Schedule 25 – [OHS / WHS] Schedule

***[Note:*** ***Part A contains Victorian-specific drafting and Part B contains NSW-specific drafting. Before issuing, please ensure that the Part that does not apply is deleted].***

# [PART A – Victoria]

# Definitions

1. Unless otherwise expressly defined below, expressions used in this Schedule have the meanings given to them in this Deed:
2. **OHS Legislation** means all Laws in connection with occupational health and safety including the *Occupational Health and Safety Act 2004* (Vic), the OHS Regulations, the *Heavy Vehicle National Law Application Act 2013* (Vic), the *Dangerous Goods Act Electricity Safety Act 1998* (Vic) and any related codes of practice, guidelines and advisory standards applicable to the Project Activities.
3. **OHS Regulations** means the *Occupational Health and Safety Regulations 2017* (Vic).
4. **Principal Contractor** has the meaning given in the OHS Legislation.

# Work health and safety

## Work health and safety

### (**Employee**): In this section 2 a reference to an 'employee' is a reference to that term as it is defined in the OHS Legislation.

### (**Works**): Project Co must carry out and must ensure that the Works are carried out:

#### safely and in a manner that does not put the health and safety of employees or any other persons at risk; and

#### in a manner that protects property.

### (**State direction**): If there is a risk of injury to employees or any other person or damage to property arising from the Works:

#### the State Representative or the Operator Representative may direct Project Co to change its manner of working or to cease working to minimise that risk; and

#### Project Co must, at its cost, comply with any direction given by the State Representative or the Operator Representative under section 2.1(c)(i).

### (**Project Co obligations**): Project Co must and must ensure that the Key Subcontractors:

#### comply with all Laws and other requirements of this Deed for work, health, safety and rehabilitation management;

#### commit to continuous improvement in work health and safety;

#### ensure that all Subcontractors and their respective employees comply with their respective obligations under the OHS Legislation;

#### ensure that any Subcontracts that they enter into contain the same or substantially the same terms as this section 2;

#### consult, co-operate and co-ordinate activities with all other persons who have a work health and safety duty in relation to the same matter;

#### notify the State Representative and the Operator Representative immediately (and in any event, within 12 hours after such matter arising) of any 'notifiable incident' (as defined in the OHS Legislation) in connection with, the Works, the Maintained Assets or the Project Activities;

#### in respect of any notifiable incident referred to in section 2.1(d)(vi):

##### immediately provide the State Representative with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator;

##### promptly provide the State Representative with a copy of all witness statements and the investigation report relating to the notifiable incident;

##### promptly provide the State Representative with copies of any notice(s) or other documentation issued by the relevant Commonwealth, State or Territory regulator; and

##### within 10 days of the date of notification to the relevant Commonwealth, State or Territory regulator, provide the State Representative with a summary of the related investigations, actions to be taken and any impact on the Project that may result from the notifiable incident;

#### within 1 Business Day of receipt, provide to the State Representative copies of:

##### all formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the applicable OHS Legislation to Project Co or a Subcontractor relating to work health and safety matters;

##### all formal notices issued by a health and safety representative of Project Co or a Subcontractor under or in compliance with the applicable OHS Legislation; and

##### all formal notices, written communications and written undertakings given by Project Co or a Subcontractor to the regulator or agent of the regulator under or in compliance with the applicable OHS Legislation;

#### institute systems to:

##### obtain regular written audit results from all Subcontractors about their ongoing compliance with OHS Legislation; and

##### ensure that Subcontractors comply with any such audit findings;

#### provide the State Representative and the Operator Representative with a written report of all work health and safety matters (including matters in connection with sections 2.1 and 2.2) or any other relevant matters as the State Representative may reasonably require from time to time, including a summary of Project Co's (and the Key Subcontractors') compliance with the OHS Legislation;

#### exercise a duty of utmost good faith to the State and the Operator in carrying out the Project Activities to enable the State and the Operator to discharge its duties under the OHS Legislation;

#### do not do anything or fail to do anything that would or would be likely to cause the State or the Operator to be in breach of the OHS Legislation;

#### if requested by the State Representative, the Operator Representative or required by OHS Legislation, demonstrate compliance with the OHS Legislation, including providing evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety matters; and

#### comply with all reasonable requests of the State to assist the State to discharge any work health and safety obligations of the State in connection with the Project under OHS Legislation.

* 1. ***[Note: More detailed requirements on OHS will be included in the PSDR.]***

## Principal Contractor

1. ***[Note: The Principal Contractor appointment arrangements will be considered on a project specific basis to ensure that they reflect the timing and relevant sites/workplace for Principal Contractor appointments in accordance with the D&C Contractor Direct Deed, Services Contractor Direct Deed and the successful Respondent's consortium structure.]***

### (**Definitions**): In this section ‎2.2, the terms "construction project", "construction work" and "workplace" have the same meanings given to those terms under the OHS Legislation. For the purposes of the OHS Legislation and this Deed:

#### any Project Activity, including work under any Subcontract; and

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

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

##### which interfaces with the Project Activities,

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

### (**Engagement as** **Principal Contractor**): Without limiting Project Co's obligations under any other provision of this Deed:

#### the State must:

##### engage the D&C Contractor as Principal Contractor:

###### in respect of the Development Activities, from Financial Close up to the Date of Commercial Acceptance; and

###### for the rectification of Defects and the undertaking of any Works during the Operational Phase, where the D&C Contractor undertakes such work;

##### authorise the D&C Contractor to have management and control of each workplace at which the D&C Contractor carries out construction work and to discharge the duties of a Principal Contractor under the OHS Legislation in respect of construction work at that workplace;

##### engage, or procure that the Operator engages (as applicable), the Services Contractor as Principal Contractor in respect of the Services from the Operational Commencement Date until the Expiry Date; and

##### authorise, or procure that the Operator authorises (as applicable), the Services Contractor to have management and control of each workplace at which construction work is to be carried out and to discharge the duties of a Principal Contractor under the OHS Legislation in respect of the construction work carried out at that workplace,

* + 1. in accordance with the D&C Contractor Direct Deed and the Services Contractor Direct Deed (as applicable); and

#### Project Co must procure that each of the D&C Contractor and the Services Contractor (as the case may be) accepts the appointment as Principal Contractor and agrees to discharge the duties imposed on a Principal Contractor by the OHS Legislation.

### (**Project Co to ensure compliance**): Project Co must procure that the D&C Contractor or the Services Contractor (as the case may be) exercise and fulfil all of their functions and obligations as Principal Contractor under the OHS Legislation that are relevant to the Project.

### (**Functions and obligations of Principal Contractor**): If the appointment of the D&C Contractor or the Services Contractor (as the case may be) as Principal Contractor under the D&C Contractor Direct Deed or the Services Contractor Direct Deed (as applicable) is not effective for any reason, Project Co must procure that the D&C Contractor or the Services Contractor (as applicable) exercise and fulfil the functions and obligations of the Principal Contractor under the OHS Legislation as if it had been validly appointed and authorised as Principal Contractor under the D&C Contractor Direct Deed or the Services Contractor Direct Deed (as applicable).

### (**Project Co obligations**): Project Co must:

#### ensure that if any Law, including in the State or Territory in which the Works are situated or the Project Activities are being carried out (as the case may be), requires:

##### a person:

###### to be authorised or licensed (in accordance with the OHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; or

###### to have prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the OHS Legislation), that person has the required qualifications or experience or is so supervised; or

##### a workplace, plant or substance (or design) or work (or class of work) to be authorised or licensed, that workplace, plant or substance (or design) or work (or class of work) is so authorised or licensed;

#### not direct or allow a person to carry out work or use plant or a substance at a workplace unless the requirements of section 2.2(e)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and

#### if requested by the State or required by the OHS Legislation in respect of any work, produce evidence of any approvals, certificates, authorisations, licenses, prescribed qualifications or experience or any other information relevant to work health and safety (as the case may be) to the satisfaction of the State (acting reasonably) before Project Co or a Subcontractor (as the case may be) commences such work.

# [PART B – NSW]

# Definitions

1. Unless otherwise expressly defined below, expressions used in this Schedule have the meanings given to them in this Deed:
2. **Appointed Principal Contractor** means:
	1. in respect of the Development Phase Sites, during the period prior to and including the Date of Commercial Acceptance, the D&C Contractor; and
	2. in respect of the Operational Phase Sites, during the period after the Date of Commercial Acceptance until the Expiry Date, the Services Contractor.
3. **Employee Checks** means the employee checks set out in the Contract Particulars.

**Employee Requirements** means the employee requirements set out in the Contract Particulars.

1. **WHS Act** means the *Work Health and Safety Act 2011* (NSW).
2. **WHS Legislation** means Legislation relating to health and safety at work including:

### the WHS Act; and

### the WHS Regulation,

1. and includes industry codes of practice, safety standards, handbooks and guidelines about work health safety and rehabilitation in place from time to time.
2. **WHS Management System** means a documented work health and safety management system which, at a minimum, complies with Australian Standard 4801 or Australian Standard 45001 (as amended or replaced from time to time).
3. **WHS Regulation** means the *Work Health and Safety Regulation 2011* (NSW).

# Workforce

## Employee Requirements

### (**Training and checks**): Project Co must ensure that each employee of Project Co and each Subcontractor engaged to provide any Project Activities:

#### completes the training detailed in the Employee Requirements for those particular types of employee; and

#### prior to being engaged to provide the Project Activities, passes the relevant Employee Checks.

#### **[*Note: The Project Team needs to consider and finalise Employee Requirements and Employee Checks on a Project-by-Project basis. For example, on education deals, child protection legislation will be particularly important.]***

### (**Availability of results**): Project Co must:

#### promptly make the results of:

##### any Employee Checks; or

##### any Probity Investigation that Project Co is required to undertake in accordance with section ‎2.1,

* + 1. available to the State.

### (**Denial of employment**): Without prejudice to clause 39.1(c), the State may require Project Co to, or procure that the Subcontractors, refuse access to the Site to any person or discontinue the access to the Site of any person if the:

#### Probity Investigation reveals information indicating that that person does not comply with the requirements of this Deed;

#### Employee Requirements are not met at all times by that person;

#### employee fails an Employee Check; or

#### State considers that that person is unsuitable or unqualified to provide the Project Activities assigned to that person.

## Principal contractor

1. ***[Note: The Project Team needs to consider on a project-specific basis whether the Operator can be appointed as the Principal Contractor for construction works carried out during the Operational Phase, or whether the State will need to appoint the relevant third party subcontractor who is actually undertaking the relevant works as the Principal Subcontractor, as and when they undertake those works.]***

### (**Definitions**): In this section ‎2.2 and section ‎2.3, the terms 'construction project', 'construction work', 'principal contractor', 'workplace' and 'WHS management plan' have the same meanings given to those terms under the WHS Act and WHS Regulations. For the purposes of the WHS Act and WHS Regulations and this Deed, the Project Activities and the work under any Subcontract are taken to be part of the same 'construction project'.

### (**Direct Deeds**): The parties acknowledge and agree that under the Direct Deeds, from the date on which any Direct Deed is entered into, the State:

#### engages the Appointed Principal Contractor as the principal contractor for any construction project forming that part of the Project Activities for which the relevant Appointed Principal Contractor will be engaged; and

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

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

#### the Date of Commercial Acceptance;

#### the termination of the D&C Contractor Direct Deed in relation to that D&C Contractor; and

#### the termination of this Deed.

### (**Operator's engagement and appointment**): The Operator's engagement and appointment as principal contractor by the State in respect of any construction project in relation to the Project Activities during the period after the Date of Commercial Acceptance will continue until the earlier of:

#### that relevant construction project being complete;

#### the termination of the Operator Direct Deed in relation to that Operator;

#### the termination of this Deed; and

#### the Expiry Date.

### (**Appointed Principal Contractor**): Project Co:

#### must procure and ensure that each Appointed Principal Contractor accepts the engagement in section ‎2.2(b) and agrees to discharge the duties imposed on a principal contractor under the WHS Legislation, the Direct Deeds and the State Project Documents (as applicable) and the Appointed Principal Contractor's WHS management plan for the construction project;

#### must not do anything which would result in either Appointed Principal Contractor being in breach of its obligations as principal contractor under the WHS Regulation; and

#### agrees to comply, and to ensure that its personnel comply, with all lawful directions relating to health and safety given by each Appointed Principal Contractor and if it believes that it is unable to do so, agree to notify and provide details to the Appointed Principal Contractor immediately.

### (**Ineffective or no appointment of Appointed Principal Contractor**): If the State's appointment of the Appointed Principal Contractor as principal contractor is not effective for any reason, or, for any period, the State has not appointed a principal contractor for any Project Activities:

#### Project Co agrees that Project Co is appointed by the State as principal contractor in respect of the Project Activities for which the Appointed Principal Contractor was engaged to perform as principal contractor (albeit that the appointment as principal contractor is not effective) or for which the State has not appointed a principal contractor;

#### the State authorises Project Co to have management or control of that part of the workplace to which the construction project for which the Appointed Principal Contractor was engaged as principal contractor (albeit, ineffectively) relates or for which the State has not appointed a principal contractor and to discharge the duties of a principal contractor under the WHS Regulation in relation to the construction project forming the whole or part of the applicable Project Activities; and

#### without limiting sections ‎2.2(f)(i) and ‎2.2(f)(ii), if Project Co is being appointed principal contractor under this section ‎2.2(f) because the appointment of the Appointed Principal Contractor by the State has been ineffective, Project Co agrees that it will ensure that the Appointed Principal Contractor exercises and fulfils the functions and obligations of the principal contractor under the WHS Regulation, the WHS management plan for the construction project and this Deed and the Direct Deeds and State Project Documents (as applicable) as if the Appointed Principal Contractor had been validly engaged and authorised as principal contractor for the construction project under the WHS Regulation.

### (**Failure to comply**): If an Appointed Principal Contractor or Project Co (if appointed principal contractor) fails to comply with any of its obligations as principal contractor under the WHS Regulation, this Deed, the Direct Deed and any State Project Document (as applicable) and the WHS management plan for the construction project, the State may:

#### direct Project Co (if the Appointed Principal Contractor is the principal contractor) to carry out the obligations of principal contractor and the cost incurred in carrying out these obligations will be the responsibility of Project Co; or

#### if Project Co is appointed the principal contractor for the construction project, carry out the obligations of principal contractor itself or have them carried out by a third party, and the cost incurred by the State in having those obligations carried out will be a debt due and payable by Project Co to the State.

### (**Documents to be provided**): Without limiting Project Co's reporting or other obligations elsewhere under this Deed, Project Co must procure that each Appointed Principal Contractor will:

#### as soon as reasonably practicable, provide Project Co with access to any registers, records and documents relating to work health safety and rehabilitation, including their WHS management plan, subcontractors' safe work method statements, records of persons carrying out construction work, and any register of hazardous substances that each Appointed Principal Contractor is required to prepare and maintain in connection with its obligations as principal contractor; and

#### at all reasonable times and at the request of Project Co, provide Project Co with access to such documents or records as may be necessary to establish the compliance by each Appointed Principal Contractor with its obligations under the Direct Deeds and State Project Documents (as applicable), the WHS Legislation and its WHS management plan, and allow Project Co to make copies of such documents or records.

### Where Project Co is appointed the principal contractor under section ‎2.2(f), the obligations of the principal contractor in this section ‎2.2(h) will apply to Project Co and information will be provided to the State or such other third party nominated by the State.

## Work Health and Safety

### (**Performance of Services and Project Activities**): Project Co must perform the Services and carry out the other Project Activities:

#### safely and in a manner that, so far as it is reasonably practicable, does not put at risk the health and safety of persons; and

#### in a manner that protects property.

### Project Co must:

#### (**Compliance with WHS obligations**): in carrying out the Project Activities:

##### ensure that it complies with all Laws and other requirements of this Deed, the Direct Deeds and State Project Documents (as applicable) and the WHS Management Plan, in respect of work health, safety and rehabilitation management; and

##### require all Subcontractors to comply with their obligations referred to in this Deed, the Direct Deeds and State Project Documents (as applicable), the WHS Legislation and the WHS management plan applicable to the Project Activities they are undertaking;

#### (**WHS Management System and Plan**): have in place, and comply with a WHS Management System and WHS Management Plan. Project Co must prepare and provide a WHS Management Plan to the State:

##### before commencement of the Works, in relation to the Development Phase; and

##### prior to the Operational Commencement Date, in relation to the Operational Phase,

and, if the State has any comments about the WHS Management Plan, Project Co must take those into account and prepare an amended WHS Management Plan. Project Co must ensure the WHS Management Plan is fit for purpose, including that the content of the WHS Management Plan is accurate, appropriate and up to date (taking into account changes in the Project Activities) at all times;

#### (**Notification of matters and incidents**): notify the State immediately (and in any event within 12 hours of such matter arising) of:

##### all work health, safety and rehabilitation matters in connection with the performance of the Project Activities that are required to be notified to an Authority under the WHS Legislation (whether required to be notified by a Subcontractor or other party performing the Project Activities); and

##### all major injury incidents sustained at the Site;

#### (**Notices issued by Authorities**): notify the State within 1 Business Day of receipt, of any safety related prohibition notice, improvement notice, correspondence or other notice issued by an Authority or other person in connection with the Project Activities (whether issued to a Subcontractor or other party performing the Project Activities);

#### (**Written assurances from Subcontractors**): institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with WHS Legislation, their obligations under the Direct Deeds and State Project Documents (as applicable) in relation to work health safety and rehabilitation matters, and the WHS management plan applicable to the Project Activities they are undertaking;

#### (**Provision of written assurances to the State**): provide the written assurances referred to in section ‎2.3(b)(iv), together with written assurances from Project Co about Project Co's ongoing compliance with the WHS Legislation, their obligations under this Deed, the Direct Deeds and the State Project Documents (as applicable) in relation to work health safety and rehabilitation matters, and its WHS Management Plan to the State. Project Co's assurance must be based on auditing and monitoring conducted under section ‎2.3(c);

#### (**Directions**): comply with any direction about work heath safety and rehabilitation matters from an Authority or the State (which may include a direction to issue a direction to a Subcontractor);

#### (**Not to breach WHS Legislation**): ensure that it does not do anything or fail to do anything that would cause the State or any of its Associates to be in breach of the WHS Legislation;

#### (**Cooperate in discharge of obligations**): cooperate with the State in respect of the discharge of any work health and safety obligations of the State in connection with the Project under the WHS Act and WHS Regulations and:

##### comply with all reasonable requests of the State to assist it to discharge its obligations; and

##### refrain from doing anything that may impede the State in discharging its obligations; and

#### (**Equivalent Subcontract clause**): procure that each Subcontract includes provisions equivalent to section ‎2.3(a) to section ‎2.3(c).

### (**Auditing and monitoring**): Project Co must:

#### regularly audit and monitor its compliance with the WHS Legislation, the WHS Management Plan and its obligations under this Deed, the Direct Deeds and the State Project Documents (as applicable) in relation to work health safety and rehabilitation matters;

#### immediately undertake any corrective work or action identified in the audit as a departure from the WHS Legislation, the WHS Management Plan and its obligations under this Deed, the Direct Deeds and the State Project Documents (as applicable) in relation to work health safety and rehabilitation matters, at its expense; and

#### report to the State about the outcome of any auditing and monitoring under this section ‎2.3(c), as required by the State.

#### Project Co must, at the State's direction, conduct auditing or monitoring as provided for in this section ‎2.3(c). Any such auditing or monitoring must be conducted within the time specified by the State.

### (**Project Co Responsible**): Except in relation to the obligations of any principal contractor under the WHS Legislation appointed in accordance with this section ‎2, Project Co accepts that it is:

#### (**Health and Safety**): responsible for all aspects of health and safety relating to the Works, the Site and the Project Activities from Financial Close until the Expiry Date and it cannot delegate or assign this responsibility to a third party without the prior approval of the State; and

#### (**Employment and conditions**): entirely responsible for the employment and conditions of service of Project Co’s employees and must procure that each Subcontractor is likewise responsible for its employees, and that each Subcontractor complies with the same obligations and requirements as required of Project Co under this section ‎2.

## State may act if Project Co fails to comply

1. To the extent that Project Co fails to comply with any obligation under this section ‎2, the State may, in addition to any other remedies under this Deed or at Law, on reasonable prior notice to Project Co, do all things, or engage a third party to do all things, necessary to rectify the failure and the reasonable costs of doing so will be a debt due and payable by Project Co to the State.

## Long service leave levy

1. Before commencing construction of the Works, Project Co must:

### (**Payment of long service levy**): pay (or procure payment) to the Building and Construction Industry Long Service Payments Corporation, or its agent, the amount of the long service levy payable in respect of the building or construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW) (**Levy**); and

### (**Evidence of payment**): produce to the State Representative the document evidencing payment of the Levy.