims, demands and proceedings against the Purchaser by any other person, and all costs, expenses, losses, damages and other liabilities suffered or incurred by the Purchaser, arising from any breach of SC22(b) by the Supplier.

### **SC23 Heavy Vehicle National Laws**

- (a) The Supplier must, and must ensure that Subcontractors, will for the duration of the Work under the Agreement, comply with their obligations under the Heavy Vehicle National Laws and upon request, provide the Purchaser with evidence of such compliance. Such obligations include but are not limited to:
  - (i) fatigue and speed management;
  - (ii) proper maintenance of heavy vehicles; and

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- (iii) compliance with all mass, dimension and loading requirements relating to heavy vehicles.
- (b) The Supplier must, upon request of the Purchaser, cooperate with and do all things necessary to assist the Purchaser and the Project Owner or their officers, employees or agents in discharging their obligations under the Heavy Vehicle National Laws. This includes but is not limited to cooperating fully with any monitoring activities undertaken by the Purchaser or Project Owner to satisfy itself that Heavy Vehicle National Laws have been complied with and will continue to be complied with and ensuring the Purchaser and Project Owner are provided with any information or assistance the Purchaser or Project Owner may reasonably require to comply with any duties, obligations or requirements it may have under Heavy Vehicle National Laws.
- (c) The Supplier must immediately inform the Purchaser upon becoming aware of any non-conformance by it or any Subcontractor of the Heavy Vehicle National Laws, whether the subject of a regulatory investigation or not.
- (d) The Supplier must, and must ensure, that its Subcontractors, cooperate with the Purchaser and the Project Owner in relation to the investigation of the non-conformance and where appropriate, will take steps to ensure the immediate rectification of the non-conformance.
- (e) **Heavy Vehicle National Laws** means the *Heavy Vehicle National Law Application Act 2013* (Vic) and related:
  - (i) regulations;
  - (ii) codes of practice;
  - (iii) other compliance codes;
  - (iv) directions on safety or notices issued by any relevant Government Agency; and
  - (v) standards,

relevant and applicable to any part of the Works, as amended from time to time including any successor legislation to the *Heavy Vehicle National Law Application Act 2013* (Vic).

### SC24 Minimum conditions – Underground Services

The Supplier must comply with the Minimum conditions – Underground Services as set out in this SC24.

- (a) A GPP system will be in place for the management of all ground penetrations. A permit is required for any works where the ground is broken / penetrated.
- (b) The Ground Penetration Permit (GPP) shall ensure that there is coordination and consultation with asset owners to ensure all requirements and approvals are achieved.
- (c) Within the nominated work zone stipulated on the GPP, all known services will be identified<sup>1</sup>, and dependent on the proximity of the ground penetration works to these

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\* This document has been created by the Melbourne Metro Rail Authority in consultation with construction industry stakeholders and outlines a contemporary and practical summary of expected minimum conditions relating to work on or around underground services.

<sup>1</sup> Means of identification shall include the use of technologies such as acoustic devices, electromagnetic technologies or ground penetrating radar.

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services; positively located<sup>2</sup> (as per asset owner or contractor organisational requirements) and marked<sup>3</sup> prior to the commencement of any ground penetration works.

- (d) Service investigation works shall consider not only all known services but include investigations to locate domestic and commercial feeds/taps coming from the main.
- (e) The GPP system will detail roles and responsibilities of all personnel involved in the permit process. Roles and responsibilities must be clearly defined including the minimum competencies, training, authority, consultation expectations and experience required for each role.
- (f) All personnel involved in the GPP process (including but not limited to the project manager, GPP coordinator, the operators and spotters on the ground) shall receive detailed information, instruction and training into the GPP system.
- (g) A senior suitably qualified and experienced person with appropriate authority shall be assigned to the position of GPP Coordinator (this role will be nominated under the contract). The GPP Coordinator will be a dedicated resource and shall have the responsibility to manage and coordinate the GPP system, and be the singular point of issue for all GPP's. This role is considered critical in the process and therefore should not be assigned additional unrelated tasks / functions, the role is to be separate from other operational disciplines.
- (h) A specific hold point shall be included within the GPP, outlining the requirement of a walk through / site inspection to be conducted prior to the commencement of ground penetrating works. This is to be carried out by the GPP Coordinator, site supervisor(s) and all associated operational employees.
- (i) Duration of the permit shall be determined using, whichever is assessed as the least duration from the following: a risk based approach; or by adhering to the timeframes outlined by dial before you dig (DBYD) (valid for 28 days). The permit shall have a re-validation section to be completed by the GPP Controller to ensure its currency and validity in the field. This re-validation section shall be completed at least weekly.
- (j) Any unknown or redundant services identified during the ground penetration process shall be recorded, the relevant asset owner / stakeholder notified and the information captured as required by 'Minimum Condition (m)'.
- (k) The scope of work including the task and limits of work boundaries must be clearly defined in the GPP and communicated to all affected workers and stakeholders. The issue of a permit covering multiple tasks such as a "blanket permit" and / or "piggy backing" of multiple tasks onto a single permit is to be avoided.
- (l) All service strikes (and potential to strike) shall be reported through normal incident reporting processes and thoroughly investigated to identify casual factors and implementation of corrective actions to prevent recurrence. As part of the reporting process, escalation to the most senior project representative is required to demonstrate an appropriate governance structure is in place.
- (m) An underground service data management system will be implemented to capture, update and classify<sup>4</sup> all underground assets (including the dissemination of updated information) within suitable timeframes to protect underground assets from damage by other user groups. All relevant project participants will be expected to co-operate with the collation of this information.

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<sup>2</sup>Positively located is defined as verifying the precise horizontal and vertical location of underground assets through non-destructive means ie water jetting, vacuum excavation and/or soft digging methods.

<sup>3</sup> As per AS 1345:1995 Identification of the contents of pipes, conduits and ducts.

<sup>4</sup> As per AS 5488:2013 Classification of Subsurface Utility Information

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- (n) Where requested by RPV, the GPP system will be independently audited to ensure the inclusion of these 'Minimum Conditions', to verify the adequacy and implementation of the GPP system / process.

### SC25 –Workplace Health and Safety

#### SC25.1 – Workplace Health and Safety Incidents

##### SC25.1.1 Incident Notification

The Supplier must ensure that:

- (a) upon the occurrence or threatened occurrence of a Workplace Health and Safety Incident:
- (1) it immediately, when it is safe to do so, provide the Purchaser, with verbal notification of the Workplace Health and Safety Incident;
  - (2) report and investigate the Workplace Health and Safety Incident in accordance with the requirements of this SC25.1;
  - (3) ensure the following document in relation to the Workplace Health and Safety Incident is entered into the Incident Reporting Management Database:
    - (A) within 24 hours after the occurrence or threatened occurrence of the Workplace Health and Safety Incident, an interim Workplace Health and Safety Incident report;
    - (B) no later than 5 days after the occurrence or threatened occurrence of the Workplace Health and Safety Incident, a Workplace Health and Safety Incident report;
    - (C) if requested by the Purchaser, a Workplace Health and Safety Alert;
    - (D) if requested by the Purchaser, any entry reports, improvement notices, prohibition notices or similar documents issued by a Government Agency in relation to the Workplace Health and Safety Incident; and
    - (E) if requested by the Purchaser, any incident investigation completed inclusive of associated corrective actions and supporting documentation to verify close out;
  - (4) the Supplier must, if and when requested by the Purchaser, provide the Purchaser with a workplace health and safety briefing addressing such matters as the Purchaser reasonably requests; and
  - (5) as soon as practicable after the Workplace Health and Safety Incident has occurred, provide the Purchaser, with evidence that the hazards or risks giving rise to the Workplace Health and Safety Incident have been appropriately identified and controlled to prevent the recurrence of the same or similar Workplace Health and Safety Incident.
- (b) upon the occurrence or threatened occurrence of a Safety Incident the Supplier must:
- (1) within 24 hours, provide the Purchaser with verbal notification of the Safety Incident;



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- (2) report and investigate the Safety Incident in accordance with the requirements of this SC25.1 and the Workplace Health and Safety Requirements;
  - (3) ensure within 24 hours after the occurrence or threatened occurrence of the Safety Incident, an interim Workplace Health and Safety Incident report is entered into the Incident Reporting Management Database; and
  - (4) as soon as practicable after the Safety Incident has occurred, provide the Purchaser with evidence that the hazards or risks giving rise to the Safety Incident have been appropriately identified and controlled to prevent the recurrence of the same or similar Safety Incident.
- (c) where Workplace Health and Safety Laws require a Government Agency to be notified of a Workplace Health and Safety Incident or Safety Incident, the Supplier must:
- (1) immediately notify the relevant Government Agency and the Purchaser of the Workplace Health and Safety Incident or Safety Incident; and
  - (2) as soon as practicable, but not later than 6 hours after the Workplace Health and Safety Incident or Safety Incident, provide the Purchaser with evidence of such notification.

### **SC25.1.2 Incident Investigation**

- (a) Within 24 hours of a Workplace Health and Safety Incident occurring, the Supplier must ensure that the Purchaser is provided with an interim written Workplace Health and Safety Incident report, which includes at a minimum, the following information:
- (1) complete details of the incident;
  - (2) details of immediate actions taken to prevent recurrence of the incident and or interim control measures;
  - (3) where applicable, confirmation and evidence that appropriate authorities have been notified in accordance with Workplace Health and Safety Laws;
  - (4) details of the factors that caused the incident;
  - (5) the risk potential of the incident;
  - (6) details of interim or permanent control measures to be implemented (and the timelines for implementing those measures) to prevent reoccurrence; and
  - (7) identification of whether a more detailed investigation and follow up will be undertaken by the Supplier.
- (b) Within 5 days of a Workplace Health and Safety Incident occurring, the Supplier must provide a completed final Workplace Health and Safety Incident report to the Purchaser which includes:
- (1) details of the review and amendment (if any) of the Health and Safety Management Plan (including any applicable sub-plans) as a result of the Workplace Health and Safety Incident; and
  - (2) evidence of completion of interim or permanent control measures implemented to prevent reoccurrence.

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**SC 25.1.3 Workplace Health and Safety Alert**

- (a) If requested by the Purchaser, the relevant Supplier must, following a Workplace Health and Safety Incident, provide the Purchaser with a written Workplace Health and Safety Alert.
- (b) The Workplace Health and Safety Alert must summarise the facts and circumstances surrounding the Workplace Health and Safety Incident.
- (c) The Purchaser may circulate the Workplace Health and Safety Alert (in amended or unamended form) to other stakeholders to facilitate Metro Tunnel Project wide safety learnings.

**SC25.2 – Monthly Health and Safety Performance Report**

The Supplier must prepare and submit to the Purchaser, no later than the fourth working day of each month, a Monthly Health and Safety Performance Report that, as a minimum, contains all of the information set out below for the previous calendar month.

**THIS FORM IS TO BE SENT TO THE PURCHASER’S REPRESENTATIVE BY THE 4<sup>TH</sup> WORKING DAY OF EACH MONTH (OR AS REQUIRED BY THE PURCHASER)**

Project Manager: \_\_\_\_\_ Project Number: \_\_\_\_\_

Work Package or Project: \_\_\_\_\_ Reporting Month / Year: \_\_\_\_\_

<b>MEASUREMENT CRITERIA</b> (for the reporting month)	<b>Number</b>
-------------------------------------------------------	---------------

Toolbox Talks Conducted  
\_\_\_\_\_

Pre-Start Briefings / Pre-Start Meetings  
\_\_\_\_\_

Safety Observations (informal site inspections, Hazard ID, Take 5 etc.)  
\_\_\_\_\_

Site Safety Inspections carried out (formally documented safety/hazard inspections)  
\_\_\_\_\_

Penalties / Infringements issued by Regulator (*WorkSafe, Comcare, TSV, etc*)  
\_\_\_\_\_

Formal OH&S Audits (Formal System Audits Only eg.- against Standard, Procedure or Plan)  
\_\_\_\_\_

Non-compliances related to OH&S and Rail issues (*including audit NCR's*)  
\_\_\_\_\_

Hazards identified and reported  
\_\_\_\_\_

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Hazards closed out

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Statutory Authority Inspections Carried Out (eg. WorkSafe, TSV etc.)

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SWMS/JSEA's reviewed and amended (where required)

---

Project Inductions Completed (for this reporting period)

INCIDENT / INJURY CLASSIFICATION - Occurrence	Number
-----------------------------------------------	--------

Lost Time Injuries (LTI) recorded for the month

---

Days Lost to LTI during the month (incl. any lost days for LTI's that occurred in previous period)

---

Alternative Work Injuries (AWI) recorded for the month

---

Days Lost to AWI during the month (incl. any lost days for AWI's that occurred in previous period)

---

Medical Treatment Injuries (MTI) recorded for the month

---

First Aid Injuries (FAI) recorded for the month

---

Rail Safety Incidents (RSI) recorded for the month

---

Property Damage Incidents (PD) recorded for the month

---

Near Miss Incidents (NM) recorded for the month

---

Report Only Incidents (RO) for the month (ie. no damage/injury, nor the potential)

---

Notifiable incidents to External Authorities e.g. Worksafe, TSV – (incl. positive alcohol & drug tests)

---

Non-Work Related Incidents (NWR) for the month

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Total Hours Worked – for the reported period

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Personnel (the average number of persons. working for the reported period)

**FITNESS FOR DUTY - Occurrence**

Alcohol tests undertaken for the month

---

Drug tests undertaken for the month

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Positive alcohol tests recorded for the month

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Positive drug tests recorded for the month

**LTI's & AWI's (If an injury from a previous month continues to lose days in this month then note this in the Comments below)**

Person	Employer	LTI - Date of 1 <sup>st</sup> day off and date of final day off in reported month	Total LTI Days	AWI - Date of 1 <sup>st</sup> day off and date of final day off in reported month	Total AWI Days
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**DETAILS OF REGULATORY ISSUED NOTICES (as listed above)**

[Number and Type of Notice Issued – Improvement / PIN]

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[Number and Type of Notice Issued – Improvement / PIN]

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Project Manager's Comments: (expand or use reverse of sheet if necessary)

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Signed:

Date:

Distribution:

Project Manager

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### SC26 Heavy vehicles

- (a) Without limiting the Supplier's obligations under the Heavy Vehicle National Laws, the Supplier must ensure that all heavy vehicles (as defined in those laws) it uses during the performance of the Works are subject to a risk assessment by the Participants and, subject to the agreed outcomes of that risk assessment, have:
- (1) side under run guards fitted (unless the Participants can demonstrate to the satisfaction of the Project Owner that the vehicle will not perform the function for which it is intended if side under run guards are fitted);
  - (2) front, rear and side blind spots completely eliminated or minimised as far as reasonably practicable, through the use of fully operational direct and indirect vision aids, sensors and audible or visual driver alerts;
  - (3) equipment fitted with an audible means of warning other road users of a left manoeuvre; and
  - (4) prominent signage on the vehicle to warn cyclists and other road users of the dangers of passing the vehicle on the inside or of getting too close to the vehicle,
- in accordance with the Health and Safety Management Plan.
- (b) Throughout the performance of the Works, the Supplier must ensure that all heavy vehicle drivers, including drivers employed by its subcontractors, undergo training (to include a mix of theoretical, e-learning, practical and on the job training) and continuous professional development covering the safety of vulnerable road users and on-road hazard awareness.