Schedule 23 – Augmentation Process Schedule

Contents

[Part 1 – General 3](#_Toc165464013)

[1. Definitions and Interpretation 3](#_Toc165464014)

[1.1 Definitions 3](#_Toc165464015)

[1.2 Application of Augmentation principles 6](#_Toc165464016)

[1.3 Resolution of inconsistency, ambiguity or discrepancy 6](#_Toc165464017)

[1.4 References to Proponent, Proponent Associate, Project Co Associate 7](#_Toc165464018)

[2. Initiation of an Augmentation Process 7](#_Toc165464019)

[2.1 Augmentation proposed by the State 7](#_Toc165464020)

[2.2 Augmentation proposed by Project Co 8](#_Toc165464021)

[2.3 Augmentation Process Deed 10](#_Toc165464022)

[3. Administration, meetings and provision of information 11](#_Toc165464023)

[4. State's rights and discretions 12](#_Toc165464024)

[5. Payment of Project Co 12](#_Toc165464025)

[5.1 No payment prior to Augmentation Process Deed 12](#_Toc165464026)

[5.2 Indemnity 13](#_Toc165464027)

[Part 2 – Augmentation Process Deed Principles 14](#_Toc165464028)

[6. General 14](#_Toc165464029)

[7. Summary of content of Augmentation Process Deed 14](#_Toc165464030)

[7.1 Content 14](#_Toc165464031)

[7.2 Terms of the Project Deed 15](#_Toc165464032)

[8. Augmentation timetable and administration 15](#_Toc165464033)

[8.1 Timetable 15](#_Toc165464034)

[8.2 Milestones 16](#_Toc165464035)

[8.3 Working groups 16](#_Toc165464036)

[8.4 Proponent Augmentation Material 16](#_Toc165464037)

[8.5 Audit 16](#_Toc165464038)

[9. Augmentation Process payments 17](#_Toc165464039)

[9.1 General principles 17](#_Toc165464040)

[9.2 Timing and reimbursement of the Augmentation Process Fee 18](#_Toc165464041)

[9.3 Timing and reimbursement of the Third Party Costs 18](#_Toc165464042)

[9.4 Open book 20](#_Toc165464043)

[10. State Brief 20](#_Toc165464044)

[11. Contractual model 20](#_Toc165464045)

[12. Existing Financiers 21](#_Toc165464046)

[13. Augmentation Price and Funding 21](#_Toc165464047)

[13.1 Funding for the Augmentation 21](#_Toc165464048)

[13.2 Augmentation Equity IRR 21](#_Toc165464049)

[13.3 Augmentation Management Fee 21](#_Toc165464050)

[13.4 Subcontractor Margin 22](#_Toc165464051)

[14. Key principles for Tender Processes 22](#_Toc165464052)

[14.1 General principles 22](#_Toc165464053)

[14.2 Tender Process principles 23](#_Toc165464054)

[15. Augmentation Proposal 25](#_Toc165464055)

[15.1 Phases 25](#_Toc165464056)

[15.2 Key inclusions in the Augmentation Proposal 25](#_Toc165464057)

[15.3 Commercial Development 26](#_Toc165464058)

[16. Evaluation and negotiation of Final Augmentation Proposals 26](#_Toc165464059)

[17. Privileges and discretions of the State 26](#_Toc165464060)

[18. Termination of the Augmentation Process Deed 27](#_Toc165464061)

[18.1 Termination of the Augmentation Process Deed 27](#_Toc165464062)

[18.2 Termination by State for failure to pass Milestone or for Proponent default or abandonment 27](#_Toc165464063)

[18.3 General termination 28](#_Toc165464064)

[18.4 Payment on termination for failure to pass Milestone or for Proponent default 28](#_Toc165464065)

[18.5 Payment under general termination right 28](#_Toc165464066)

[18.6 Payment on termination for Contract Close 28](#_Toc165464067)

[18.7 State's rights after termination 28](#_Toc165464068)

[19. Intellectual Property 29](#_Toc165464069)

[19.1 State Augmentation Information licence 29](#_Toc165464070)

[19.2 Proponent Augmentation Material 30](#_Toc165464071)

[19.3 State's further Intellectual Property Rights 31](#_Toc165464072)

[20. Liability and Indemnity 32](#_Toc165464073)

[21. Set-off 32](#_Toc165464074)

[Appendix 1 – Probity and Process Deed i](#_Toc165464075)

Part 1 – General

# Definitions and Interpretation

## Definitions

Unless otherwise expressly defined in this Schedule, expressions used in this Schedule have the meanings given to them in this Deed.

In this Schedule:

1. **Advisor Fees** has the meaning given in section 9.1(d)(ii).
2. **Alternative Process** has the meaning given in section 14.1(c).
3. **Augmentation** means a change (including any addition, decrease, omission, deletion, demolition or removal) to the Project Assets, the Delivery Requirements or the Project Activities:
	1. the total cost (nominal) of which the State considers is likely to be in excess of $80,000,000 (CPI Indexed); and
	2. which the State determines in accordance with this Schedule should be delivered pursuant to an Augmentation Process.
4. **Augmentation Documents** means all documents to be entered into by one or more of the State, the Proponents and Project Co (amongst others) for the undertaking of the relevant Augmentation, including any such documentation contemplated by the Augmentation Process Deed.
5. **Augmentation Equity IRR** means the nominal pre-tax equity internal rate of return for the relevant Augmentation.
6. **Augmentation Equity IRR Cap** means [insert]%. ***[State note to Respondents: This percentage to be bid by Respondents.]***
7. **Augmentation Management Fee** means in respect of an Augmentation, the relevant fixed sum or fixed percentage to be charged by the Delivery Proponent as its fee for carrying out the Augmentation pursuant to the Augmentation Documents.
8. **Augmentation Process** means the process set out in this Schedule, any Probity and Process Deed and the Augmentation Process Deed for the relevant Augmentation.
9. **Augmentation Process Deed** means the document(s) of that name to be entered into by the State and the Proponents and, if required by the State, Project Co (if Project Co is not a Proponent), to progress the Augmentation Process.
10. **Augmentation Process Fee** has the meaning given in section 9.1(b).
11. **Augmentation Process Fee Cap** has the meaning given in section 9.2(c).
12. **Augmentation Proposal** means in respect of an Augmentation, any proposal for that Augmentation that Project Co or a Proponent submits to the State in accordance with the Augmentation Process, including the Initial Augmentation Proposal (if any) and the Final Augmentation Proposal.
13. **Background IP** means Intellectual Property Rights in:
	1. subject matter in existence at the date of the Augmentation Process Deed (other than where such subject matter has been developed for the Augmentation or the Project); or
	2. subject matter developed independently of the development of the Augmentation Proposal, the Augmentation and the Project.
14. **Commercial Development** has the meaning given in section 15.3(a).
15. **Construction Margin** means [*#*]%. ***[State note to Respondents: to be bid.]***
16. **Contract Close** means, in respect of an Augmentation, the date on which the State Augmentation Documents are executed by all parties to them and all conditions precedent for those State Augmentation Documents to come into full force and effect have been satisfied or waived.
17. **Date for Contract Close** means, in respect of an Augmentation, the date by which Contract Close must be achieved, as set out in the Augmentation Process Deed.
18. **Delivery Proponent** has the meaning given in section 2.3(a)(iv).
19. **Design Fees** has the meaning given in section 9.1(d)(i).
20. **Design Fees Cap** has the meaning given in section 9.3(d)(i).
21. **Excluded IP** means Intellectual Property Rights subsisting in:
	1. subject matter produced by third parties engaged by a Proponent or any Proponent Associate to primarily provide printing, general administration, project management, communications support, advertising, marketing or financial model auditing services or legal or communications advice, and not forming part of the Augmentation Proposal or incorporated into the Augmentation Proposal; and
	2. any off the shelf computer software used by or on behalf of a Proponent or any Proponent Associates to develop the Augmentation Proposal.

**Final Augmentation Proposal** has the meaning given in section 15.2(a).

1. **Initial Augmentation Proposal** has the meaning given in section 2.2(b).
2. **Lead Proponent** has the meaning given in section 2.3(a)(iii).
3. **Margin** means the amount that a party charges for its off-site overheads and administrative, corporate and other like costs and profit, that are directly attributable to the relevant Augmentation.
4. **Milestone** has the meaning given in section 8.2(a).
5. **Permitted Purpose** means, in respect of an Augmentation, the sole purpose of carrying out that Augmentation and the Augmentation Process for that Augmentation.
6. **Phase** has the meaning given to that term in section 15.1(b).
7. **Probity and Process Deed** means the short form deed in the form set out in Appendix 1 to this Schedule.
8. **Project Co Margin** means [#]%. ***[State note to Respondents: to be bid.]***
9. **Project Objectives** means [##].
10. **Proponent** has the meaning given in section 2.3(a).
11. **Proponent Associate** means each of the following persons:
	1. any Associate of a Proponent; and
	2. any Tenderer and its Associates.
12. **Proponent Augmentation Material** means, in respect of an Augmentation:
	1. all Material disclosed or otherwise provided by or on behalf of a Proponent, any Proponent Associate, Project Co or any Project Co Associate to the State or any State Associate, whether before or after execution of the Augmentation Process Deed which is connected with the Augmentation Process or the Augmentation (or any related development) or the involvement of a person with the Augmentation Process or the Augmentation;
	2. all Material prepared or created by or on behalf of a Proponent, any Proponent Associate, Project Co or any Project Co Associate in connection with the Augmentation Process or the relevant Augmentation (or any related development) in the possession or control of Project Co, a Proponent, any Proponent Associate or any Project Co Associate;
	3. all notes, data and other records based on, referring to or incorporating any information referred to in paragraph (a) or (b); and
	4. all copies of the information and those notes, data and other records referred to in paragraphs (a), (b) or (c),

whether or not in tangible, oral or electronic form (however disclosed).

1. **Proponent Group Member** means:
	1. each Proponent;
	2. each company or trust which, directly or indirectly, holds issued shares or units in a Proponent, and is not itself wholly owned by any other person; and
	3. [insert], ***[State note to Respondents: Any other entities and finance companies within Project Co corporate structure]***

and any wholly owned subsidiary of any of them. ***[State note to Respondents: To be tailored to reflect proposed corporate structure based on the successful Respondent's Proposal.]***

**PV Requirements** means the Partnerships Victoria requirements and associated guidance as published on the Partnerships Victoria website at the relevant time.

1. **Services Margin** means [#]%. ***[State note to Respondents: to be bid.]***
2. **Standard Form Project Deed** means the Partnerships Victoria Standard PPP Project Deed applicable to the Augmentation as published on the Partnerships Victoria website at the relevant time.
3. **State Augmentation Documents** means those Augmentation Documents to which the State is a party.
4. **State Augmentation Information** means, in respect of an Augmentation, all Material disclosed or otherwise provided by or on behalf of the State or any State Associate to Project Co, any Project Co Associate, any Proponent or any Proponent Associate whether before or after execution of the Augmentation Process Deed, in connection with the Augmentation Process or the Augmentation, whether or not in tangible, oral or electronic form (however disclosed).
5. **State Brief** means any brief or request for proposal for an Augmentation issued by the State under the Augmentation Process Deed.
6. **Statement of Proposed Augmentation** means, in respect of an Augmentation, a notice issued by the State in accordance with section 2.1(a).
7. **Sunset Date** means the date which is six months after the Date for Contract Close.
8. **Tenderer** means each entity or group of entities bidding in a Tender Process to carry out the whole or any part of the relevant Augmentation, including any debt or equity funding, works or services in respect of the relevant Augmentation.
9. **Tenderer Information** means any Proponent Augmentation Material disclosed, provided, prepared or created by or on behalf of a Tenderer or its Associates.
10. **Tender Process** has the meaning given in section 14.1(a).
11. **Third Party Costs** has the meaning given in section 9.1(d).
12. **Third Party Cost Cap** has the meaning given in section 9.3(d).

## Application of Augmentation principles

### The State acknowledges that Augmentations will vary in size and nature and that not all aspects of the Augmentation Process or all principles for the Augmentation Process Deed will necessarily be applicable to every Augmentation.

### Nevertheless, Project Co must, and must procure that the Proponents:

#### comply with the Augmentation Process; and

#### adopt the principles set out in this Schedule for the Augmentation Process Deed,

unless otherwise agreed by the State.

## Resolution of inconsistency, ambiguity or discrepancy

If, in respect of an Augmentation, there is an inconsistency, ambiguity or discrepancy between this Schedule and the Augmentation Process Deed, then the following order of precedence applies:

### the Augmentation Process Deed; and

### this Schedule.

## References to Proponent, Proponent Associate, Project Co Associate

### Where:

#### this Schedule includes:

##### an obligation imposed on; or

##### a release or promise not to sue or bring a Claim by,

#### a Proponent, Proponent Associate or Project Co Associate; and

#### the Proponent, Proponent Associate or Project Co Associate (as applicable) breaches that obligation or promise not to sue or bring a Claim, or fails to so release,

this will be deemed to be a breach of this Schedule by Project Co, including for the purposes of section 5.2.

### Whether or not it is a Proponent, Project Co is not relieved from any or all of its obligations or Liabilities (whether under this Schedule or otherwise) as a result of a Proponent participating in the relevant Augmentation Process.

# Initiation of an Augmentation Process

## Augmentation proposed by the State

### The State may at any time issue to Project Co a notice entitled "Statement of Proposed Augmentation" which must set out high level details of the proposed Augmentation, and may include (to the extent developed at that time):

#### a description of the proposed Augmentation (including its unique characteristics and reasons for the proposed Augmentation);

#### desired timeframes for the delivery of the proposed Augmentation; and

#### any other information considered relevant by the State,

(together the **Statement of Proposed Augmentation**).

### Following the issue of a Statement of Proposed Augmentation, the State may require Project Co to:

#### submit an initial response to the Statement of Proposed Augmentation which sets out any key issues or risks that Project Co considers may arise in respect of the proposed Augmentation, within the period reasonably specified by the State in the Statement of Proposed Augmentation; and

#### enter into, and procure that:

##### the Proponents; and

##### those Project Co Associates and Proponent Associates (as reasonably nominated by the State),

enter into, a deed substantially in the form of the Probity and Process Deed within 10 Business Days of any such request by the State.

## Augmentation proposed by Project Co

### In circumstances where Project Co is considering submitting an Initial Augmentation Proposal in accordance with this section 2.2, which is not invited by the State, Project Co must meet with the State Representative to explain the proposed Augmentation and must not issue an Initial Augmentation Proposal without first advising the State of its intention to do so at least 20 Business Days prior to issuing the Initial Augmentation Proposal.

### Subject to section 2.2(a), Project Co may submit to the State a notice entitled "Initial Augmentation Proposal" which must consist of a business case for the proposed Augmentation which must include:

#### a description of the proposed Augmentation including any unique characteristics of the proposed Augmentation;

#### the party that Project Co proposes will deliver the Augmentation if not Project Co;

#### the proposed Proponents, including the Lead Proponent and the Delivery Proponent;

#### how the proposed Proponent proposes to run the Augmentation Process and demonstrated ability and team capacity to do so (including a team organisation diagram and details of expertise);

#### an assessment of the anticipated benefits to users of the Project Assets and the State that the Augmentation is expected to generate, including any supporting evidence, and how the proposed Augmentation is in the public interest and will deliver value for money to the State;

#### why the State should undertake the proposed Augmentation as:

##### an Augmentation and not as a Modification (including a Modification proposed by Project Co under clause 35.12);

##### a standard competitive tendering or procurement process; or

##### another procurement process whether or not contemplated in the Project Documents;

#### a high level summary of the scope and requirements (including functional, technical, performance, and maintenance requirements and standards) for the Augmentation;

#### Project Co’s desired timeframe and key milestones for delivery of the proposed Augmentation;

#### an assessment of the anticipated impact that the proposed Augmentation is likely to have (both during construction and after completion) on the Project Assets, the Project Activities and users of the Project Assets;

#### a breakdown between capital expenses and operational expenses of the estimated net costs (net of any cost savings or avoided costs) of the proposed Augmentation;

#### how the proposed Augmentation meets a State project or service need, including alignment with policy and budget priorities;

#### any market sounding;

#### how the proposed Augmentation will be funded (private or public funds) including, if Project Co proposes to procure equity or debt finance and how Project Co proposes to service any such debt or equity;

#### the commercial aspects of the proposed Augmentation, including a high level description of key risks and their allocation;

#### the proposed Augmentation Process Fee;

#### the proposed Augmentation Management Fee;

#### the proposed Augmentation Equity IRR (which must not exceed the Augmentation Equity IRR Cap);

#### where any debt finance for the Augmentation will not be sourced from traditional debt markets, the proposed cost of the debt;

#### a supporting financial model for the proposed Augmentation which identifies the Project Co Margin, Construction Margin, Services Margin, proposed Augmentation Management Fee, Augmentation Process Fee and Augmentation Equity IRR;

#### the required level of State support for the proposed Augmentation (financial and otherwise and whether direct and indirect);

#### details of any consultation undertaken with key State stakeholders in respect of the proposed Augmentation and any State stakeholder support;

#### any proposed contractual strategy for the proposed Augmentation;

#### how competition will be incorporated into the Augmentation Process to the maximum extent practicable and where not possible, the reasons why and other methods that will be used to demonstrate value for money to the State in respect of the proposed Augmentation and to what aspects of the proposed Augmentation they will apply, including any applicable Margin of a Subcontractor;

#### whether the proposed Augmentation has been considered by the State previously;

#### aspects of the proposed Augmentation considered to be the subject of or to contain Intellectual Property Rights;

#### a declaration of any potential or actual conflicts of interest, including all contact between:

##### Project Co, the proposed Proponents, any Project Co Associates or any proposed Proponent Associates; and

##### the State, State Associates or other officials in respect of the proposed Augmentation;

#### how the proposed Augmentation meets the Project Objectives; and

#### any other information necessary or reasonably required by the State to allow the State to conduct an initial assessment of the merits of the proposed Augmentation,

(together the **Initial Augmentation Proposal**).

### Following receipt of an Initial Augmentation Proposal, in addition to its rights under section 4(a), the State may do one or more of the following:

#### require Project Co to enter into and procure that the Proponents, any relevant Project Co Associates, and any relevant Proponent Associates (as reasonably nominated by the State) enter a deed substantially in the form of the Probity and Process Deed within 10 Business Days after receipt of any such request from the State;

#### seek further information or clarification from Project Co to determine whether to proceed with the proposed Augmentation and Project Co must provide, or procure that the relevant Proponent, Project Co Associate or Proponent Associate provides, any such information or clarification as reasonably required by the State within 10 Business Days after receipt of any such request from the State; and

#### require Project Co to prepare or assist the State to prepare a business case for the Augmentation to the level of detail typically required by the State for *Partnerships Victoria* projects and Project Co must prepare, or assist the State to prepare, that business case as reasonably required by the State.

## Augmentation Process Deed

### If following:

#### the issue of a Statement of Proposed Augmentation by the State to Project Co; or

#### the submission of an Initial Augmentation Proposal by Project Co to the State,

the State decides to proceed with an Augmentation Process in respect of the proposed Augmentation, the State and Project Co must agree:

#### the entity who will lead the development of the Augmentation, and be the State's primary point of contact for the Augmentation Process (whether Project Co or another entity) (**Lead Proponent**);

#### the entity who will deliver the Augmentation (whether Project Co or another entity) (**Delivery Proponent**); and

#### the entity that will enter into the Augmentation Process Deed with the State,

(each a **Proponent** and together the **Proponents**).

### The Lead Proponent must have sufficient assets to support the Lead Proponent's obligations and liabilities under the Augmentation Process Deed.

### If Project Co is not a Proponent, the State may also require Project Co to enter into the Augmentation Process Deed for certain specified purposes including:

#### to commit to enter into Augmentation Documents relevant to it;

#### to release the State from liabilities in respect of the Augmentation;

#### to licence Intellectual Property Rights to the State; and

#### to meet the other "Project Co" obligations as specified in this Schedule and included in the Augmentation Process Deed.

### Project Co must negotiate, and procure that the Proponents negotiate, in good faith with the State to agree and execute an Augmentation Process Deed.

### The parties acknowledge and agree that subject to section 1.2, the principles set out in Part 2 will be adopted for the purpose of agreeing an Augmentation Process Deed.

### Where the Proponent comprises more than one entity or is a consortium, the obligations and liabilities of the Proponent under the Augmentation Process Deed must apply to each Proponent jointly and severally unless otherwise agreed by the State.

# Administration, meetings and provision of information

### The parties acknowledge and agree that the Augmentation Process is intended to be an interactive process including regular meetings and exchanges of information between the State and the Proponents (and any other party nominated by the State) to progress an Augmentation.

### The parties acknowledge and agree that the State may, acting reasonably, determine and notify Project Co or the Lead Proponent of the protocols which will govern the Augmentation Process and Project Co must comply and procure that the Proponents, Project Co Associates, and the Proponent Associates comply with such protocols.

### Without limiting section 3(a) or section 3(b), Project Co acknowledges and agrees that at any time during an Augmentation Process, the State may (acting reasonably) request Project Co:

#### to attend meetings in respect of the Augmentation, including making available appropriately qualified personnel of any relevant Project Co Associate, Proponent, or Proponent Associate, to attend such meetings; and

#### to provide to the State and State Associates, any information, data and documents,

and Project Co must, and must procure that the relevant Project Co Associates, Proponents and Proponent Associates, attend those meetings at the time requested and provide that requested information, data and documents to the State within 10 Business Days after receipt of the request to do so from the State (or such longer period agreed between the parties acting reasonably taking into account the nature of such request).

### Where there are multiple Proponents, the Lead Proponent or another Proponent nominated by the Proponents must act on behalf of all Proponents in communications with the State so that the State has a single point of contact in respect of the Augmentation.

# State's rights and discretions

### Notwithstanding any other term of this Deed, the State may elect:

#### not to proceed with the Augmentation Process in respect of the proposed Augmentation; or

#### not to consider any proposed Augmentation the subject of an Initial Augmentation Proposal,

and will advise Project Co and the Lead Proponent (if not Project Co) accordingly.

### If the State notifies Project Co under section 4(a) that it does not intend to proceed with the Augmentation Process in respect of a proposed Augmentation, then Project Co acknowledges and agrees that:

#### the Augmentation Process will come to an end in respect of that proposed Augmentation;

#### other than to the extent expressly provided in any Augmentation Process Deed, any Probity and Process Deed or this Deed, Project Co will have no Claim against the State in respect of that proposed Augmentation, and Project Co will procure that no Project Co Associate, Proponent or Proponent Associate makes any Claim against the State in respect of that proposed Augmentation; and

#### the State may elect at any time:

##### to perform all or any part of the proposed Augmentation itself;

##### to engage a State Associate to perform all or any part of the proposed Augmentation;

##### to engage any Project Co Associate, Proponent, or Proponent Associate directly to perform all or any part of the proposed Augmentation;

##### to issue a Modification Order or a Modification Request in relation to the proposed Augmentation; or

##### to take any other action it deems fit in respect of the proposed Augmentation.

# Payment of Project Co

## No payment prior to Augmentation Process Deed

Project Co acknowledges and agrees that it will not make and will procure that no Project Co Associate, Proponent or Proponent Associate makes any Claim against the State or any State Associate in connection with a proposed Augmentation or Augmentation Process including for payment of any costs or expenses incurred by Project Co, any Project Co Associate, any Proponent or any Proponent Associate in connection with the proposed Augmentation or Augmentation Process where such costs and expenses are incurred prior to the execution of an Augmentation Process Deed.

## Indemnity

Without limiting clauses 43.1, 43.2 and 43.5, and subject to clause 43.6 and clause 43.11, Project Co indemnifies the State and each State Associate from and against any Claim or Liability suffered or incurred by the State or relevant State Associates arising in connection with:

### any breach of this Schedule by Project Co;

### any breach by Project Co, a Project Co Associate, Proponent or a Proponent Associate of a Probity and Process Deed; or

### any Wilful Misconduct by Project Co, a Project Co Associate, a Proponent or a Proponent Associate in respect of an Augmentation or an Augmentation Process,

prior to execution of an Augmentation Process Deed in respect of the relevant Augmentation or Augmentation Process.

Part 2 – Augmentation Process Deed Principles

# General

This Part 2 sets out the principles that, subject to section 1.2, are required to be included in the Augmentation Process Deed for an Augmentation.

# Summary of content of Augmentation Process Deed

## Content

The Augmentation Process Deed must address the following in respect of a proposed Augmentation:

### the State's objectives for the proposed Augmentation;

### the protocols and principles for ongoing interaction between Project Co, the Project Co Associates, the Proponents and the Proponent Associates on the one hand and the State and relevant State Associates on the other hand for the purposes of the Augmentation Process;

### the process and timetable for the procurement of the proposed Augmentation, in accordance with the principles set out in section 8;

### the Phases (if any) for procurement of the Augmentation, in accordance with the principles set out in section 15.1;

### the Milestones that are to be achieved in order to achieve Contract Close by the Date for Contract Close, in accordance with the principles set out in section 8.2;

### the form, content and timing of any State Brief in accordance with the principles set out in section 10;

### the contractual model for delivery of the proposed Augmentation in accordance with the principles set out in section 11;

### the commercial principles that apply to the funding and financing solution for the Augmentation, including the process and protocols for conducting a competitive Tender Process for any financial accommodation to be procured for the proposed Augmentation, in accordance with the principles set out in sections 13 and 15;

### the strategy for engaging with the Financiers to procure consents in accordance with the principles set out in section 12;

### the budget for the Augmentation Process Fee and Third Party Costs and the Augmentation Process Fee Cap and any Third Party Cost Cap in accordance with the principles set out in section 9;

### the required content and process for preparing the Augmentation Proposal in accordance with the principles in section 15;

### the Augmentation Equity IRR Cap, if the Augmentation Equity IRR is not otherwise to be determined by a Tender Process in accordance with the principles in sections 13 and 14;

### any Augmentation Management Fee in accordance with the principles set out in section 13.3;

### any Margin payable to any Subcontractor for the Augmentation, determined in accordance with section 13.4 where the work to be undertaken by the Key Subcontractor has not been the subject of a Tender Process;

### the circumstances in which the Augmentation Process Deed may be terminated by the State, in accordance with the principles set out in section 18;

### the consequences if the Augmentation Process Deed is terminated prior to Contract Close as set out in sections 18.2 to 18.7;

### the Intellectual Property Rights of the parties if the Augmentation Process Deed is terminated without achieving Contract Close as set out in section 19; and

### indemnities and releases that Project Co and the Proponents must provide in favour of the State and the State Associates in respect of the Augmentation Process and proposed Augmentation, in accordance with the principles set out in section 20.

## Terms of the Project Deed

### The following clauses of this Deed must be incorporated into the Augmentation Process Deed, mutatis mutandis, unless otherwise agreed (which may include where the subject matter of the clause is already dealt with in a Probity and Process Deed):

#### clause 2 (General rules of interpretation);

#### clause 7.2 (State Representative);

#### clause 7.3 (Project Co Representative);

#### clause 10 (Project and Site Information);

#### clause 15.1 (State's right to enter, inspect and test);

#### clause 15.3 (State audits);

#### clause 16 (Work health and safety and Quality Assurance System);

#### clause 55 (Confidential Information and privacy); and

#### clause 62 (Notices and bar to Claims).

### The parties may agree that other provisions of this Deed will be incorporated into any Augmentation Process Deed.

# Augmentation timetable and administration

## Timetable

### The Augmentation Process Deed must include the agreed process and timetable for the Augmentation Process.

### The Augmentation Process Deed must provide that the Proponents will carry out the activities to be undertaken by them in respect of the Augmentation Process in accordance with Best Industry Practices.

## Milestones

### The Augmentation Process Deed will specify agreed milestones in order to achieve Contract Close by the Date for Contract Close (each a **Milestone** and together the **Milestones**).

### The Proponents and the State may agree that, on the achievement of certain Milestones, the Proponent will be entitled to payment of Third Party Costs in accordance with the principles set out in section 9.

### The Augmentation Process Deed may require the Proponents to:

#### achieve Milestones by a specified date; or

#### use their best endeavours to achieve Milestones by a specified date,

depending on the nature of the Milestone and the importance of timing in the context of the Augmentation.

### The Augmentation Process Deed should include a Date for Contract Close as a Milestone.

## Working groups

### The Proponents and the State may agree to use working groups to progress matters relating to the relevant Augmentation and the Augmentation Process.

### The Proponents and the State must agree on the requirements for any such working groups and set out such requirements in the relevant Augmentation Process Deed.

## Proponent Augmentation Material

The Proponent must, and must procure that the Proponent Associates:

### provide to the State all Proponent Augmentation Material as required by the State; and

### if required by the State, make available the appropriate personnel to explain the content of the Proponent Augmentation Material.

## Audit

The Proponents must allow, and must procure that the Proponent Associates allow, the State and the State Associates to review and undertake audits to enable the State to verify compliance with the Augmentation Process Deed and any amounts payable under the Augmentation Process Deed.

# Augmentation Process payments

## General principles

### Except as otherwise expressly provided in an Augmentation Process Deed, none of the Proponents or the Proponent Associates are entitled to make any Claim against the State or any State Associate in connection with the Augmentation Process or any Augmentation including for payment for any costs or expenses incurred in connection with the Augmentation Process or any Augmentation.

### The State may agree to pay one of Project Co, a Proponent, or a management company used by the Proponents for its internal costs properly and reasonably incurred in managing the Augmentation Process (the **Augmentation Process Fee**), provided that if Project Co or the Management Services Contractor is managing the Augmentation Process, the Augmentation Process Fee may only be an amount that represents the material additional resources to those identified in the relevant Bid Project Plans that are required by Project Co or the Management Services Contractor (as applicable) to manage the Augmentation Process.

### Any Augmentation Process Fee payable by the State must be set out in the Augmentation Process Deed.

### The State may agree to reimburse:

#### design fees and other third party fees as agreed by the State on the basis that the service provided by the relevant third party will result in the State obtaining valuable Material which may be used by the State (**Design Fees**); and

#### professional advisor fees and any other third party fees not contemplated in section 9.1(d)(i) (**Advisor Fees**),

that are properly and reasonably incurred, payable by any of the Proponents and are directly attributable to the Augmentation Process including preparation of the Augmentation Proposal (together, **Third Party Costs)**.

### Any Third Party Costs payable to any of the Proponents must be set out in the Augmentation Process Deed.

### Subject to sections 18.5 and 18.7, the Proponents and the Proponent Associates will not be entitled to any fees, margins, contingencies, costs, expenses or returns in connection with the Augmentation Process or an Augmentation for the period prior to Contract Close other than:

#### any Augmentation Process Fee; and

#### any Third Party Costs,

except to the extent otherwise expressly agreed by the State.

### The Augmentation Process Fee and Third Party Costs will only be payable:

#### to one Proponent (on behalf of all Proponents) rather than multiple Proponents; and

#### where the Proponents have:

##### diligently pursued the development of the Augmentation;

##### acted in good faith in the development of the Augmentation; and

##### taken reasonable and proper steps to develop the Augmentation.

### The Augmentation Process Fee and Third Party Costs must be calculated on an open book basis.

## Timing and reimbursement of the Augmentation Process Fee

### The Augmentation Process Fee must not include costs that are already included or allowed for in the Service Payment or for any resources which are already required to be committed to the Project.

### The Proponents must prepare a detailed budget for the Augmentation Process Fee to be included in the Augmentation Process Deed including details of the budget allocated to the relevant Proponent.

### The Augmentation Process Deed must include a separate cap on the amount payable by the State for the Augmentation Process Fee that must not be exceeded (**Augmentation Process Fee Cap**).

### The Augmentation Process Fee Cap can only be adjusted for material changes to the proposed Augmentation made by the State after the execution of the Augmentation Process Deed that are the equivalent to Modifications under this Deed and require material additional resourcing by the relevant Proponent, and then only by an amount agreed by the State, acting reasonably.

### Subject to section 9.2(f) and section 9.3, none of the Proponents or Proponent Associates will be entitled to make any Claim against the State or any State Associates for any costs or expenses incurred by any of them in connection with the Augmentation (including Augmentation Process Fees) for the period prior to Contract Close.

### The Augmentation Process Fee will only be payable on termination of the Augmentation Process Deed prior to Contract Close in accordance with section 18.5 and must not exceed the relevant Augmentation Process Fee Cap.

### The Augmentation Process Fee will not be payable on Contract Close as it is the State's expectation that any such costs will be included as part of the Final Augmentation Proposal provided by the Proponent. Any Augmentation Process Fee included as part of the Final Augmentation Proposal provided by the Proponent must not exceed the relevant Augmentation Process Fee Cap.

## Timing and reimbursement of the Third Party Costs

### The Third Party Costs must not include any amounts payable as an Augmentation Process Fee or that would be payable by Project Co or a Project Co Associate during the Term notwithstanding the Augmentation.

### Third Party Costs will typically include consultant costs and must not include any Key Subcontractor costs or Tenderer costs except where agreed by the State and where:

#### the Augmentation requires significant investment by Key Subcontractors or Tenderers; and

#### payment of such Third Party Costs will deliver demonstrable value for money to the State.

### The Proponents must prepare a detailed budget for the Third Party Costs to be included in the Augmentation Process Deed including details of the budget allocated to the relevant third party.

### The Augmentation Process Deed must include separate caps on the amount payable by the State for:

#### Design Fees (**Design Fees Cap**); and

#### Advisor Fees,

#### that must not be exceeded (each a **Third Party Cost Cap)**.

### Each Third Party Cost Cap can only be adjusted for material changes to the proposed Augmentation made by the State after the execution of the Augmentation Process Deed that are the equivalent of Modifications under this Deed and require material additional resourcing by the relevant third party and then only by an amount agreed by the State acting reasonably.

### The Proponents must not make, and must procure that no Proponent Associate makes, any Claim against the State or any State Associate for any Design Fees or Advisor Fees incurred by any of them:

#### in connection with the Augmentation for the period prior to Contract Close in excess of the relevant Third Party Cost Cap; or

#### other than in accordance with section 9.3(g) or 9.3(h) (as applicable).

### If the State agrees to pay the Proponents for Design Fees, unless otherwise expressly provided in the Augmentation Process Deed, the State will only pay Design Fees:

#### upon achievement of certain agreed Milestones to incentivise the achievement of those Milestones, provided that:

##### any agreed Milestone payment in respect of Design Fees must be subject to an agreed maximum or capped amount; and

##### the State has received value for money for any such payment, including the licence granted to the State respect of any Intellectual Property Rights in the Proponent Augmentation Material in accordance with section 19; or

#### on termination of the Augmentation Process Deed prior to Contract Close in accordance with section 18.4 or 18.5 (as applicable).

### If the State agrees to pay the Proponents for Advisor Fees, unless otherwise expressly provided in the Augmentation Process Deed, the State will only pay Advisor Fees on termination of the Augmentation Process Deed prior to Contract Close in accordance with section 18.5.

### Third Party Costs must not include any amounts that should be included in the Augmentation Management Fee or Augmentation Process Fee.

### Third Party Costs will not be payable on Contract Close as it is the State's expectation that any such costs, to the extent not already paid, will be included as part of the Final Augmentation Proposal provided by the Proponent. Any Third Party Costs included as part of the Final Augmentation Proposal provided by the Proponent must not exceed the balance of the relevant Third Party Cost Cap (taking into account any Third Party Costs already paid).

## Open book

Where this Schedule or the Augmentation Process Deed refers to calculations or payments being made on an "open book basis" this means:

### providing a reasonable breakdown of the calculation of all relevant preliminaries, labour, consultant fees, equipment, materials, subcontract, finance and other costs, Margins and receipts of any Proponent and any Proponent Associate (as applicable) in a clear and transparent manner;

### using best endeavours to provide a breakdown of any amounts payable under any relevant subcontracts; and

### providing other information reasonably requested by the State including reasonably available source documents including invoices and timesheets required to verify such calculation.

# State Brief

The parties must agree and set out in the Augmentation Process Deed:

### the Milestone upon which the State Brief may be issued by the State; and

### the form and content of any such State Brief which, unless otherwise agreed by the parties (acting reasonably having regard to the nature and the extent of the Augmentation), should be consistent with the then current Partnerships Victoria Request for Proposal template as published on the Partnerships Victoria website.

# Contractual model

### The form of contract for the delivery of an Augmentation will be:

#### as specified in the State Brief; or

#### otherwise agreed between the parties.

### Any contract proposed for the delivery of the Augmentation must have terms that are consistent with the risk allocation in this Deed or the Standard Form Project Deed save that as between the State on the one hand and the Proponents and Project Co on the other hand, the Proponents and Project Co will bear all interface risk between the Project and the Augmentation.

# Existing Financiers

### The Proponents must procure any consents required from the Financiers for the relevant Augmentation (including in relation to entry into the Augmentation Documents).

### The State's sole and exclusive remedy in respect of a breach by the Proponents of section 12(a) is the right to terminate under section 18.2.

### The Proponents must develop a strategy for engaging with the Financiers, or to refinance debt if applicable, which must be approved by the State and included in the Augmentation Process Deed.

# Augmentation Price and Funding

## Funding for the Augmentation

### Value for money is a key consideration for the State in evaluating and agreeing to an appropriate funding and financing solution for an Augmentation.

### The commercial principles that will apply to the funding and financing solution for an Augmentation, which are to be reflected in the Augmentation Documents, must be agreed by the parties and must be consistent with those required by the PV Requirements.

### Any funding or financing required for a proposed Augmentation must be procured in accordance with section 14 and included in the Final Augmentation Proposal.

## Augmentation Equity IRR

### If the Augmentation will include the contribution of equity and, in accordance with the principles set out in section 14.1, the parties determine not to undertake a Tender Process to procure the equity for the Augmentation, the Augmentation Equity IRR Cap must be included in the Augmentation Process Deed as the maximum possible Augmentation Equity IRR.

### Unless the State materially changes the risk profile of the Augmentation from that identified in this Deed, or the State otherwise agrees, any Augmentation Equity IRR included in the Final Augmentation Proposal must not exceed the Augmentation Equity IRR Cap.

## Augmentation Management Fee

### The Augmentation Process Deed must set out any agreed Augmentation Management Fee which will be determined and calculated on an open book basis using methods that will be able to demonstrate value for money to the State in respect of the proposed Augmentation Management Fee, including benchmarking in respect of comparable reference projects.

### Unless the State materially changes the scope of the Augmentation or otherwise agrees, any Augmentation Management Fee included in the Final Augmentation Proposal must not exceed the Augmentation Management Fee included in the Augmentation Process Deed.

### The Augmentation Management Fee must not include any Third Party Cost or any part of the Augmentation Process Fee.

### The Proponents will not be entitled to be paid any amount in respect of the Augmentation Management Fee if the Augmentation Process Deed is terminated prior to Contract Close.

### The Augmentation Management Fee will only be payable to one Proponent (on behalf of all Proponents) rather than multiple Proponents.

## Subcontractor Margin

### Subject to section 13.3:

#### if, in accordance with the principles set out in section 14.1, the parties determine to procure a Subcontractor to undertake any part of the Augmentation without a Tender Process, the Margin of that Subcontractor for the work it will undertake as part of the Augmentation must be included in the Augmentation Process Deed and must not exceed the Construction Margin and the Services Margin (as applicable); and

#### the Margin of Project Co for the work it will undertake as part of the Augmentation must be included in the Augmentation Process Deed and must not exceed the Project Co Margin.

### Unless the State materially changes the scope of the Augmentation Process Deed, or otherwise agrees, any Margin payable to a Subcontractor or Project Co for the Augmentation included in the Augmentation Process Deed must be included in the Final Augmentation Proposal, unadjusted and must not exceed the Construction Margin, Services Margin or Project Co Margin (as applicable).

# Key principles for Tender Processes

## General principles

### Subject to section 14.1(b), the Proponents must undertake a competitive tender process (**Tender Process**) for all parts of the relevant Augmentation other than the management of the delivery of the Augmentation (in respect of which the Augmentation Management Fee is payable).

### In only exceptional circumstances and if the Proponents are able to demonstrate to the satisfaction of the State that it is not possible or will not deliver the State value for money to run a competitive Tender Process for any part of an Augmentation, the Proponents must propose another process, and demonstrate that the outcome of this alternative process will deliver at least the same value for money to the State as a competitive Tender Process.

### If the State agrees to an alternative process to a Tender Process for the procurement of any part of the Augmentation (**Alternative Process**):

#### any such Alternative Process must be set out in the Augmentation Process Deed and must be undertaken on a transparent and open book basis. Any proposed rates or margins must not exceed relevant rates or margins set out in the Change Compensation Principles;

#### subject to section 14.1(c)(iii), the price outcome of the Alternative Process will not be subject to further adjustment, other than to the extent of a change in scope of the Augmentation agreed to by the State; and

#### if the State notifies the Proponents that it is dissatisfied with the Alternative Process (including the progress of the Alternative Process) or the outcome of the Alternative Process, the Proponents must cease the Alternative Process (if not already concluded) and instead undertake a Tender Process for the relevant part of the Augmentation. If the State notifies the Proponents that it is dissatisfied with the outcome of such Tender Process, the Proponents will be bound to offer the outcome of the preceding Alternative Process (to the extent concluded).

### Without limiting sections 9.2 and 9.3, none of the Proponents or the Proponent Associates are entitled to make any Claim against the State or any State Associate in connection with a Tender Process or any Alternative Process for an Augmentation.

## Tender Process principles

A clear structure and process must be set out in the Augmentation Process Deed for each Tender Process in accordance with the following principles:

### the Proponents will be responsible for conducting the Tender Process, including preparing the tender strategy, timetable, evaluation plan and assessment criteria;

### the Tender Process must be completed on a competitive, arm's length, transparent and open book basis;

### tender submissions must meet the State Brief requirements for the relevant Augmentation;

### Tenderers must demonstrate value for money;

### selection of a preferred Tenderer must be based on competent and fully detailed analysis of the respective tender submissions;

### there must be no bias and no perception of bias;

### the Tender Process must be fair and be seen to be fair to all participants;

### the State may appoint a probity auditor (which may be the State Probity Auditor as defined in the Probity and Process Deed) or require the Proponents to appoint a probity advisor to oversee the Tender Process;

### confidentiality must be upheld at all stages of the Tender Process and effective security measures must be maintained to safeguard the Tenderer Information from unauthorised access or use;

### key decisions must be well documented such that the results are transparent and auditable in accordance with any applicable Laws and Standards;

### the State must approve each Tender Process before it is commenced by the Proponents;

### the State must have full visibility of each Tender Process, including:

#### any Tenderer Information and any material or communications produced by any Proponent or any Proponent Associate in relation to the Tender Process; and

#### a right to attend and actively participate in all negotiations and meetings with Tenderers;

### all tender documentation must be approved by the State prior to release and incorporate any State requirements, including with respect to probity requirements and maintaining the integrity of the Tender Process;

### the Proponents must ensure that there are no conflicts of interest or perceived conflicts of interest associated with the Tender Process, or if there is a potential or perceived conflict of interest, that appropriate and customary safeguards acceptable to the State (acting reasonably) are in place to manage that potential or perceived conflict of interest;

### Related Bodies Corporate or shareholders of Project Co, any Proponent, Proponent Associate, any Key Subcontractor or any Significant Subcontractor can only tender for packages the subject of a Tender Process if approved by the State;

### following receipt of tenders, the Proponents must recommend a preferred Tenderer and provide the State with a detailed explanation of the reasons for its recommendation or proposal (including a comparative analysis of the tender received from a preferred Tenderer and each other tender received);

### the Proponents must not select a preferred Tenderer without State approval;

### the State may reject the Proponents' preferred Tenderer;

### at the request of the State from time to time, the Proponents must provide any documents, records and other information that the State reasonably requires to evidence compliance by the Proponents with the requirements of the Augmentation Process Deed, including providing any tender submitted by a Tenderer, communications with the Tenderers and final contracts (including downstream tenders and contracts);

### the Proponents must notify the State immediately if they become aware of any suspected or actual breach of any Tender Process arrangements and take all reasonable steps to prevent or stop any such suspected or actual breach of the Tender Process arrangements; and

### the Proponents must maintain records of the Tender Process and all decisions made by the Proponents or any Proponent Associates during the Tender Process to allow for independent auditing of the Tender Process and review and consideration by the State, including:

#### minutes of meetings;

#### the Tenderer Information;

#### correspondence sent by or to Project Co, any Proponent, any Project Co Associates or any Proponent Associate in relation to the Tender Process or the Augmentation;

#### papers presented to any working group referred to in this Schedule; and

#### assessment reports.

# Augmentation Proposal

## Phases

### The Augmentation Proposal may be submitted in stages or updated as set out in the Augmentation Process Deed, however a Final Augmentation Proposal must be submitted by the Proponents in accordance with the Augmentation Process Deed and the State Brief (or any other process agreed by the parties) which will be evaluated by the State for the purposes of determining whether to implement the relevant Augmentation.

### The parties must agree on the phases for the procurement of the Augmentation, which may include the preparation and submission by Project Co or the Proponents (as the case may be) of Augmentation Proposal(s) and evaluation of Augmentation Proposals by the State, negotiation of the Augmentation Documents and the achievement of Contract Close (each a **Phase** and together the **Phases**).

## Key inclusions in the Augmentation Proposal

### The Proponents must submit a Final Augmentation Proposal in a form and with sufficient information to enable the State to determine whether or not to proceed with the Augmentation, including:

#### being in the form, and containing the information and documents, required by the Augmentation Process Deed and the State Brief (or any other process as agreed by the parties);

#### being of a quality and level of detail similar to that which would be submitted as part of a proposal in response to a request for proposal for a Partnerships Victoria PPP project as set out in the Partnerships Victoria Request for Proposal template as published on the Partnerships Victoria website at the relevant time;

#### any offers received from a Tender Process for the relevant Augmentation;

#### a financial model for the Augmentation in a form and containing a level of detail similar to that required by the Partnerships Victoria Request for Proposal template as published on the Partnerships Victoria website at the relevant time;

#### drafts of all Augmentation Documents proposed to be entered into in connection with the relevant Augmentation;

#### being a binding offer that is capable of acceptance by the State on its terms; and

#### being submitted by the Proponents to the State in accordance with the timetable set out in the State Brief (or any other process as agreed by the parties),

(together the **Final Augmentation Proposal**).

### The State may ask clarification questions in respect of any Augmentation Proposal and the Proponents must, and must procure that the relevant Proponent Associates, promptly consider and respond to any such clarification question.

## Commercial Development

### The Proponents must, in their Augmentation Proposal, include full details of any commercial development they propose to deliver under, or in conjunction with, the relevant Augmentation (**Commercial Development**).

### The State will take no risk on delivery of the Commercial Development or on any interface risk between such Commercial Development and the relevant Augmentation or the Project.

# Evaluation and negotiation of Final Augmentation Proposals

### Provided all Milestones which are required to have been achieved prior to the State evaluating the Final Augmentation Proposal have been achieved (or waived by the State in accordance with the Augmentation Process Deed), the State will undertake its evaluation and value for money assessment of the Final Augmentation Proposal.

### The State will determine how, or the principles for how, the Final Augmentation Proposal will be evaluated by the State subject to any express provisions or criteria in relation to such evaluation set out in the relevant Augmentation Process Deed or State Brief.

### The evaluation criteria for the Final Augmentation Proposal will be of a quality and level of detail similar to the evaluation criteria contained in the request for proposal for a Partnerships Victoria PPP Project as set out the Partnerships Victoria Request for Proposal template as published on the Partnerships Victoria website at the relevant time.

### Subject to section 17, if the State evaluates the Final Augmentation Proposal as acceptable, the Proponents must negotiate in good faith to finalise the Augmentation Documents, in order to achieve Contract Close by the Date for Contract Close.

# Privileges and discretions of the State

### In addition to its rights set out elsewhere in the Augmentation Process Deed, including its right to terminate the Augmentation Process Deed at any time, the State will have the right to:

#### accept or reject all or part of an Augmentation Proposal (whether or not an Augmentation Proposal meets the evaluation criteria);

#### change the Augmentation (substantially or otherwise);

#### suspend the Augmentation Process at any time or the further participation of any Proponent or any Proponent Associate in the Augmentation Process;

#### request additional information from the Proponents in connection with the Augmentation, whether it has been submitted to the State or not and the Proponents must provide, and must procure that any relevant Proponent Associate provides, that information requested within 10 Business Days after receipt of request from the State;

#### adopt different procedures for, or methods of, evaluation, negotiation, discussion or engagement with the Proponents and may alter these procedures and methods at any time;

#### impose additional obligations on any Proponent or any Proponent Associate if the State reasonably determines that those additional obligations are necessary or desirable to ensure (or to ensure the perception of) confidentiality, competitiveness or probity with respect to the Augmentation Process or the Augmentation, and the Proponents and Proponent Associates (as applicable) must comply with those obligations; and

#### take such other action as it deems fit in relation to the Augmentation Process.

### Notwithstanding the terms of any Augmentation Process Deed and this Deed, the State Augmentation Documents are not binding on the State until they are executed by all parties to them and then only to the extent stated in the State Augmentation Documents.

# Termination of the Augmentation Process Deed

## Termination of the Augmentation Process Deed

Unless otherwise expressly provided, an Augmentation Process Deed must terminate on the earlier of:

### Contract Close; or

### the termination of the Augmentation Process Deed in accordance with section 18.2 or section 18.3.

## Termination by State for failure to pass Milestone or for Proponent default or abandonment

Unless otherwise expressly provided in an Augmentation Process Deed, the State may terminate any Augmentation Process Deed if:

### the Proponents fail to achieve, or fail to use their best endeavours to achieve (as applicable), a Milestone by the required date set out in the relevant Augmentation Process Deed subject to any cure period or extension of time regime agreed by the parties and set out in the relevant Augmentation Process Deed;

### the Sunset Date has been reached and Contract Close has not been achieved as a result of a failure of the Proponent to comply with the Augmentation Process Deed;

### any Proponent does not otherwise comply with the terms of the Augmentation Process Deed and the Proponents do not Cure such non-compliance (or, where the non-compliance is not capable of Cure, overcome the effects of non-compliance) within the time period set out in the Augmentation Process Deed, or where no time period is set out in the Augmentation Process Deed such reasonable period determined by the State and notified to the Proponents in a notice from the State alleging the non-compliance;

### an Augmentation Proposal submitted by the Proponents to the State is not substantially in accordance with the terms of the Augmentation Process Deed or State Brief; or

### the Proponents abandon the development of, or decide not to proceed with, an Augmentation.

## General termination

The State may terminate the Augmentation Process Deed under this section 18.3 at any time for any reason.

## Payment on termination for failure to pass Milestone or for Proponent default

If an Augmentation Process Deed is terminated under section 18.2:

### the State will pay the Proponents, subject to its rights of set-off set out in the Augmentation Process Deed, to the extent not already paid, all Design Fees properly and reasonably incurred in accordance with the Augmentation Process Deed up to the date of termination which, together with all other Design Fees that have been paid by the State to the date of termination, must not exceed the Design Fees Cap; and

### the State will not pay the Proponents any other amount, including any amount in respect of the Augmentation Process Fee or any other Third Party Costs.

## Payment under general termination right

If an Augmentation Process Deed is terminated under section 18.3, the State will pay the Proponents, subject to its rights of set-off set out in the Augmentation Process Deed:

### to the extent not already paid, all Third Party Costs properly and reasonably incurred in accordance with the Augmentation Process Deed up to the date of termination which, together with all other Third Party Costs that have been paid by the State to the date of termination, must not exceed the Third Party Cost Cap; and

### the amount of the Augmentation Process Fee properly and reasonably incurred in accordance with the Augmentation Process Deed up to the date of termination which must not exceed the Augmentation Process Fee Cap.

## Payment on termination for Contract Close

### If an Augmentation Process Deed is terminated under section 18.1(a), no amount will be payable by the State to the Proponents other than in accordance with the State Augmentation Documents; and

### the Proponents and Project Co will have no Claim against the State in respect of that proposed Augmentation, and will procure that no Project Co Associate or Proponent Associate makes a Claim, against the State in respect of that proposed Augmentation, other than to the extent expressly provided in the State Augmentation Documents.

## State's rights after termination

If an Augmentation Process Deed is terminated (other than due to Contract Close occurring):

### the Proponents and Project Co will have no Claim against the State in respect of that proposed Augmentation, and will procure that no Project Co Associate or Proponent Associate makes a Claim, against the State in respect of that proposed Augmentation, other than to the extent expressly provided in the Augmentation Process Deed, any Probity and Process Deed or this Deed;

### the State may elect, other than to the extent expressly provided in the Augmentation Process Deed:

#### not to proceed with the proposed Augmentation;

#### to perform all or any part of the proposed Augmentation itself;

#### to take over any Tender Process or any part of a Tender Process from that point, and conduct the Tender Process on its own;

#### to engage a State Associate to perform all or any part of the proposed Augmentation;

#### to engage a Proponent, a Proponent Associate or a Project Co Associate directly to perform all or any part of the proposed Augmentation;

#### issue a Modification Order or a Modification Request in relation to the relevant proposed Augmentation; or

#### to take any other action it deems fit;

### the Proponents and Project Co must, and must ensure that the Proponent Associates and Project Co Associates, provide the State and any State Associate with all reasonable assistance required by the State in exercising its rights under section 18.7(b);

### the Proponents and Project Co must procure the novation of any agreements entered into by Project Co, the Proponents, any Project Co Associate or any Proponent Associate in relation to the relevant Augmentation as the State may nominate, to the State or any nominee of the State and the terms of the Augmentation Process Deed and any such agreement must be drafted to facilitate those novations;

### any indemnity provided in accordance with section 20 will not apply in respect of a Tender Process or part of a Tender Process that is taken over by the State, for the period of time after which it is taken over by the State, but without limiting any right or entitlement arising in respect of a Tender Process prior to the State taking over such Tender Process;

### this Deed will continue to apply (whether or not the State takes over all or any part of a Tender Process); and

### the Proponents will be entitled to be paid their reasonable internal and external costs in complying with their obligations under section 18.7(c) to be determined on an open book basis.

# Intellectual Property

## State Augmentation Information licence

Under the Augmentation Process Deed, the State will grant to the Proponents an irrevocable, royalty free, non-exclusive licence to exercise the Intellectual Property Rights in the State Augmentation Information solely for the Permitted Purpose which:

### terminates upon termination of the Augmentation Process Deed;

### may not be sub-licensed other than to a Proponent Associate; and

### is subject to such conditions as the State may reasonably impose from time to time.

## Proponent Augmentation Material

### Subject to section 19.3(b), under the Augmentation Process Deed the Proponents must, and must procure that the Proponent Associates, grant to the State a perpetual, irrevocable, non-exclusive, worldwide, royalty free licence (with a right to sublicense) to exercise all Intellectual Property Rights in the Proponent Augmentation Material for any purposes of or in connection with:

#### (i) reviewing, assessing and deciding whether to proceed with the Augmentation (or any modified version of it which is being pursued by a Proponent);

#### (ii) to the extent those Intellectual Property Rights are Background IP (other than Excluded IP) subsisting in subject matter forming part of the Augmentation, using, dealing with, maintaining, remedying defects or omissions in, modifying and developing the subject matter in which that Background IP subsists; and

#### (iii) in respect of all other such Intellectual Property Rights (other than Excluded IP):

##### A. the procurement, funding, financing, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of the Augmentation (or any part of the Augmentation), or any other augmentation in Victoria or reviewing, assessing and deciding whether to proceed with the Augmentation (or any modified version of it which is being pursued by the Proponent);

##### B. the procurement, funding, financing, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of any thing (including infrastructure, equipment, computer hardware, computer software and computer or telecommunications systems) which interfaces or interoperates with, or which is (in whole or in part) located under, on, above or adjacent to any infrastructure implemented in connection with the Augmentation (or any modified version of it which is being pursued by the Proponent); or

##### C. any other project, infrastructure, augmentation, initiative or thing undertaken by or on behalf of the State within Victoria.

### Under the Augmentation Process Deed, the Proponents will warrant to the State that:

#### no rights (including Intellectual Property Rights) of any person will be infringed or breached by:

##### the use of the Proponent Augmentation Material; or

##### the use or exercise of any Intellectual Property Rights licensed to the State pursuant to this section 19,

by the State, its Associates or any or any person nominated or authorised by the State; and

#### it owns, or has the authority to grant the rights granted in accordance with this section 19 in connection with the Intellectual Property Rights licensed under this section 19 and neither:

##### the exercise of those rights by the State, its Associates or any person nominated or authorised by the State; nor

##### the possession or use of any materials in which those rights subsist in connection with the Augmentation Process Deed,

in accordance with the Augmentation Process Deed will give rise to any Liability on the part of the State, its Associates or any person nominated or authorised by the State, including to pay any compensation (including any royalty) to any person, or will give rise to a right entitling any person to make a Claim against the State, its Associates or any person nominated or authorised by the State for any attribution or acknowledgment or rectification in relation to the Intellectual Property Rights or any materials in which they subsist.

## State's further Intellectual Property Rights

### Nothing in this Deed, any Augmentation Process Deed or any Augmentation Document prevents the State or any State Associate from:

#### exercising the Intellectual Property Rights in the State Augmentation Information;

#### exercising the Intellectual Property Rights created by the State or any State Associate as part of the Augmentation Process (without limiting section 19.3(b), other than to the extent they are Intellectual Property Rights in the Proponent Augmentation Material); and

#### using any know-how generated through its participation in the Augmentation Process (without limiting section 19.3(b), other than to the extent they are Intellectual Property Rights in the Proponent Augmentation Material).

### Subject to section 19.3(c), if an Augmentation Process Deed is terminated other than due to Contract Close occurring, the Proponents must, and must procure that the Proponent Associates, grant a worldwide, permanent, perpetual, irrevocable, transferable, royalty-free, sub licensable licence to the State to exercise:

#### the Intellectual Property Rights in all of the Proponent Augmentation Material, other than Excluded IP, for any lawful purpose required by the State; and

#### to the extent that the Intellectual Property Rights referred to in section 19.3(b)(i) cannot reasonably be exercised without Material in which Background IP subsists, the Intellectual Property Rights in that Background IP.

### The licence granted under section 19.3(b) in respect of an Augmentation will arise on the date of termination of the Augmentation Process Deed.

### In order to ensure the State has the full benefit of the licence granted under section 19.3(b), the Proponents must, and must procure that the relevant Proponent Associates for a period of 6 months after the termination of the Augmentation Process Deed:

#### provide all reasonable access required by the State to the Proponents' and the Proponent Associates' databases, programmes and other software pursuant to which the Intellectual Property Rights in the Proponent Augmentation Material (other than Excluded IP) were created, including in native application, well ordered and in a manner that is able to be readily used; and

#### make available, and continue to make available, to the State an appropriate number of resources, having sufficient skills, qualifications and experience for the purposes of the State being able to understand and fully utilise the Intellectual Property Rights in the Proponent Augmentation Material (other than Excluded IP).

### The Proponents and the Proponent Associates (as applicable) will be entitled to be paid their reasonable internal and external costs properly and reasonably in complying with their obligations under section 19.3(d) to be determined on an open book basis.

# Liability and Indemnity

### Unless otherwise agreed by the State, the Augmentation Process Deed must require the Proponents to indemnify the State and each State Associate from and against any Claim or Liability suffered or incurred by the State or any State Associate arising in connection with:

#### any breach of the Augmentation Process Deed by the Proponents;

#### any Wilful Misconduct by any Proponent or any Proponent Associate in relation to an Augmentation or an Augmentation Process;

#### any Tender Process undertaken in connection with an Augmentation, except to the extent the State takes over a Tender Process pursuant to section 18.7(b)(iii) (and without limiting the Proponents' liability for acts or omissions occurring prior to the State taking over the Tender Process); or

#### any Commercial Development proposed to be undertaken in connection with an Augmentation.

### Unless otherwise agreed by the State, the Proponents' liability to the State under section 20(a) should not be limited by any exclusion of the Proponents' liability for Indirect or Consequential Loss.

# Set-off

The Augmentation Process Deed must provide that the State may deduct from any amount due and payable by the State to a Proponent under the Augmentation Process Deed:

### any amount due and payable by the Proponent or any Proponent Group Member to the State; and

### the amount of any Claim that the State may have against the Proponent or any Proponent Group Member.

Appendix 1 – Probity and Process Deed

Probity and Process Deed

**Contents**

[1. Definitions and interpretation iv](#_Toc165464124)

[1.1 Definitions iv](#_Toc165464125)

[1.2 Interpretation viii](#_Toc165464126)

[2. Process Matters x](#_Toc165464127)

[2.1 Single point of contact x](#_Toc165464128)

[2.2 Contact with the State and Government Stakeholders x](#_Toc165464129)

[2.3 Clarifications and other information xi](#_Toc165464130)

[2.4 Meetings between State and the Proponent xi](#_Toc165464131)

[3. Stakeholder and community engagement xii](#_Toc165464132)

[4. Probity xiii](#_Toc165464133)

[4.1 State Probity Advisor xiii](#_Toc165464134)

[4.2 Co-operate xiii](#_Toc165464135)

[4.3 Proponent probity checks xiv](#_Toc165464136)

[4.4 Responsibility for probity xiv](#_Toc165464137)

[5. Management of Associates xiv](#_Toc165464138)

[6. Conflicts xv](#_Toc165464139)

[6.1 Conflicts xv](#_Toc165464140)

[6.2 Proponent must make enquiries xv](#_Toc165464141)

[7. Security and control of State Confidential Information xv](#_Toc165464142)

[7.1 Security xv](#_Toc165464143)

[7.2 Assistance in proceedings xv](#_Toc165464144)

[7.3 State’s right to terminate holding of State Confidential information xv](#_Toc165464145)

[7.4 Consequences of right to terminate holding of State Confidential Information xv](#_Toc165464146)

[7.5 Effect of such termination on accrued rights xvi](#_Toc165464147)

[7.6 Additional obligations unaffected xvi](#_Toc165464148)

[7.7 Confidentiality obligations continue after assignment or termination xvi](#_Toc165464149)

[8. Use and disclosure of State Confidential Information by the Proponent xvi](#_Toc165464150)

[8.1 Use of State Confidential Information xvi](#_Toc165464151)

[8.2 Disclosure of State Confidential Information xvii](#_Toc165464152)

[8.3 Recipient obligations xvii](#_Toc165464153)

[8.4 Exclusion from obligation of confidentiality xviii](#_Toc165464154)

[8.5 Disclosure required by Law xviii](#_Toc165464155)

[9. Disclaimer and exclusion of Liability - State Confidential Information xviii](#_Toc165464156)

[9.1 State Confidential Information xviii](#_Toc165464157)

[9.2 State not liable xx](#_Toc165464158)

[9.3 Liability unaffected xx](#_Toc165464159)

[10. Disclaimer and exclusion of Liability - Proponent Information xx](#_Toc165464160)

[11. Indemnity xxi](#_Toc165464161)

[12. Augmentation Proposal xxi](#_Toc165464162)

[12.1 Cost of Augmentation Proposal xxi](#_Toc165464163)

[12.2 Proprietary information xxi](#_Toc165464164)

[12.3 Discretion of the State xxii](#_Toc165464165)

[12.4 No warranty as to feasibility xxiii](#_Toc165464166)

[12.5 Intellectual Property Rights xxiii](#_Toc165464167)

[12.6 Next steps xxv](#_Toc165464168)

[13. Termination xxv](#_Toc165464169)

[14. Notices xxv](#_Toc165464170)

[14.1 General xxv](#_Toc165464171)

[14.2 Time of receipt xxv](#_Toc165464172)

[14.3 Address for Notices xxvi](#_Toc165464173)

[15. Delegation xxvi](#_Toc165464174)

[15.1 Right to delegate xxvi](#_Toc165464175)

[15.2 Notice of delegation xxvi](#_Toc165464176)

[15.3 Revocation or amendment of delegation xxvi](#_Toc165464177)

[15.4 No limitation of State obligations xxvi](#_Toc165464178)

[15.5 Unfettered discretion xxvii](#_Toc165464179)

[16. Publicity xxvii](#_Toc165464180)

[17. Survival of deed xxvii](#_Toc165464181)

[18. General Provisions xxvii](#_Toc165464182)

[18.1 No partnership or joint venture xxvii](#_Toc165464183)

[18.2 Waiver xxviii](#_Toc165464184)

[18.3 Indemnity held on trust xxviii](#_Toc165464185)

[18.4 Damages not an adequate remedy xxviii](#_Toc165464186)

[18.5 Cost of performing obligations xxviii](#_Toc165464187)

[18.6 Entire Agreement xxviii](#_Toc165464188)

[18.7 Successors xxviii](#_Toc165464189)

[18.8 Further assurance xxviii](#_Toc165464190)

[18.9 Benefit of deed xxviii](#_Toc165464191)

[18.10 Counterparts xxix](#_Toc165464192)

[18.11 Governing Law and jurisdiction xxix](#_Toc165464193)

[Schedule 1 – Particulars xxxi](#_Toc165464194)

Probity and Process Deed

**Date**

**Parties** **Department of [xxxx]** (**xxx**) for and on behalf of the Crown in right of the State of Victoria (**State**)

and

**Proponent**

***[Note: Proponent may not be Project Co. Where not Project Co, consider whether Project Co should also be a party to this Deed or an Associate to the Proponent on a project specific basis]***

**Background**

1. The State has required the Proponent to enter into this deed in accordance with the Augmentation Process Schedule.
2. This deed sets out terms and conditions in relation to probity, confidentiality, stakeholder engagement and other process matters applicable to the Proponent in relation to the Augmentation Proposal and the Augmentation.
3. ***[Note: To be completed on a project specific basis.]***

**Operative provisions**

* 1. Definitions and interpretation
		1. Definitions

In this deed:

1. **Associate:**
	1. in the case of the State, means any Government Agency and any officer, employee, agent, contractor, consultant, nominee, licensee or adviser of any Government Agency (other than the Proponent or any of its Associates) or the State;
	2. in the case of the Proponent, means any Related Body Corporate, and any officer, employee, agent, contractor, consultant, nominee, financier, insurer, licensee or adviser of the Proponent or a Related Body Corporate that is involved in the Augmentation Process, the Augmentation or the Project; and
	3. in respect of any other entity, means any Related Body Corporate, and any officer, employee, agent, contractor, consultant, nominee, financier, insurer, licensee or adviser of that entity or a Related Body Corporate that is involved in the Augmentation Process, the Augmentation or the Project.
2. **Associate Obligations** has the meaning given in clause 5(a).
3. **Augmentation** has the meaning given in the Particulars.
4. **Augmentation Process** has the meaning given in the Augmentation Process Schedule.
5. **Augmentation Process Deed** has the meaning given in the Augmentation Process Schedule.
6. **Augmentation Process Schedule** has the meaning given in theProject Deed.
7. **Augmentation Proposal** has the meaning given in the Augmentation Process Schedule.
8. **Background IP** means Intellectual Property Rights in:
	1. subject matter in existence at the date of this deed (other than where such subject matter has been developed for the Project); or
	2. subject matter developed independently of the development of the Augmentation Proposal, the Augmentation and the Project.
9. **Business Day** has the meaning given in the Project Deed.
10. **Claim** means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made under this deed, at Law or for specific performance, restitution, payment of amounts (including damages), an extension of time or any other form of relief.
11. **Communications and Stakeholder Engagement Plan** has the meaning given in clause 3(a).
12. **Disclosure Requirements** means the requirement to disclose information under or in accordance with any one or more of the following:
	1. the *Freedom of Information Act 1982* (Vic);
	2. the *Ombudsman Act 1973* (Vic);
	3. the requirements of Parliamentary accountability;
	4. the disclosure requirements of the Victorian Auditor General;
	5. in the case of any Minister of the Crown, to fulfil his or her duties of office;
	6. the requirement to satisfy public accountability or transparency obligations of a Government Agency or the requirements of Government policy (including concerning Partnerships Victoria projects);
	7. the requirement to satisfy any conditions of a funding agreement with the Commonwealth Government or any other disclosure requirements of the Commonwealth Government or Infrastructure Australia;
	8. in accordance with policies of the State or any Government Agency; or
	9. to satisfy any other recognised public requirement.
13. **Engagement Schedule** has the meaning given in clause 3(a)(ii).
14. **Excluded IP** means Intellectual Property Rights subsisting in:
	1. subject matter produced by third parties engaged by a Proponent or any of its Associates to primarily provide printing, general administration, project management, communications support, advertising, marketing or financial model auditing services or legal or communications advice, and not forming part of the Augmentation Proposal or incorporated into the Augmentation Proposal; and
	2. any off the shelf computer software used by or on behalf of a Proponent or any of its Associates to develop the Augmentation Proposal.
15. **Government Agency** means a government (including State, Commonwealth or municipal) or any governmental, semi-governmental, judicial, municipal, statutory, public or administrative entity, agency or authority and includes a Minister of the Crown (in any right), a statutory corporation, a self-regulatory authority established under statute or a stock exchange (wherever created or located).
16. **Government Stakeholder** has the meaning given in clause 2.2(a).
17. **GST** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
18. **Indemnified Person** has the meaning given in clause 12.5(c).
19. **Intellectual Property Rights** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:
	1. inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;
	2. literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;
	3. registered and unregistered trademarks and service marks, including goodwill in the business concerned in the relevant goods and/or services;
	4. trade, business or company names;
	5. internet domain names; and
	6. proprietary rights under the Circuit Layouts Act 1989 (Cth),

whether created or in existence before or after the date of this deed.

1. **Law** has the meaning given in the Project Deed.
2. **Liability** means any debt, obligation, claim, action, cost, (including legal costs, deductibles or increased premiums) expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:
	1. actual, prospective or contingent; or
	2. currently ascertainable or not,

and whether under or in any way in connection with this deed or arising at Law.

1. **Notice** has the meaning given in clause 14.1.
2. **Other Party** has the meaning given in clause 18.10.

**Particulars** means Schedule 1.

1. **Party** means:
	1. the State; and
	2. the Proponent,

and **Parties** will mean all of such entities.

1. **Permitted Purpose** has the meaning given in clause 8.1(a)(i).
2. **Project Deed** has the meaning given in the Particulars***.***
3. **Proponent** means theproponent identified in the Particulars.
4. **Proponent Information** means the following, whether or not in tangible or electronic form (however disclosed):
	1. all information directly or indirectly disclosed by or on behalf of the Proponent or its Associates to the State or any of its Associates, whether before or after execution of this deed which is connected directly or indirectly with the Augmentation, the Augmentation Proposal or the involvement of a person with the Augmentation Proposal or the Augmentation;
	2. all notes, data and other records based on, referring to or incorporating any information referred to in paragraph (a); and
	3. all copies of the information and those notes, data and other records referred to in paragraphs (a) or (b),

but excludes:

* 1. information which was in the public domain before the date of this deed;
	2. information which comes into the public domain after the date of this deed, except through disclosure by the State or any of its Associates in contravention of this deed or any other obligations of confidence.
1. **Proponent’s Representative** means each of the persons identified in the Particulars or such other person which the Proponent notifies the State from time to time is the Proponent’s representative in relation to the Augmentation.
2. **Recipient** means the Proponent, each Associate of a Proponent and any person to whom the Proponent or an Associate of the Proponent discloses, or otherwise provides access to, State Confidential Information.
3. **Recipient Obligations** has the meaning given in clause 8.3(a).
4. **Related Body Corporate** has the meaning given to it in the *Corporations Act 2001* (Cth).
5. **State Confidential Information** means the following, whether or not in tangible or electronic form (however disclosed):
	1. all information directly or indirectly disclosed by or on behalf of the State or its Associates to the Proponent or its Associates, whether before or after execution of this deed which is connected directly or indirectly with any Statement of Proposed Augmentation, the Augmentation Proposal or the Augmentation or the involvement of a person with the Augmentation Proposal or the Augmentation;
	2. all other information in relation to or connected with the State or its Associates in relation to any Statement of Proposed Augmentation, the Augmentation Proposal or the Augmentation in the possession or control of the Proponent or its Associates;
	3. the fact that the Proponent has had, will have, or are having discussions with the State or its Associates in connection with the Augmentation Proposal or the Augmentation;
	4. the fact, details or terms of any discussions, negotiations or agreements (including in relation to timing or process) between the State or any of its Associates and the Proponent or any of its Associates in relation to any Statement of Proposed Augmentation, the Augmentation Proposal or the Augmentation;
	5. all material disclosed in presentations by or on behalf of the State or any of its Associates in connection with any Statement of Proposed Augmentation, the Augmentation Proposal or the Augmentation;
	6. all notes, data and other records based on, referring to or incorporating any information referred to in paragraphs (a) to (e); and
	7. all copies of the information and those notes, data and other records referred to in any of paragraphs (a) to (e),

but excludes:

* 1. information which was in the public domain before the date of this deed; or
	2. information which comes into the public domain after the date of this deed, except through disclosure by the Proponent or any of its Associates in contravention of this deed or any other obligations of confidence.
1. **State’s Representative** means each of the persons identified in the Particulars or such other person whom the State notifies the Proponent from time to time is the State’s representative in relation to the Augmentation Proposal and the Augmentation.
2. **State Probity Advisor** means the probity advisor of the State designated as such and as advised to the Proponent from time to time.
3. **Statement of Proposed Augmentation** has the meaning given in the Augmentation Process Schedule.
	* 1. Interpretation

In this deed:

* + - 1. (**headings**): headings and subheadings (including those of the type in this paragraph) are for convenience only and do not affect interpretation;
			2. (**number and gender**): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
			3. (deed and Schedule references): a reference to:
				1. a party, clause, Schedule, Annexure or Attachment is a reference to a party, clause, Schedule, Annexure or Attachment of or to this deed; and
				2. a section or part is a reference to a section or part of the Schedule or the PSDR (as applicable) in which they are located,

#### unless expressly provided otherwise;

* + - 1. (**Appendix**): a reference to an Appendix is a reference to an Appendix of the PSDR;
			2. (**document as amended**): a reference to the Project Deed, or to any other deed, agreement, document or instrument means a reference to the Project Deed, or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
			3. (**Party**): a reference to a Party includes that Party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation, and in the case of the trustee, includes a substituted or additional trustee;
			4. (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, a body corporate, a Government Agency, an association or a joint venture (whether incorporated or unincorporated), a partnership, an Entity and a trust (including a trustee);
			5. (**replacement person**): a reference to a person appointed under this deed or any other Project Document includes that person's replacement or delegate appointed in accordance with this deed or other Project Documents (as applicable);
			6. (**Standards**): unless otherwise expressly stated, a reference to a Standard includes that Standard as amended or updated from time to time;
			7. (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes:
				1. all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation; and
				2. consolidations, amendments, re‑enactments and replacements;
			8. (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
			9. (**"includes"**): "include", "includes" and "including" will be read as if followed by the phrase "(without limitation)";
			10. (**"or"**): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
			11. (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
			12. (**"$"**): a reference to "$", AUD or dollar is to Australian currency;
			13. (**Business Day**): if the day on or by which anything is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day;
			14. (**time**):a reference to time is a reference to time in Melbourne, Victoria, Australia;
			15. (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
			16. (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
			17. (**absolute discretion**): unless the State or the State Representative is expressly required under this deed to act reasonably in exercising a power, right or remedy, the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
			18. (**"may"**): without limiting clause 1.2(v), unless the State or the State Representative is expressly required under this deed to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
			19. (**no bias against drafter**): each provision will be interpreted without disadvantage to the Party who (or whose representative) drafted or proposed that provision; and
			20. ("**in writing**") where a Party has to give consent or agreement in accordance with this deed, that consent or agreement will be deemed not to be given unless it is given in writing.
	1. Process Matters
		1. Single point of contact

Except to the extent that the State’s Representative otherwise agrees, if the Proponent or any of its Associates wishes to communicate with the State or any of its Associates concerning the Augmentation Proposal or the Augmentation, it must communicate by or through the Proponent's Representative to the State’s Representative.

* + 1. Contact with the State and Government Stakeholders
			1. The Proponent acknowledges and agrees that it must not make contact with:
				1. any Government Agency or officer or member thereof;
				2. the State or any of its Associates; or
				3. Members of Parliament or their staff,

(each a **Government Stakeholder**) to discuss any aspect of the Augmentation Proposal or the Augmentation except with the prior written consent of the State's Representative, which may be given or withheld at the State's Representative's discretion and on such terms and conditions as the State's Representative determines.

* + - 1. Without limiting the State Representative’s discretion under clause 2.2(a), the Parties acknowledge and agree that the State's Representative may impose the following conditions on its consent under clause 2.2(a):
				1. the State may require the Proponent to give the State prior notice of the topic of the proposed meeting with a Government Stakeholder, including to enable the appropriate key personnel to be present;
				2. the State may determine the location of any meeting; and
				3. the State or its nominated representative may elect to be present at any meeting that relates to any Statement of Proposed Augmentation, the Augmentation Proposal or the Augmentation between the Proponent (or any of its Associates) and a Government Stakeholder.
			2. The meeting procedures set out in clause 2.4 apply to any meeting between the Proponent (or any of its Associates) and a Government Stakeholder as if the meeting was between the State and the Proponent, and the State's Representative may attend any such meeting.
		1. Clarifications and other information
			1. At any time, the State may, through the State's Representative, request:
				1. clarification in respect of any part of the Proponent Information, the Augmentation Proposal or the Augmentation;
				2. additional information concerning any of the Proponent Information, the Augmentation Proposal or the Augmentation;
				3. information in relation to the preparation of any part of the Proponent Information; or
				4. information as to the basis on which the Proponent may be prepared to undertake any part of the Augmentation.
			2. If a request referred to in clause 2.3(a) is made by the State, the Proponent must use reasonable endeavours to provide such clarification or other information within such reasonable time period as may be specified by the State.
		2. Meetings between State and the Proponent
			1. The State may, through the State's Representative, invite the Proponent or any of its Associates to attend meetings with the State or its Associates to discuss issues arising in relation to any Statement of Proposed Augmentation, the Augmentation Proposal or the Augmentation. The Proponent may, through the State's Representative, request meetings with the State or its Associates for the same reasons.
			2. If the State requests a meeting or consents to a request for a meeting:
				1. the State will chair the meeting;
				2. the Party that requested the meeting must prepare an agenda of items to be discussed;
				3. the meetings must be conducted in accordance with all probity and other procedures and protocols advised by the State from time to time in writing;
				4. the State may decline to discuss any or all issues raised by the Proponent or any of its Associates; and
				5. questions and responses at any meeting may be recorded in writing or by any other means on behalf of the State, copies of which may, at the State's discretion, be provided to the Proponent.
			3. The State Probity Advisor may, at the request of the State, attend any meetings between the State or its Associates and the Proponent or its Associates in relation to any Statement of Proposed Augmentation, the Augmentation Proposal or the Augmentation.
			4. Nothing which occurs at a meeting between the State or its Associates and the Proponent or its Associates may be relied on by the Proponent or its Associates unless subsequently confirmed in writing by the State.
	1. Stakeholder and community engagement
		+ 1. If required by the State, promptly after the date of this deed the Parties must agree a strategic communications and stakeholder engagement plan in respect of the further development of the Augmentation, which must:
				1. set out the principles, objectives, protocols and roles of the Parties in relation to communications and stakeholder and community engagement;
				2. include a requirement for the Proponent to prepare a two week forward looking stakeholder and community engagement schedule (**Engagement Schedule**) for the State's review and approval, and a requirement for the Proponent to submit an updated Engagement Schedule to the State on a weekly basis for the State's review and approval; and
				3. include requirements for meeting record keeping and regular weekly written reports of meeting outcomes,

(**Communications and Stakeholder Engagement Plan**).

* + - 1. The Proponent may engage with local councils, the community or any other stakeholder in relation to the Augmentation Proposal and the Augmentation:
				1. to the extent that the engagement, the content of the discussion or forum and the meeting procedure:

is in accordance with the latest Engagement Schedule which has been approved by the State in accordance with the Communications and Stakeholder Engagement Plan; and

otherwise complies with the Communications and Stakeholder Engagement Plan; or

* + - * 1. to respond to a direct enquiry from a local council, the community or other stakeholder following, and in respect of, an engagement described in clause 3(b)(i), provided that the content of the communication is consistent with the requirements of the Communications and Stakeholder Engagement Plan,

and in any such engagement may discuss information which is in the public domain (except through disclosure by the Proponent or any of its Associates in breach of this deed or any other obligations of confidence).

* + - 1. If the State does not require the Parties to agree a Communications and Stakeholder Engagement Plan or the Parties cannot agree a Communications and Stakeholder Engagement Plan, the Proponent must not communicate with local councils, the community or any other stakeholder in respect of the Augmentation Proposal or the Augmentation without the prior consent of the State.
			2. The State may, in its discretion, direct the Proponent to cancel any meeting, or to not discuss certain content at any meeting, with any local council, stakeholder or the community.
			3. The State may, in its discretion, direct the Proponent to not have any contact with a tenderer or potential tenderer for another State project which has an interface with the Augmentation, in respect of the Augmentation Proposal or the Augmentation.
			4. The Proponent must comply with any direction given by the State (including under clauses 3(d) and 3(e) in respect of the Proponent's engagement with any local council, the community or any other stakeholder in respect of the further development of the Augmentation Proposal or the Augmentation.
			5. The State may attend any meeting or forum between the Proponent and any local council, the community or any other stakeholder in respect of the Augmentation Proposal or the Augmentation.
			6. For the avoidance of doubt, the requirements of this clause 3 do not apply to communications between the Proponent and an Associate of the Proponent or where clause 8.5 or clause 16 applies.
	1. Probity
		1. State Probity Advisor
			1. The State may appoint a State Probity Advisor who will, among other matters, be responsible for oversight of the process and procedures of the Proponent’s conduct in relation to the Augmentation and who may, at the request of the State, be present at any meeting between the State or its Associates and any member of the Proponent or its Associates in relation to the Augmentation.
			2. Each Proponent must provide (or procure) access for the State Probity Advisor to the records, books, accounts and personnel of the Proponent and its Associates, for the purpose of verifying any matters connected with probity.
		2. Co-operate

The Proponent must fully co-operate with and do all things reasonably necessary or desirable to enable the State Probity Advisor to effectively and expeditiously carry out the State Probity Advisor's functions and duties.

* + 1. Proponent probity checks

The Proponent consents to probity checks being conducted at any time. Such probity checks may include:

* + - 1. investigations into commercial structure, business and credit history;
			2. prior contract compliance;
			3. compliance with this deed and any plans and protocols required by this deed;
			4. any criminal records or pending charges;
			5. interviews with any referees nominated; and
			6. research into any relevant activity that is or might reasonably be expected to be the subject of regulatory investigation.
		1. Responsibility for probity

Nothing in this clause 4 detracts from or limits the Proponent's obligations or responsibilities for complying with and ensuring its Associates comply with all probity requirements which relate to the Augmentation.

* 1. Management of Associates
		+ 1. The Proponent must procure that each of its Associates complies with the requirements of clauses 2, 3(b) to 3(f), 4, 6, 7, 8, 9, 12.3(a)(x), 12.3(c), 16, 17 and 18 as though it were the Proponent (**Associate Obligations**).
			2. Other than in respect of agents, contractors, advisors or consultants engaged by the Proponent prior to the date of this deed, as set out in the Particulars, the Proponent must not engage an agent, contractor, advisor or consultant in relation to the Augmentation without notifying the State of:
				1. the identity of the agent, contractor, advisor or consultant; and
				2. the reasons for the engagement,

prior to the proposed engagement.

* + - 1. Without limiting clause 5(a), the Proponent must provide to the State a draft of the form of deed poll or other contractual arrangements it proposes that its Associates will enter into for the purposes of ensuring that the Proponent is able to comply with the Proponent’s confidentiality obligations under this deed, for the State's approval (not to be unreasonably withheld).
			2. The Proponent must:
				1. notify the State immediately if it becomes aware of a suspected or actual breach of the Associate Obligations;
				2. immediately take all reasonable steps to prevent or stop any such suspected or actual breach; and
				3. provide all reasonable assistance requested by the State from time to time regarding enforcement of the Associate Obligations (including assisting the State in commencing, conducting and settling enforcement proceedings, at the Proponent’s cost payable on demand).
	1. Conflicts
		1. Conflicts

The Proponent:

* + - 1. must immediately notify the State upon becoming aware of any actual or potential conflict of interest in respect of the Proponent or an Associate of the Proponent in relation to any Statement of Proposed Augmentation, the Augmentation Proposal or the Augmentation; and
			2. must comply, and must ensure that any such Associate complies, with the State's reasonable requirements in relation to the actual or potential conflict of interest.
		1. Proponent must make enquiries

The Proponent must require its Associates to inform the Proponent of any actual or potential conflict of interest as described in clause 6.1(a).

* 1. Security and control of State Confidential Information
		1. Security

The Proponent must:

* + - 1. establish and maintain effective security measures to safeguard State Confidential Information from access or use not authorised by this deed;
			2. subject to the terms of this deed, keep State Confidential Information under each relevant Recipient’s control; and
			3. establish and maintain effective and auditable procedures for ensuring compliance with this deed.
		1. Assistance in proceedings

The Proponent must provide all reasonable assistance requested by the State in relation to any proceedings the State may take against any person for unauthorised use, copying or disclosure of State Confidential Information, or failure to comply with the provisions of this deed.

* + 1. State’s right to terminate holding of State Confidential information

The State may terminate the entitlement of any Recipient to hold State Confidential Information at any time with immediate effect, by giving written notice to that effect to the Proponent.

* + 1. Consequences of right to terminate holding of State Confidential Information
			1. On termination of the entitlement of a Recipient to hold State Confidential Information under clause 7.3, without limitation to the other rights of the State:
				1. the right of that Recipient to use State Confidential Information ceases; and
				2. the Proponent must immediately procure that, except to the extent prohibited by Law from doing so, and subject to clause 7.4(b), such State Confidential Information is, at the State’s option:

returned to the State;

destroyed and that destruction certified to the State;

destroyed and a representative of the State is permitted to witness that destruction; or

dealt with in some other manner nominated by the State.

* + - 1. The Proponent may request the State's consent to an exception to the Proponent's obligations under clause 7.4(a)(ii) where the State Confidential Information is incorporated into board papers and associated documents, is proposed to be retained for corporate governance purposes or as part of the professional duties of advisors or forms part of information technology backup. The State must not unreasonably withhold or delay its consent to such a request from the Proponent. Any such consent will not limit the obligations of the Proponent, or the rights of the State, under this clause 7 (other than clause 7.3), in relation to that State Confidential Information.
		1. Effect of such termination on accrued rights

Termination of the entitlement to hold State Confidential Information pursuant to clause 7.3 does not affect any accrued rights or remedies the State may have.

* + 1. Additional obligations unaffected

The obligations under this deed are in addition (and without prejudice) to any other obligations of confidence or with respect to probity which the Recipient may have whether at Law, in equity, by statute or otherwise.

* + 1. Confidentiality obligations continue after assignment or termination

The obligations of confidentiality under this deed continue to apply after assignment, transfer or termination of any right to hold State Confidential Information under this deed.

* 1. Use and disclosure of State Confidential Information by the Proponent
		1. Use of State Confidential Information
			1. The Proponent must:
				1. not use the State Confidential Information for any purpose whatsoever except the permitted purpose of further developing the Augmentation Proposal or the Augmentation (**Permitted Purpose**);
				2. keep confidential all State Confidential Information (subject to disclosure permitted under clause 8.2 or 8.3); and
				3. not copy or duplicate (or allow the copying or duplication of) any State Confidential Information except for the purposes of the use or disclosure of State Confidential Information provided for in clause 8.2.
			2. The State acknowledges and agrees that the Proponent will not have breached clause 8.1(a)(ii) by:
				1. communicating with the State’s Representative concerning the Augmentation Proposal or the Augmentation;
				2. providing clarifications and other information to the State in accordance with clause 2.3;
				3. submitting the Augmentation Proposal to the State or the State’s Representative; or
				4. making contact with a Government Stakeholder to discuss any aspect of the Augmentation Proposal or the Augmentation in circumstances permitted by clause 2.2.
			3. The Proponent must establish appropriately robust internal policies regarding restrictions on access to and the transfer, storage and use of information (including State Confidential Information) in order to ensure compliance with clause 8.1(a).
		2. Disclosure of State Confidential Information

The Proponent must only disclose State Confidential Information to:

* + - 1. Recipients specifically nominated by the State; or
			2. any Recipient who:
				1. has a need to know (and only to the extent that each has a need to know) the State Confidential Information for the Permitted Purpose; and
				2. is aware that the State Confidential Information must be kept confidential and may only be used for the Permitted Purpose.
		1. Recipient obligations

The Proponent must, at its own expense:

* + - 1. ensure, at all times, that each Recipient complies with clauses 7, 8 and 9 as though it were the Proponent (**Recipient Obligations**);
			2. notify the State immediately if it becomes aware of a suspected or actual breach of the Recipient Obligations or any unauthorised disclosure, copying or use of State Confidential Information;
			3. immediately take all reasonable steps to prevent or stop any such suspected or actual breach or unauthorised disclosure or use; and
			4. provide all reasonable assistance requested by the State from time to time regarding enforcement of the Recipient Obligations (including assisting the State in commencing, conducting and settling enforcement proceedings, at the Proponent’s cost payable on demand).
		1. Exclusion from obligation of confidentiality

The obligations of confidentiality under this deed do not apply to a Recipient to the extent that the obligations apply to information that:

* + - 1. prior to the date of this deed was rightfully known to and in the possession or control of that Recipient and not subject to an obligation of confidentiality on that Recipient;
			2. the State has consented in writing to being disclosed, provided that any such disclosure may only be made in accordance with the terms and conditions (if any) of that consent; or
			3. subject to clause 8.5, that Recipient is required by Law or a binding requirement of a recognised stock exchange to disclose.
		1. Disclosure required by Law
			1. If a Recipient is required by Law or a binding requirement of a recognised stock exchange to disclose any of the State Confidential Information, that Recipient must immediately give notice to the State setting out full details of the circumstances of the proposed use or disclosure and the relevant information proposed to be used or disclosed.
			2. The Recipient must give the State a reasonable opportunity to challenge in a court of law or other appropriate forum whether the proposed use or disclosure is in accordance with clause 8.5(a).
			3. In addition, if the Recipient is or anticipates being legally compelled to disclose State Confidential Information, the Recipient must, at the direction of the State:
				1. assist and take such steps as will permit the State to oppose or restrict that disclosure;
				2. take all lawful measures available to oppose or restrict that disclosure; and
				3. if that disclosure is legally required, make disclosure on terms which preserve the confidentiality of the State Confidential Information to the maximum extent possible.
	1. Disclaimer and exclusion of Liability - State Confidential Information
		1. State Confidential Information

The Proponent acknowledges and agrees that:

* + - 1. the State Confidential Information, and all Intellectual Property Rights in the State Confidential Information (to the extent the State owns, or its Associates own, the Intellectual Property Rights in the State Confidential Information), will remain the property of the State or any of its Associates (as the case may be);
			2. none of the State, its Associates or any other person acting on behalf of or associated with any of them has verified, or has any obligation to verify the accuracy, reliability or completeness of the State Confidential Information;
			3. none of the State, its Associates or any other person acting on behalf of or associated with any of them has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the State Confidential Information;
			4. the Proponent must rely absolutely on its own opinion and professional advice based upon its own independent analysis, assessment, investigation and appraisal in deciding to further develop the Augmentation Proposal or the Augmentation;
			5. the Proponent must not in any way rely upon:
				1. the State Confidential Information; or
				2. a failure by the State or any of its Associates to provide any information to the Proponent or its Associates;
			6. the Proponent must carry out all relevant investigations, make its own review and evaluation, and examine and acquaint itself in respect of:
				1. all aspects of the Augmentation;
				2. the contents, correctness, sufficiency and suitability of the State Confidential Information; and
				3. all information which is relevant to the risks, contingencies and other circumstances related to the Augmentation which could affect their decision to further develop the Augmentation Proposal or the Augmentation,

without reliance on the State or any of its Associates;

* + - 1. no statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by the State, its Associates or any person acting on behalf of or associated with any of them in any prior negotiation, arrangement, understanding or agreement is of any effect except to the extent expressly set out or incorporated in this deed;
			2. none of the State, its Associates or any other person acting on behalf of or associated with any of them is under any obligation to:
				1. notify the Proponent or any of its Associates or provide any further information to the Proponent or any of its Associates if it becomes aware of any inaccuracy, incompleteness or change in the whole or any part of the State Confidential Information; or
				2. update the whole or any part of the State Confidential Information, although, the State or any of its Associates may do so at their sole discretion; and
			3. the acknowledgements under this clause 9.1 are in addition to and, to the extent not inconsistent, do not replace the terms and conditions already agreed to or accepted by the Proponent or its Associates when receiving the State Confidential Information.
		1. State not liable
			1. None of the State, its Associates, or any person acting on behalf of, or associated with any of them, will have any Liability arising out of or in respect of or in connection with:
				1. any right which the Proponent, any of its Associates, or any person acting on behalf of, or associated with any of them, has (whether at the date of this deed or otherwise) in respect of any alleged misrepresentation or misleading or deceptive conduct on the part of the State, any of its Associates, or any person acting on behalf of, or associated with any of them in providing the State Confidential Information; or
				2. any Statement of Proposed Augmentation, the Augmentation Proposal, the Augmentation or the Augmentation Process (except to the extent expressly stated in the Augmentation Process Deed).
			2. The Proponent must not make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against Liability from the State, any of its Associates, or any person acting on behalf of, or associated with any of them, arising out of or in respect of or in connection with:
				1. any right which the Proponent, any of its Associates, or any person acting on behalf of, or associated with any of them, has (whether at the date of this deed or otherwise) in respect of any alleged misrepresentation or misleading or deceptive conduct on the part of the State, any of its Associates, or any person acting on behalf of, or associated with any of them, in providing the State Confidential Information; or
				2. any Statement of Proposed Augmentation, the Augmentation Proposal, the Augmentation or the Augmentation Process (except to the extent expressly stated in the Augmentation Process Deed).
			3. The Proponent releases the State and its Associates from, and indemnifies the State in respect of, any Claim or Liability referred to in clauses 9.2(a) or 9.2(b).
		2. Liability unaffected

The matters referred to in this clause 9 will not affect:

* + - 1. the Liability and responsibility of the Proponent under this deed or otherwise according to Law; or
			2. the State’s rights against the Proponent under this deed or otherwise according to Law.
	1. Disclaimer and exclusion of Liability - Proponent Information
		+ 1. The Proponent warrants that, on the date of this deed the Proponent Information is accurate in all material respects, and not misleading or deceptive.
			2. The Proponent acknowledges that the State is entering into this deed in reliance on the warranty set out in clause 10(a).
			3. The Proponent warrants on each date that it submits an Augmentation Proposal to the State, the Augmentation Proposal is accurate in all material respects and not misleading or deceptive.
			4. The Proponent must, from the date of this deed until the earlier of the date the Parties enter binding documentation for the Augmentation or this deed is suspended or terminated, notify the State of any inaccuracy or change (other than of a typographical or trivial nature) in the whole or any part of the Proponent Information of which it is or becomes aware and which it has not already informed the State or its Associates.
	2. Indemnity
		+ 1. The Proponent:
				1. acknowledges and agrees that any breach of this deed by the Proponent may cause the State or its Associates to suffer or incur a Liability, and any such breach will entitle the State to make a Claim against the Proponent; and
				2. indemnifies the State and its Associates in respect of any Liability suffered or incurred by the State or its Associates and against any Liability to any person by way of indemnity against, or contribution to, the Liability of that person, arising out of, or in respect of, or in connection with any Claim referred to in clause 11(a)(i).
			2. The Proponent's liability under the indemnity in clause 11(a) will be reduced proportionally to the extent that the relevant Liability was caused by the act or omission of the State or its Associates.
	3. Augmentation Proposal
		1. Cost of Augmentation Proposal

The Proponent agrees that all costs incurred by the Proponent or any of its Associates in connection with any Statement of Proposed Augmentation or the Augmentation Proposal will be borne by the Proponent or its Associates, including any such costs that arise as a result of cancellations, supplements, variations, amendments, clarifications, negotiations, waivers, addenda, suspensions, termination or exclusion made or issued by the State in connection with any Statement of Proposed Augmentation or the Augmentation Proposal, except to the extent otherwise agreed by the State (including in any Augmentation Process Deed).

* + 1. Proprietary information
			1. The State:
				1. acknowledges and agrees that the Proponent Information, and all Intellectual Property Rights in the Augmentation, the Augmentation Proposal or Proponent Information (to the extent the Proponent owns, or its Associates own, those Intellectual Property Rights), will remain the property of the Proponent or its Associates (as the case may be); and
				2. will hold the Proponent Information in confidence except to the extent it:

elects to disclose the whole or any part of the Proponent Information to its Associates for the purpose of reviewing, considering and responding to the Proponent Information; or

is otherwise required to disclose the whole or any part of the Proponent Information in accordance with the Law or the Disclosure Requirements.

* + - 1. If the State elects to disclose the whole or any part of the Proponent Information as permitted under clause 12.2(a)(ii)A, it will ensure that any such recipients are made aware that the Proponent Information is disclosed to them for the purpose of reviewing, considering and responding to the Proponent Information, must be kept confidential and must not be copied, duplicated or disclosed except as required in accordance with the Law or the Disclosure Requirements.
		1. Discretion of the State
			1. In addition to its rights set out elsewhere in this deed, including its right to terminate this deed, the State will have the right to:
				1. enter into or not enter into an Augmentation Process Deed or any other agreement with the Proponent or its Associates in respect of the Augmentation Proposal, the Augmentation or the Augmentation Process;
				2. require the Proponent to enter into an Augmentation Process Deed in accordance with the Augmentation Process Schedule should it wish to proceed with the Augmentation;
				3. accept, reject or refuse to consider the whole or part of the Augmentation Proposal, provided that in the case of part acceptance, that part of the Augmentation Proposal is capable of such partial acceptance;
				4. change the Augmentation (substantially or otherwise);
				5. refuse to consider the Augmentation or the Augmentation Proposal;
				6. withdraw, cancel or change the Statement of Proposed Augmentation or the proposed Augmentation (substantially or otherwise);
				7. not proceed with the Augmentation or the Augmentation Process;
				8. suspend or terminate the Augmentation Process at any time;
				9. suspend or terminate at any time any further participation by the State in its consideration of the Augmentation or the Augmentation Proposal;
				10. require additional information from the Proponent in connection with , any Statement of Proposed Augmentation, the Augmentation or the Augmentation Proposal, and the Proponent must provide the information requested within 10 Business Days after receipt of request from the State;
				11. adopt different procedures for, or methods of, evaluation, negotiation, discussion or engagement for the Proponent, and may alter these procedures and methods at any time;
				12. withdraw, cancel or modify (substantially or otherwise) the Augmentation;
				13. commence public sector delivery of the Augmentation or engage any other party to deliver the Augmentation; and
				14. not attribute any reasons for any actions or decisions taken including in respect of the exercise of any or all of the above mentioned rights.
			2. The Parties agree that the State is not bound to accept the whole or any part of the Augmentation Proposal.
			3. The Proponent must not enquire into the basis of the State’s decisions under clauses 12.3(a) or 12.3(b) and the Proponent represents and warrants that it has no Claim, and will not bring any Claim against the State or any of its Associates arising from or in connection with the exercise or the failure to exercise the rights of the State under clauses 12.3(a) or 12.3(b).
		2. No warranty as to feasibility

The State’s acceptance of the whole or any part of the Augmentation Proposal does not mean that the State or any of its Associates in any way:

* + - 1. warrants or makes any representations as to the feasibility of; or
			2. assumes responsibility for, or has any obligations in relation to the implementation of,

any Statement of Proposed Augmentation, the Augmentation Proposal or the Augmentation, other than as specified in the final contract documentation (if any) to which the State or its Associate, as applicable, may be a party in respect of the Augmentation.

* + 1. Intellectual Property Rights
			1. The Proponent grants (or must procure the grant) to the State a perpetual, irrevocable, non-exclusive, worldwide, royalty free licence (with a right to sublicense) to exercise all Intellectual Property Rights in the Proponent Information (to the extent those Intellectual Property Rights were or are developed or made available in connection with, or subsist in aspects of the Proponent Information relating to, or otherwise arise in connection with, the Augmentation), with effect from the date of this deed, for any purposes of or in connection with:
				1. reviewing, assessing and deciding whether to proceed with the Augmentation Proposal or the Augmentation (or any modified version of it which is being pursued by the Proponent);
				2. to the extent those Intellectual Property Rights are Background IP (other than Excluded IP) subsisting in subject matter forming part of the Augmentation Proposal or the Augmentation, using, dealing with, maintaining, remedying defects or omissions in, modifying and developing the subject matter in which that Background IP subsists; and
				3. in respect of all other such Intellectual Property Rights (other than Excluded IP):

the procurement, funding, financing, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of the Augmentation (or any part of the Augmentation), or any other augmentation in Victoria or reviewing, assessing and deciding whether to proceed with the Augmentation Proposal or the Augmentation (or any modified version of it which is being pursued by the Proponent);

the procurement, funding, financing, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of any thing (including infrastructure, equipment, computer hardware, computer software and computer or telecommunications systems) which interfaces or interoperates with, or which is (in whole or in part) located under, on, above or adjacent to any infrastructure implemented in connection with the Augmentation (or any modified version of it which is being pursued by the Proponent); or

any other project, infrastructure, augmentation, initiative or thing undertaken by or on behalf of the State within Victoria.

* + - 1. The Proponent warrants to the State that:
				1. no rights (including Intellectual Property Rights) of any person will be infringed or breached by:

the use of the Proponent Information; or

the use or exercise of any Intellectual Property Rights licensed to the State by the Proponent pursuant to this deed,

by the State, its Associates or any or any person nominated or authorised by the State, in accordance with this deed; and

* + - * 1. it owns, or has the authority to grant the rights granted in accordance with this deed in connection with the Intellectual Property Rights licensed under this deed and neither:

the exercise of those rights by the State, its Associates or any person nominated or authorised by the State; nor

the possession or use of any materials in which those rights subsist in connection with this deed,

in accordance with this deed will give rise to any Liability on the part of the State, its Associates or any person nominated or authorised by the State, including to pay any compensation (including any royalty) to any person, or will give rise to a right entitling any person to make a Claim against the State, its Associates or any person nominated or authorised by the State for any attribution or acknowledgment or rectification in relation to the Intellectual Property Rights or any materials in which they subsist.

* + - 1. The Proponent indemnifies the State, its Associates and any person nominated or authorised by the State (**Indemnified Persons**) against any Claim or Liability brought against, suffered or incurred by the Indemnified Persons arising in connection with:
				1. any infringement, violation, alleged infringement or alleged violation by the Proponent or its Associates or any Indemnified Person of any rights (including Intellectual Property Rights) of any person; or
				2. any breach of the warranties set out in clause 12.5(b).
		1. Next steps

If the State elects to progress the whole or part of the Augmentation or the Augmentation Proposal (including by requiring the Proponent to enter into an Augmentation Process Deed in accordance with the Augmentation Process Schedule), the Proponent must diligently progress the further development of the Augmentation Proposal and the Augmentation and:

* + - 1. negotiate in good faith;
			2. allocate sufficient resources and time for negotiation; and
			3. cooperate with the State,

in the further development of the Augmentation Proposal and the Augmentation.

* 1. Termination

If the State notifies the Proponent that it has decided not to proceed with the Augmentation Proposal or the Augmentation, this deed will terminate.

* 1. Notices
		1. General

Any notice, demand, consent or other communication (**Notice**) must be, if in writing, signed by or on behalf of the sender, addressed to the intended recipient and:

* + - 1. delivered;
			2. sent by prepaid mail (or if posted to another country, by registered airmail); or
			3. transmitted by facsimile; or
			4. sent by email,

to that recipient’s address, facsimile number or email address specified in clause 14.3 or the last address, facsimile number or email address notified by that recipient to the sender.

* + 1. Time of receipt

A Notice given to a person in accordance with this clause is treated as having been given and received:

* + - 1. in the case of delivery in person, when delivered to the intended recipient or their premises;
			2. in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);
			3. in the case of delivery by facsimile, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination facsimile number or name of the intended recipient and indicating that the transmission has been made without error; and
			4. in the case of delivery by email, the first to occur of:
				1. receipt by the sender of any email acknowledgment from the intended recipient’s information system showing that the Notice has been delivered to the email address of that recipient;
				2. the time that the Notice enters an information system which is under the control of the intended recipient; and
				3. the time that the Notice is first opened or read by an employee or officer of the intended recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or at later than 4.00pm (local time) on a Business Day, the Notice will be taken to have been duly given or made at the start of business on the next Business Day in that place.

* + 1. Address for Notices

The address, facsimile number and email address of each Party is:

* + - 1. the address, facsimile number and email address set out in the Particulars; or
			2. where the intended recipient notifies the sender of another address, facsimile number or email address, the last address or number so notified by that recipient to the sender.
	1. Delegation
		1. Right to delegate

The Proponent acknowledges that the State may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to perform any of its functions, rights and powers under this deed.

* + 1. Notice of delegation

The State must give the Proponent written notice of any delegate so appointed, setting out the delegated functions, rights and powers and including a copy of the relevant instrument of appointment.

* + 1. Revocation or amendment of delegation

Any such delegation may be revoked, changed, delegated, limited or made subject to such conditions as the State determines from time to time. The State must give the Proponent written notice of any such revocation, amendment or other action.

* + 1. No limitation of State obligations

The appointment of a delegate to perform some or all of the functions, rights and powers of the State under this deed will not limit or affect the State’s obligations or Liability under this deed.

* + 1. Unfettered discretion

The Proponent acknowledges and agrees that:

* + - 1. nothing in this deed will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the State to exercise any of its functions and powers pursuant to any Law;
			2. without limiting clause 15.5(a), anything which the State does, fails to do or purports to do pursuant to its functions and powers under any Law or otherwise will not be deemed to be an act or omission by the State under this deed; and
			3. each reference to "the State" in this clause 15.5 will be taken to include a "Government Agency".
	1. Publicity
		+ 1. Without limiting clause 8, the Proponent must not make a media release or other public announcement or statement in relation to the Augmentation or the Augmentation Process without the prior consent of the State, except to the extent it is not possible to comply with this clause 16 while complying with the Law or a binding requirement of a recognised stock exchange, in which case the Proponent must advise the State of the release or announcement as soon as practicable after they (or any one of them) become aware that the release or announcement will be made.
			2. If seeking the State’s consent under clause 16(a), the Proponent must provide a draft of the proposed media release or public announcement or statement to the State.
			3. The State must use its best endeavours to advise the Proponent before making any media release or other public announcement or statement in relation to the Augmentation.
	2. Survival of deed
		+ 1. Subject to clause 17(b), the Parties acknowledge and agree that their obligations under this deed (other than clauses 2, 3, 5(b), 5(c), 12.6 and 13) will survive the termination of this deed or completion of the Augmentation.
			2. Clause 5(a) will survive the termination of this deed or completion of the Augmentation, however in such circumstances the clauses referenced in clause 5(a) will be read so as to exclude any clauses which do not survive the termination of this deed or completion of the Augmentation.
	3. General Provisions
		1. No partnership or joint venture

Except as expressly provided in this deed, nothing contained or implied in this deed will:

* + - 1. constitute or be deemed to constitute a Party as a partner, joint venture, agent or legal representative of any other Party for any purpose; or
			2. create or be deemed to create any partnership, joint venture, agency or trust between the Parties or any of them.
		1. Waiver

Subject to the express provisions of this deed, if the State or one of its Associates fails or delays in exercising or enforcing any right or remedy under this deed, it will not preclude or amount to a waiver of any further exercise or enforcement of that right or remedy or of any other right or remedy under this deed or provided by Law.

* + 1. Indemnity held on trust

The Proponent declares and acknowledges that:

* + - 1. each indemnity and right referred to in this deed in favour of any of the State’s Associates is held on trust by the State for the benefit of any of the State’s Associates from the date of this deed; and
			2. the consent of the State’s Associates referred to in clause 18.3(a) will not be required for any amendment to, or waiver of rights under, this deed.
		1. Damages not an adequate remedy

Each Proponent acknowledges that damages may not be an adequate remedy for the State for any failure by a Proponent or its Associate to comply with clauses 2, 3, 4, 5(a), 7, 8, 9, 10 and 16, and if there is a breach or suspected breach of those clauses by a Proponent or its Associate, the State may seek and is entitled to injunctive or declaratory relief or orders for specific performance.

* + 1. Cost of performing obligations

A Party who has an obligation to do anything under this deed must perform that obligation at its own cost, unless a provision of this deed expressly provides otherwise.

* + 1. Entire Agreement

This deed contains the entire agreement of the Parties with respect to the matters contemplated in this deed. There are no understandings, agreements, warranties or representations (express or implied), with respect to the matters contemplated by this deed except for those referred to in them.

* + 1. Successors

This deed shall be binding upon the Proponent and its successors and assigns and shall enure to the benefit of the State, its successors and assigns.

* + 1. Further assurance

Each Party must sign, execute, deliver and do all such acts and things as may reasonably be required of it to carry out and give full effect to this deed and the rights and obligations of the parties to them.

* + 1. Benefit of deed

The State is entitled to enforce this deed on its own behalf and as trustee on behalf of any Associate of the State even though that Associate is not a party to this deed.

* + 1. Counterparts

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

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

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

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

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

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

* + 1. Governing Law and jurisdiction
			1. This deed will be governed by and construed in accordance with the laws of Victoria.
			2. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

**Executed** as a deed.

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

***[Execution clauses to be inserted.]***

1. – Particulars

|  |  |  |
| --- | --- | --- |
| **Clause**  | **Description** | **Details** |
| 1.1 | "Augmentation" |  |
| 1.1 | "Project Deed" |  |
| 1.1 | "Proponent" |  |
| 1.1 | "Proponent's Representative" |  |
| 5(b) | Agents, contractors, advisors or consultants engaged by the Proponent prior to the date of this deed |  |
| 14.3 | Address for Notices | **PROPONENT**Attention: [#]Address: [#]Facsimile: [#]Email: [#]**STATE**Attention: [#]Address: [#]Facsimile: [#]Email: [#]**STATE PROBITY ADVISOR**As advised in writing by the State's Representative. |