

ROAD OCCUPATION LICENCE AGREEMENT – TERMS AND CONDITIONS

AGREEMENT RECITALS

- A The Road is an Arterial Road and Department of Transport is the Coordinating Road Authority with respect to the Road. The Licence Area is part of the Road.
- B The Licensee's Activity could not be completed without the Licensee temporarily occupying the Licence Area.
- C The Licensee's Activity will impede trafficable use of the Licence Area as a road and will disrupt the Road Network. To offset the impact on the Road Network by the Licensee's Activities, Department of Transport will impose the Occupation Fee.
- D The Licensee is required to ensure that the Licensee's Activity is completed within the Expected Occupation Period.
- E The Department of Transport is empowered by:
- (1) clause 9 of Schedule 5 of the RM Act to enter into this Agreement and to grant a licence of any part of the Road; and/or
 - (2) clause 18 of Schedule 7 of the RM Act to enter into this Agreement with respect to the Licensee's Activity relating to the Road; and
 - (3) the RM Act, generally, in relation to the things dealt with in the MOA and the Works Consent (if any).
- F Subject to receiving the signed Deed Poll, the Department of Transport will allow the Licensee's Activity to be undertaken on the Road for the Expected Occupation Period during the Occupation Window on the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS

In this Agreement:

- 1.1 Words which are capitalised and which are not otherwise defined in this Agreement, have the same meaning they have in the RM Act.
- 1.2 **Agreement** means this agreement as formed by these Terms and Conditions and the Deed Poll, and includes:
 - 1.2.1 the MOA, as if the terms of that MOA were set out in full in this Agreement;
 - 1.2.2 the Works Consent (if one applies), as if the terms of that Works Consent were set out in full in this Agreement.
- 1.3 **Approvals** means the MOA, the Works Consent (if one applies), any Consent issued by Department of Transport, any and all directions given by Department of Transport and/or any Authority with respect to the Licensee's Activity, the Licence Area, the Road or the Road Network, and any approval, permit or other authorisation from any Authority relating to the Licensee's Activities.
- 1.4 **Authority** includes a government, a local, statutory or public authority, and a person entitled to carry out a statutory function, including Department of Transport.
- 1.5 **Business Day** means any day (other than a Saturday or a Sunday) on which banks are open for general banking business in Melbourne.
- 1.6 **Business Hours** means the hours between 9.00am and 5.00pm on a Business Day.
- 1.7 **Claim** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment, whether based in contract, tort, statute or otherwise.
- 1.8 **Commencement Date** means the date specified in item 7 of the Schedule.
- 1.9 **Condition Report** means an ingoing and an outgoing (as the case may be) condition report, based on the Condition Report Template, for the Condition Report Items, which, at a minimum, contains accurate and detailed descriptions and photographs of the Condition Report Items.
- 1.10 **Condition Report Items** means the Licence Area, the Infrastructure and the Road.
- 1.11 **Condition Report Template** means the ingoing and outgoing condition report template provided to the Licensee or to the Licensee's Agents when applying for the Approvals and/or this Agreement.
- 1.12 **Conditions Precedent** mean the conditions precedent set out at clause 3.1.
- 1.13 **Consent** means prior written consent of Department of Transport, which may be granted or withheld in Department of Transport's absolute discretion and, if granted, may be subject to any such terms and conditions as Department of Transport requires.
- 1.14 **Contamination** means anything of any kind which makes or may make the Licence Area:
 - 1.14.1 unsafe or unfit for humans;
 - 1.14.2 degraded in any way;
 - 1.14.3 materially depreciated in value; or
 - 1.14.4 non-compliant with a Law relating to the Environment.
- 1.15 **Costs** means all costs, expenses, Claims, demands, liabilities, Loss or other detriment, including all legal costs and disbursements (on a full indemnity basis).
- 1.16 **Deal With** includes doing or agreeing to do, or purporting to do, any of the following:
 - 1.16.1 transferring, assigning or disposing of the Licence and/or any rights under this Agreement;
 - 1.16.2 sharing or sub-licensing the Licence Area or any part of the Licence Area with any other person.
- 1.17 **Deed Poll** means the "Road Occupation Licence Agreement Deed Poll Confirming Licensee's Acceptance of the Terms And Conditions" which has been or will be signed by the Licensee and given in favour of the Department of Transport and which confirms the Licensee's agreement to and entry into this Agreement.
- 1.18 **Default Interest** means a rate of interest that is 2% higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
- 1.19 **Department of Transport Assets** means any Road, Infrastructure, personal property or other installation of any kind which is on, affixed to, above, under, near or adjacent to the Licence Area which belongs to Department of Transport or for which Department of Transport has any responsibility in any capacity under the RM Act.
- 1.20 **Department of Transport's Agents** means the officers, employees, contractors and agents of Department of Transport.

- 1.21 **Department of Transport's Prequalification Register** means the register of that name or a similar name, which is published from time to time on the Department of Transport's website (transport.vic.gov.au).
- 1.22 **Environment** includes all the meanings given to that term or any similar terms in the Laws of Victoria and includes all aspects of human surroundings.
- 1.23 **Expiry Date** means the date set out in item 8 of the Schedule.
- 1.24 **Expected Occupation Period** means the period set out in item 5 in the Schedule.
- 1.25 **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes any associated legislation (including, without limitation, delegated legislation), and expressions used in this Agreement and in the GST Act have the same meaning as when used in the GST Act.
- 1.26 **Infrastructure** means any:
- 1.26.1 Road Infrastructure and Non-Road Infrastructure of any kind;
- 1.26.2 any plant or equipment of any kind on any Road Infrastructure or Non-Road Infrastructure;
- 1.26.3 any plant or equipment required by any Infrastructure Manager, Road Authority or by Department of Transport in connection with any Road; and
- 1.26.4 any Services,
that are in, on, under, over, adjacent, connected to, running through or under the Licence Area or the Road, or are near to the Licence Area or the Road, whether owned by Department of Transport or not.
- 1.27 **Law** means any law, rule, Act, ordinance, regulation, by-law, local law, order, statutory instrument, control, restriction, direction, notice, proclamation, planning scheme or Approval, and includes the requirements of any Authority affecting the Licence Area or the Licence, and includes the OHS Law.
- 1.28 **Licence Area** means the area of land or other area within the Road described in item 3 of the Schedule.
- 1.29 **Licence** means the non-exclusive licence granted by this Agreement.
- 1.30 **Licensee's Activity** and/or **Licensee's Activities** includes:
- 1.30.1 any works, activity or actions referred to in the MOA and the Traffic Management Plan;
- 1.30.2 any of the Proposed Works outlined or referred to in or by the Works Consent (if one is required); and
- 1.30.3 any other works or activity on or near the Road which disrupts or prevents trafficable use of the Road or interrupts traffic flow on the Road Network.
- 1.31 **Licensee's Agents** means any Related Body Corporate of the Licensee and the officers, employees, contractors and agents of the Licensee, in any way involved in the Licensee's Activity.
- 1.32 **Licensee's Property** includes any property of any kind on the Licence Area which the Licensee or the Licensee's Agents brought onto the Licence Area.
- 1.33 **Listed Corporation** has the meaning ascribed by the *Corporations Act 2001* (Cth).
- 1.34 **Loss** means all Costs and any liability of any kind whatsoever and includes, but is not limited to, direct and indirect losses or damage, consequential or special damage, loss of profits, loss of use, loss of revenue, anticipated revenue, interest or other economic loss and any Claim arising from any cause whatsoever whether or not the loss, damage or Claim is based on contract, statute, warranty, tort (including negligence), indemnity or otherwise.
- 1.35 **MOA** means a memorandum of authorisation issued by Department of Transport in respect of the Traffic Management Plan and the Licensee's Activity.
- 1.36 **Non-Negotiable Rate** means the per metre rate which has been set by Department of Transport in consultation with the Valuer-General for the calculation of the Occupation Fee.
- 1.37 **Occupation Fee** means the amount stated in item 9 in the Schedule.
- 1.38 **Occupation Window** means the period from the Commencement Date to the Expiry Date or the period as stated in item 6 in the Schedule.
- 1.39 **OHS Law** means the *Occupational Health and Safety Act 2004* (Vic) and includes any regulations made under that Act and includes all regulations and codes of practice made under that Act as well as any other relevant Australian Standards in relation to the Licensee's Activity.
- 1.40 **PL Insurance Policy** means a public liability insurance cover with a reputable insurer for an amount of not less than \$20,000,000 in respect of any single occurrence, which fully indemnifies Department of Transport against all Claims, Cost, and Loss of any kind and any injury or death arising from any act, omission or neglect by the Licensee or any of the Licensee's Agents in using any part of the Road in relation to the Licensee's Activities.
- 1.41 **Pre-qualified Department of Transport TMP/TGS Operator** means an entity listed on Department of Transport's Prequalification Register who has been approved by Department of Transport for providing and/or undertaking 'TGS – Traffic Guidance Scheme' and/or 'TMP - Traffic Management Plan' services.
- 1.42 **Proposed Works** means any works described or referred to in the Works Consent (if any), or means any improvement, alteration (whether structural or otherwise) or addition (including the installation of any equipment) on or to the Licence Area and any excavation, demolition, landscaping or earthworks to the Licence Area, including any such works carried out by the Licensee prior to the Commencement Date.
- 1.43 **Reinstatement Works** means:
- 1.43.1 reinstatement of the Road surface to the condition that it was in prior to the Commencement Date;
- 1.43.2 replace, reinstate and/or repair all Infrastructure that has been removed, damaged, destroyed or disrupted by or in connection with the Licensee's Activities or otherwise during the Occupation Window; and
- 1.43.3 any other works required to return the Condition Report Items to the condition that they were in as at the Commencement Date and/or as shown in the ongoing Condition Report.
- 1.44 **Related Body Corporate** means a body corporate which is related to another body corporate within the meaning of section 50 of the *Corporations Act 2001* (Cth).
- 1.45 **Requirement** means any requirement of Department of Transport as set out in any Consent or in any relevant policies, codes of practice, guidelines, standards (including Australian Standards), specifications or directions of Department of Transport, or any other requirement of any Authority as set out in any Approval.

- 1.46 **Risk Events** means:
- 1.46.1 the Licensee's use and occupation of the Licence Area and/or the Licensee's Activities;
- 1.46.2 any damage to any Infrastructure caused by or in connection with the Licensee's Activities;
- 1.46.3 the Reinstatement Works;
- 1.46.4 the exercise by Department of Transport of its rights and powers under this Agreement or any Law; or
- 1.46.5 any unlawful conduct of any person, other than Department of Transport.
- 1.47 **Road** means the Road described in item 4 of the Schedule.
- 1.48 **Road Network** means the Road and the surrounding roads which form part of the Melbourne road network.
- 1.49 **RM Act** means the *Road Management Act 2004* (Vic) and includes any regulations made under that Act.
- 1.50 **Schedule** means the schedule at the end of these Terms and Conditions and includes the Schedule which is attached to the Deed Poll.
- 1.51 **Security Deposit** means a cash security deposit in the amount set out in item 11 of the Schedule and to be paid as directed in item 11 of the Schedule.
- 1.52 **Services** means water, sewerage, drainage, gas, electricity and telecommunications and other similar services and/or infrastructure.
- 1.53 **Special Conditions** means the special conditions (if any) set out in item 12 of the Schedule.
- 1.54 **Specifications** means specifications for all aspects of the Proposed Works.
- 1.55 **Terms and Conditions** means these terms and conditions.
- 1.56 **Traffic Management Plan** means a traffic management plan, prepared by a Pre-qualified Department of Transport TMP/TGS Operator, and approved by the Department of Transport, which specifies, to Department of Transport's satisfaction, how the Licensee and the Licensee's Agents are to manage access to the Licence Area and the flow of traffic on the Road Network during the Occupation Window in respect of the Licensee's Activities.
- 1.57 **Warranty Period** means a period of 12 months from the date of completion of the Reinstatement Works or such longer period as set out in any Consent.
- 1.58 **Works Consent** means a 'Conditions of Consent for the Conduct of Proposed Works on a Road or Road Reserve' issued by Department of Transport pursuant to Schedule 7 of the RM Act for or in respect of the Licensee's Activity, if one is required for the Licensee's Activity. (*Note: Department of Transport will only require a Licensee to obtain a Works Consent where the Licensee's Activity involves any ground penetration*).
- 1.59 **Works Program** means a detailed program of the Proposed Works and includes a Traffic Management Plan.
2. **INTERPRETATION**
- In this Agreement, unless the contrary intention appears:
- 2.1 if there is an inconsistency between a Special Condition and another provision of this Agreement, the Special Condition prevails;
- 2.2 a reference to:
- 2.2.1 a document or instrument, including this Agreement, includes that document or instrument as novated, altered or replaced from time to time;
- 2.2.2 a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- 2.2.3 a statute, code or other Law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 2.2.4 to an authority, institution, association or body (**original entity**) that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity;
- 2.3 a covenant, undertaking, representation, warranty, indemnity or agreement made or given by a party comprised of two or more persons or given by two or more parties, is made or given and binds those parties or persons jointly and severally;
- 2.4 a recital, schedule, annexure or description of the parties forms part of this Agreement;
- 2.5 notes and headings are for convenience only and do not affect the interpretation of this Agreement;
- 2.6 if an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day;
- 2.7 a party that is a trustee is bound both personally and in its capacity as trustee.
3. **CONDITIONS PRECEDENT**
- 3.1 Subject to clause 3.3, the Licence shall not commence and the Licensee must not access the Licence Area unless the following conditions precedent are completed to Department of Transport's reasonable satisfaction:
- 3.1.1 by no later than the Commencement Date, the Licensee must:
- (a) obtain the Works Consent (if one is required);
- (b) obtain the MOA (directly, if the Licensee is a Prequalified Department of Transport TMP/TGS Operator, or, if the Licensee is not a Prequalified Department of Transport TMP/TGS Operator, ensure that a Prequalified Department of Transport TMP/TGS Operator obtains that MOA);
- (c) obtain the Approval for the Traffic Management Plan;
- 3.1.2 any further conditions precedent set out in the Special Conditions (if any).
- 3.2 The Department of Transport may immediately end this Agreement if any of the Conditions Precedent have not been satisfied within the timeframes specified for that Condition Precedent, by giving notice to the Licensee at any time before the Condition Precedent is satisfied.
- 3.3 In its absolute discretion, Department of Transport may, at any time, waive the need for any Condition Precedent to be completed and, if it does so, the Licence will be deemed to have commenced on the Commencement Date.
- 3.4 The Licensee shall not be entitled to any compensation or any financial contribution from Department of Transport for any Costs of any kind in any way incurred by the Licensee if this Agreement is ended pursuant to this clause 3.
4. **LICENCE**
- 4.1 **Non-exclusive temporary Licence**
- The Department of Transport grants the Licence to the Licensee to use the Licence Area for the Licensee's Activity for the Expected Occupation

Period during the Occupation Window. The Licence and this Agreement are personal to the Licensee only. The Licensee must not Deal With the Licence or any part of the Licence Area in any way without Department of Transport's Consent.

4.2 Department of Transport reserves rights to do anything permitted by Law and require Licensee to share the Licence Area

4.2.1 The Department of Transport reserves to itself the right to do everything to and in connection with the Licence Area that it may lawfully do as Coordinating Road Authority and Responsible Road Authority at any time, and without notice to the Licensee.

4.2.2 During the Occupation Window, the Department of Transport may require the Licence Area to be shared with others, including Infrastructure Managers, and may require the Licensee to allow the installation, repair, maintenance and use of any Infrastructure on the Licence Area, at any time and without notice to the Licensee.

4.3 Access to Licence Area

The Licensee must only access the Licence Area from or via an access point approved in the Traffic Management Plan.

5. ACTIVATION OF USE OF LICENCE AREA AND EXPECTED OCCUPATION PERIOD

5.1 Expected Occupation Period

The Licensee must do all things reasonably necessary to ensure that the Licensee's Activities and the Reinstatement Works are completed during the Expected Occupation Period.

5.2 Notify Department of Transport about activation of Expected Occupation Period and each time the Licence Area is to be used during the Occupation Window

5.2.1 Before the Licensee can use the Licence Area for the Licensee's Activity during the Occupation Window, the Licensee must notify the Department of Transport's Traffic Management Centre by phoning 1300 107 757, as required by clause 4 of the MOA..

5.2.2 The Expected Occupation Period will begin on the first occasion that the Licensee notifies the Department of Transport's Traffic Management Centre or, if the Licensee fails to make the notification, the Expected Occupation Period will begin on the first date that the Licensee actually accessed the Licence Area.

5.2.3 The Licensee must notify the Department of Transport by phone on each occasion that the Licensee wants to use any part of the Expected Occupation Period, by giving the notice required under clause 4 of the MOA.

5.3 New licence required when Expected Occupation Period to be exceeded

The Licensee will only have the Expected Occupation Period during which it must complete the Licensee's Activity and any Reinstatement Works. This Agreement will not be renewed or extended and the Licensee must apply for a new Agreement if it wants to use any part of the Road or Licence Area for any purpose after the end of the Expected Occupation Period or after the Expiry Date.

6. OCCUPATION FEE

The Licensee must pay the Occupation Fee to Department of Transport in the manner set out in item 10 of the Schedule. The Licensee acknowledges and agrees that the rate of the

Occupation Fee has been set by Department of Transport using the Non-Negotiable Rate.

7. COMPLIANCE WITH AGREEMENT AND APPROVALS

7.1 Strict compliance with all Approvals

7.1.1 The Licensee must and must ensure that all of the Licensee's Agents comply at all times with, and use the Licence Area and undertake the Licensee's Activities strictly in accordance with, all of the terms of this Agreement and the Requirements.

7.1.2 The Licensee must comply at all times with the MOA and the Works Consent (if one applies) notwithstanding that the MOA and/or the Works Consent (if one applies) are or may be issued to or signed by a Prequalified Department of Transport TMP/TGS Operator engaged by the Licensee and/or one of the Licensee's Agents.

7.2 Order of priority of Agreement terms

To the extent that there is any inconsistency between any of the terms of this Agreement, the following table depicts the order of precedence of the terms of those documents:

7.2.1 these Terms & Conditions and the Deed Poll (to be read together as one); then

7.2.2 the Works Consent; then

7.2.3 the MOA.

7.3 Termination or suspension of Agreement, MOA and Works Consent

7.3.1 In the event that either or both of the MOA or the Works Consent is revoked, cancelled or ended for any reason, this Agreement will also automatically end without the need for any notice to be given by either party to the other party.

7.3.2 In the event that either or both of the MOA or the Works Consent is suspended for any reason, this Agreement will also be automatically suspended, for the same duration as the suspension of the MOA and/or the Works Consent, without the need for any notice to be given by either party to the other party.

7.4 No variation of Proposed Works, Works Program, MOA or Works Consent

The Licensee must not deviate from, change or vary in any way any of the Proposed Works, the Works Program or the Specification for the Proposed Works, without Department of Transport's Consent.

8. OTHER PAYMENTS

8.1 Costs incurred by Department of Transport

The Licensee must pay or reimburse Department of Transport on request all reasonable Costs incurred by Department of Transport in connection with the negotiation, preparation, settling and execution of this Agreement, any variation of this Agreement requested by the Licensee, and the exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, by Department of Transport of any rights or remedies under this Agreement.

8.2 Licensee's costs

Anything the Licensee is required to do under this Agreement must be done at the Licensee's cost.

8.3 Default Interest on overdue amounts

The Licensee must pay Default Interest on any outstanding amounts that the Licensee owes to Department of Transport. The Default Interest is payable on the amount outstanding from the day the amount becomes due until it and the Default Interest is paid.

8.4 **GST**

Except where this Agreement states otherwise, each amount payable by a party under this Agreement in respect of a taxable supply by the other party is expressed as a GST exclusive amount and the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the GST payable in respect of the supply. A party is not obliged under this clause 8.4 to pay the GST on a taxable supply to it under this Agreement, until given a valid tax invoice for the supply.

9. **SECURITY DEPOSIT**

9.1 **Licensee to Security Deposit**

By no later than the Commencement Date, the Licensee pay the Security Deposit as directed by the Department of Transport. Any interest earned on the Security Deposit is the sole property of the Department of Transport.

9.2 **Use of Security Deposit**

Department of Transport may use the Security Deposit (including any accrued interest) to make good the cost of remedying breaches of the Licensee's obligations under this Agreement.

9.3 **Refund at end of Warranty Period**

The Department of Transport must refund any unused part of the Security Deposit by the earlier of:

- 9.3.1 14 days from the Expiry Date, provided that the Licensee has discharged all of its obligations under this Agreement; or
- 9.3.2 within 14 days from the date that the Department of Transport is satisfied that the Reinstatement Works have been completed, and provided that the Licensee has discharged all of its obligations under this Agreement; or
- 9.3.3 within 14 days of the end of the Warranty Period.

10. **CONDITION REPORTS – INGOING AND OUTGOING**

- 10.1 The Licensee must undertake an inspection of the Condition Report Items, prepare an ingoing Condition Report, and provide the ingoing Condition Report to Department of Transport by the Commencement Date. If the Licensee fails to provide an ingoing Condition Report, then the parties agree that the Condition Report Items will be deemed to have been in good condition, in all respects, there being no defaults or faults with any part of the Condition Report Items.
- 10.2 By no later than the Expiry Date, the Licensee must provide an outgoing Condition Report to Department of Transport's satisfaction which shows the condition of the Condition Report Items. Department of Transport will not be required to return the Security Deposit if the Licensee does not provide an outgoing Condition Report.

11. **LICENSEE'S ACTIVITIES AND USE OF THE LICENCE AREA**

11.1 **Use of Licence Area**

The Licensee must:

- 11.1.1 not use the Licence Area for any purpose other than the Licensee's Activity;
- 11.1.2 not, except with, and in accordance with the Works Consent (if any), the MOA, or any other Department of Transport's Consent and any Approval:
 - (a) undertake or carry out any Proposed Works;
 - (b) do anything or permit the Licensee's Agents to do anything which may obstruct or interfere with the use of any Road or Infrastructure;

- (c) use, disrupt or interfere with any Infrastructure;
- (d) display any commercial advertisement or signage at the Licence Area or use any part of the Licence Area for any advertising (this does not preclude the Licensee from erecting signage required for safety reasons or by Law, provided that such things do not interfere with the safe use of any Road or Infrastructure);

11.1.3 avoid causing damage to any Department of Transport Assets, Road and/or Infrastructure;

11.1.4 do everything reasonable to ensure that the Licensee's Activity and use of the Licence Area do not present a danger to any person and ensure that anything placed near a Road does not cause an obstruction, inconvenience or danger to any person, including any person with a disability;

11.1.5 at its own expense, comply on time with all Laws and Requirements concerning the Licence Area, the use and occupation of the Licence Area, the Licensee's Activity, the Environment and/or Contamination;

11.1.6 not introduce any Contamination onto the Licence Area or disturb any Contamination in situ at the Licence Area.

11.2 **Pre-qualification of any traffic management contractors for traffic management / guidance**

Only Pre-qualified Department of Transport TMP/TGS Operators can be engaged by the Licensee in relation to the provision of any traffic management or traffic guidance services required in connection with the Licence Area or the Licensee's Activities, in accordance with Department of Transport's Prequalification Scheme.

11.3 **OHS LAW**

The Department of Transport irrevocably appoints the Licensee and the Licensee irrevocably accepts the appointment as principal contractor for any works and any workplace on or in relation to the Licence Area, and the Licensee must undertake and discharge any duty imposed on a principal contractor under the OHS Law. The Licence must:

- 11.3.1 comply with the OHS Law;
- 11.3.2 conduct the Licensee's Activity in a safe manner so as to ensure that there is minimal exposure to hazards at the Road, the Licence Area and on the Road Network.

12. **LICENSEE RESPONSIBLE FOR LICENSEE'S AGENTS**

The Licensee must ensure that the Licensee's Agents and invitees do not do or fail to do anything on the Licence Area which, if the Licensee did it or failed to do it, would be a breach of this Agreement, the Works Consent, the MOA and/or any direction of any Authority.

13. **INSURANCE**

The Licensee must maintain the PL Insurance Policy for the duration of this Agreement. The Licensee must provide Department of Transport with a copy of the PL Insurance Policy and a certificate of currency for the PL Insurance Policy within 24 hours of Department of Transport requesting a copy. The Licensee must not do anything that causes or may cause the PL Insurance Policy (or any other insurance policy, taken out under this Agreement or otherwise) to become void or voidable, or may cause any claim on any insurance policy to be rejected. Department of Transport may immediately terminate this Agreement by notice (verbal or written) to the Licensee if the Licensee breaches any of its obligations under this clause.

14. NO WARRANTY AND LICENSEE'S RISK, RELEASE AND INDEMNITY

14.1 No representation or warranty and Licensee's risk

The Licensee acknowledges and agrees that Department of Transport does not make and has not made any promise, representation or any warranty as to the condition, fitness or suitability of the Licence Area to be used for any use, including the Licensee's Activity and the Proposed Works. The Licensee occupies the Licence Area at its own risk entirely and accepts all risk in relation to the Licensee's use of the Licence Area (including in respect of any Contamination in, on, under or emitted from the Licence Area). Department of Transport shall not be responsible to the Licensee for any Claim, Loss or Costs of any kind suffered or incurred by the Licensee as a result of or in connection with any Risk Events.

14.2 Release and indemnity

The Licensee releases Department of Transport from all liability, and must not make any Claim against Department of Transport in relation to any Loss or Costs of any kind suffered or incurred by the Licensee as a result of or in connection with any Risk Events. The Licensee indemnifies Department of Transport and must keep Department of Transport indemnified against any Claim that is or has been made, threatened or commenced, and any liability, Loss or Costs of any kind that Department of Transport may suffer or incur as a direct or indirect result of any Risk Events.

14.3 Carve out

Clause 14.2 does not apply to the extent that the Loss (whether suffered or incurred by the Licensee, Department of Transport or another person) is caused directly by Department of Transport's own negligent or unlawful conduct.

15. BREACH AND TERMINATION OF THE AGREEMENT

15.1 Termination for breach

If the Licensee breaches any of its obligations under this Agreement, Department of Transport may:

15.1.1 where, in Department of Transport's sole opinion (acting reasonably), the breach:

- (a) presents a risk to road safety;
- (b) presents a risk to the health or safety of any person;
- (c) is a breach of an essential term of this Agreement, immediately terminate this Agreement by notice to the Licensee and may, by the same notice, end, revoke or suspend the MOA and/or the Works Consent; or

15.1.2 give the Licensee a notice that the Licensee is in breach, and require the Licensee to rectify it within the period specified in the notice. If the Licensee fails to remedy the breach to Department of Transport's satisfaction within the period specified in the notice, then Department of Transport may issue a notice to the Licensee immediately terminating this Agreement, and may, by the same notice, end, revoke, or suspend the MOA and/or the Works Consent,

and this Agreement and the MOA and/or the Works Consent will end immediately upon receipt of that notice by the Licensee.

15.2 Exercise of its rights under clause 15.1.2 does not preclude Department of Transport from

subsequently exercising its rights under clause 15.1.1 in respect of the same breach.

15.3 If Department of Transport terminates this Agreement pursuant to this clause 15, the Licensee is not entitled to any refund of any part of the Occupation Fee or any other amounts paid pursuant to this Agreement.

16. REPAIR, MAINTENANCE AND REINSTATEMENT WORKS

16.1 Repairs and maintenance

16.1.1 The Licensee must keep the Licence Area, the Road and the Infrastructure in good repair and condition throughout the Occupation Window.

16.1.2 In regard to any damage caused to any Road, Infrastructure or Department of Transport's Assets as a result of the Licensee's Activities by the Licensee or the Licensee's Agents, or when complying with its obligations under clause 16.2, the Licensee must:

- (a) with appropriate Consent, immediately repair that damage to Department of Transport's satisfaction; or
- (b) where Department of Transport determines that it is to perform the repair works, the Licensee must reimburse on demand all Costs reasonably incurred by Department of Transport for those repair works.

16.1.3 In performing any repair work in accordance with this clause 16.1, the Licensee must comply with all relevant Requirements whether notified to the Licensee before this Agreement or not.

16.2 Vacate and remove all Licensee's Property

16.2.1 The Licensee must leave the Licence Area in at least the same condition that it was in as at the Commencement Date as depicted in the ingoing Condition Report.

16.2.2 By the Expiry Date, the Licensee must have vacated the Licence Area and removed any Licensee's Property from the Licence Area and the Road. In doing so, the Licensee must, to the reasonable satisfaction of Department of Transport:

- (a) repair any damage to the Licence Area or reimburse Department of Transport for any costs that Department of Transport incurs to repair any damage to the Licence Area caused by the removal of the Licensee's Property; and
- (b) pay the cost of removal and any relocation of the Licensee's Property.

16.2.3 Department of Transport may treat any Licensee's Property that the Licensee fails to remove in accordance with clause 16.2.2 as abandoned and any such property becomes the property of Department of Transport.

16.3 Reinstatement Works

16.3.1 This clause 16.3 only applies where a Works Consent issued (or was required but has not issued) in relation to the Licensee's Activity.

16.3.2 By the Expiry Date or the date that this Agreement ends, or by any later date set out in any Department of Transport's Consent, the Licensee must complete the Reinstatement Works, to the satisfaction of Department of Transport and in strict compliance with all relevant Department of Transport's Consents and any Requirements.

16.3.3 The Licensee must continue to pay the Occupation Fee (as increased by clause 5.3) until all of the Reinstatement Works have been completed to the satisfaction of Department of Transport.

17. DEPARTMENT OF TRANSPORT'S RIGHTS TO AN EARLY TERMINATION OR SUSPENSION

17.1 Department of Transport's right to terminate early

If Department of Transport requires the use of Licence Area or any part of it for any reason related to any of its functions under the RM Act, then despite anything in this Agreement, Department of Transport may terminate the Licence and this Agreement by giving the Licensee at any time (by giving written or verbal notice). Upon the expiry of the notice period given in that notice, this Agreement will be at an end. If this Agreement ends under this clause, the Department of Transport will provide a prorated credit to the Licensee for the unused portion of the Expected Occupation Period or a prorated credit of such part of the Occupation Fee which is equivalent to the unused portion of the Expected Occupation Period.

17.2 Suspension for duration of an emergency

If requested by any Authority during an emergency or incident of any kind (including a traffic incident), the Licensee must immediately suspend the Licensee's Activity and, if requested by any Authority, must removal all of the Licensee's Property from the Licence Area, for the duration of emergency or incident.

18. NOTICES

18.1 Any notice or other communication required or authorised under this Agreement must be in writing (except where a verbal notice is permitted), and may be given personally to the person, left at or sent by prepaid post to the person's address set out in this Agreement, or sent by email to the person's current email address notified by that party to the other parties.

18.2 A notice or other communication is taken to be received by the recipient:

18.2.1 if given personally, at that time;

18.2.2 if sent by prepaid post, within Australia to an Australian address, 6 Business Days after the date of posting;

18.2.3 if sent by email, at the time of receipt as specified in section 13A of the *Electronic Transactions (Victoria) Act 2000*.

18.3 In all cases, a notice or communication received after 5.00pm in the place of receipt or on a day that is not a Business Day is taken to be received by the recipient at 9.00am on the next Business Day.

19. GUARANTEE AND INDEMNITY

19.1 Application

This clause 19 only applies where the Licensee is a corporation that is not a Listed Corporation. If this clause applies, a Guarantor approved by Department of Transport must be named at item 2 of the Schedule and must sign this Agreement at the same time that the Licensee signs this Agreement.

19.2 Guarantor's obligations

In consideration of Department of Transport entering into this Agreement with the Licensee at the Guarantor's request, the Guarantor:

19.2.1 guarantees that the Licensee will perform all its obligations under this Agreement;

19.2.2 must pay Department of Transport on demand any money owing to Department of Transport by the Licensee; and

19.2.3 indemnifies Department of Transport against all Loss resulting from Department of Transport having

entered into this Agreement, whether from the Licensee's breach of any provision of this Agreement, or from this Agreement being or becoming unenforceable against the Licensee.

19.3 Liability not affected

The Guarantor's liability is not in any way affected by Department of Transport granting the Licensee or any Guarantor any time or other indulgence, Department of Transport not enforcing the Agreement against the Licensee or Department of Transport delaying the enforcement of it, Department of Transport agreeing not to sue the Licensee or any Guarantor, any provision of this Agreement being unenforceable, this Agreement not being signed or not being signed correctly by any Guarantor or any other person, Department of Transport doing or failing to do something else which under any Law would have affected the Guarantor's liability, the Occupation Fee being changed in accordance with the terms of this Agreement or by agreement between Department of Transport and the Licensee, this Agreement being varied or extended without the consent of the Guarantor, Department of Transport failing to give a notice Department of Transport is required to give the Licensee or the Guarantor under this Agreement, anyone else (including another Guarantor) being released from this guarantee, Department of Transport calling upon the Security Deposit or Department of Transport electing not to do so, or the Licence not being effective as a licence or this Agreement having ended.

19.4 Covenants

The Guarantor agrees:

19.4.1 not to seek to recover any money from the Licensee by way of reimbursement for payments made by the Guarantor to Department of Transport until Department of Transport has been paid in full;

19.4.2 not to prove, claim or exercise voting rights if a liquidator, provisional liquidator, administrator or trustee in bankruptcy is appointed in respect of the Licensee for any amount which Department of Transport has demanded from the Guarantor until Department of Transport has been paid in full; and

19.4.3 to pay Department of Transport any money which Department of Transport is required to refund to the Licensee's liquidator or trustee in bankruptcy as preferential payments received from the Licensee.

19.5 Reinstatement of guarantee

If any payment or other transaction in connection with this Agreement or this clause 19 is void, voidable, unenforceable or defective, or claimed to be so and that claim is upheld, then:

19.5.1 the liability of the Guarantor is to be what it would have been if the payment or other transaction had not been made; and

19.5.2 immediately when Department of Transport requests it, the Guarantor must do everything necessary to put Department of Transport back into the position it would have been in if the payment or other transaction had not been made.

20. SEVERANCE

20.1 The parties agree that a construction of this Agreement that results in all provisions being

enforceable is to be preferred to any other construction.

20.2 If, despite the application of clause 20.1, a provision of this Agreement is illegal or unenforceable:

20.2.1 if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are omitted; and

20.2.2 in any other case, the whole provision is omitted, and the remainder of this Agreement continues in force.

21. GENERAL

21.1 Electronic execution, witnessing and exchange of Agreement

21.1.1 This clause applies if this Agreement has been executed, witnessed and/or exchanged by using electronic means, including an electronic execution service (EES) and/or witnessing over audio visual link.

21.1.2 By signing this Agreement, the parties consent to this Agreement being executed, witnessed and exchanged by way of electronic means.

21.1.3 Each party and any witness may execute the Agreement in physical paper format or electronically or a combination of both. This Agreement may be exchanged electronically or in physical paper format or a combination of both. In each case this Agreement will be legally binding upon the parties.

21.1.4 If using an EES, the parties:

- (a) must comply, and must ensure that its authorised representatives comply with all processes and instructions concerning the use of the EES to execute and to give effect to this Agreement;
- (b) must refrain from engaging in any conduct which may place any party in breach of their obligations under any agreement with the provider of the EES for the provision of the EES; and
- (c) acknowledge and agree that the date, time and location of the electronic execution by or on behalf of the parties may be recorded by the provider of the EES and may be used by the parties in establishing when and where this Agreement was executed by or on behalf of other parties.

21.1.5 Each party must do all things necessary and must ensure that party's employees and agents do all things necessary in order to give effect to this Agreement, including signing and delivering to other parties electronic or hard copies of this Agreement.

21.1.6 If a party is a company, then:

- (a) the signatories for that party sign this Agreement pursuant to sections 126 and 127(4) of the Corporations Act; and
- (b) that party warrants (and the signatories for that party separately warrant) to the other parties that the other parties may rely on the assumptions in section 129 of the Corporations Act, despite this Agreement not being signed pursuant to section 127(1) of that Act.

21.1.7 Any witness, by signing this Agreement and having witnessed the execution of a party over audio visual link, is taken to have entered the following words before signing or applying any form of electronic or digital signature:

I confirm that execution of this document by the signatory was witnessed by me over audio visual link in accordance with the COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020 (Vic).

21.2 Counterparts

This Agreement may be executed in any number of counterparts and all the counterparts together constitute one and the same instrument.

21.3 Power of attorney

If this Agreement is executed under power of attorney, each attorney executing this Agreement warrants that, at the time of executing this Agreement, he or she has no notice of revocation of the power of attorney under the authority of which this Agreement is executed.

21.4 Party preparing document not to be disadvantaged

No rule of contract interpretation must be applied in the interpretation of this Agreement to the disadvantage of one party on the basis that it prepared or put forward this Agreement or any document comprising part of this Agreement.

21.5 Continuing indemnity

Each indemnity given by the Licensee in this Agreement is a continuing obligation, separate and independent from the other obligations of the Licensee, and survives the termination end of this Agreement.

21.6 Governing law

This Agreement is governed by the laws of Victoria.

SCHEDULE

1 Licensee	
<i>Full legal name:</i>	
<i>ABN / ACN:</i>	ACN / ABN
<i>Address (physical – PO box not acceptable):</i>	
<i>Main contact (name):</i>	
<i>Phone:</i>	
<i>Email:</i>	
2 Guarantor	(* Note: if relevant – refer to clause 19)
	[Note: The Guarantor should be two directors of the company (or one, where the company is a sole director company) or should be the ultimate holding company if the Licensee wants another company to be Guarantor]
<i>Full legal name(s):</i>	
<i>ABN / ACN (if relevant, only required for corporate Guarantor):</i>	ACN / ABN
<i>Address (PO box not acceptable):</i>	
3 Licence Area (clause 1.28)	The part of the Road that is to be occupied, closed or used, as permitted by and described in the Traffic Management Plan which relates to this Licence Agreement.
4 Road (clause 1.47)	
5 Expected Occupation Period (clause 1.24)	_____ days, within the Occupation Window.
6 Occupation Window (clause 1.38)	The period between the Commencement Date and the Expiry Date, being the period as specified in the MOA.
7 Commencement Date (clause 1.8)	Such date as specified in the MOA.
8 Expiry Date (clause 1.23)	Such date as specified in the MOA.
9 Occupation Fee (clauses 1.37)	\$ _____ plus GST
10 Method for payment of Occupation Fee (clause 6)	The Licensee must pay the whole of the Occupation Fee for the Expected Occupation Period to Department of Transport before the Commencement Date. Instructions for payment will be set out on a tax invoice provided to the Licensee.
11 Security Deposit (clauses 1.51 and 9)	\$ _____ payable by the Commencement Date, payable to the Department of Transport's agent, BGIS.
12 Special Conditions (clause 2.1)	